

TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT AND ACCEPTANCE.** This Purchase Order will become the exclusive agreement between the parties, subject to the terms and conditions hereof, when accepted by acknowledgment or commencement of performance. Additional or different terms proposed by Vendor shall not be applicable, unless accepted in writing by Astronautics Corporation of America (hereinafter called "KG&N"). No change in, modification of, or revision to this Purchase Order shall be valid unless in writing and signed by an authorized employee of KG&N. All supplements, sheets, specifications, schedules, exhibits, riders or other attachments annexed hereto or referenced herein are made part of this Purchase Order and Vendor agrees to them by acceptance of this Purchase Order. Failure of Vendor to send to KG&N a written acceptance or advice that Vendor has commenced performance within ten (10) days after the date hereof shall entitle KG&N, at KG&N's option, at any time prior to receipt of such written acceptance or advice, to cancel this Purchase Order without cost or liability to KG&N.

2. **DEFINITIONS.** As used herein, the term "products" shall include goods, supplies, materials, packaging, services, work and data expressly or impliedly ordered herein. The term "FAR" means Federal Acquisition Regulation. The term "DoD FAR Supp." (DFARS) means Department of Defense Federal Acquisition Regulation Supplement.

3. **CHANGES.**

(a) KG&N may at any time make changes by means of written change order to this Purchase Order in one or more of the following: quantity, drawings, designs, specifications, technical data, delivery schedules, place of inspection, acceptance or delivery, method of shipment, and packaging. If such change results in an increase or decrease in the cost or time required for performance of the work under this Purchase Order, an equitable adjustment shall be made in price, delivery schedule, or both. Any claim for such adjustment shall be deemed waived by Vendor unless submitted in writing to KG&N within thirty (30) days of receipt by Vendor of the change order or within such other period of time as may be agreed upon in writing by KG&N and Vendor. KG&N may require that claims for equitable adjustment pursuant to this paragraph shall be submitted on the applicable forms contained in FAR Part 53, and shall be governed by the principles prescribed by FAR Part 31, whether or not this Purchase Order bears a government contract number. Failure of Vendor to submit its claim in the prescribed manner or within the time allowed shall be grounds for KG&N to make a unilateral determination of the amount, if any, due Vendor for the change and such determination shall be final. Where the cost of property made obsolete or excess as a result of a change is included in Vendor's claim for adjustment, KG&N shall have the right to prescribe the manner of disposition of such property. Failure to agree on any claim for equitable adjustment under this paragraph shall be a dispute within the meaning of the disputes clause hereof. Such dispute shall not relieve Vendor from proceeding without delay in the performance of this Purchase Order as changed. Changes shall not be binding upon KG&N unless evidenced by a change order issued and signed by an authorized employee of KG&N.

(b) Any communication, purchase order, agreement, amendment, change, stop work order, course of performance or course of dealing, supplementing, modifying, rescinding, or waiving any of KG&N's rights or obligations shall be void unless executed or ratified in a writing which expressly states that it constitutes an amendment or change of this Purchase Order and which is signed by KG&N's representative duly authorized in writing in order that KG&N shall be bound only by such writing and not by construction, implication, or apparent authority. Information, advice, approvals, or instructions by KG&N's technical or other personnel shall be deemed expressions of personal opinions only and shall not affect KG&N's or Vendor's rights and obligations.

4. **DISPUTES.** This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin. By entering into this Agreement, Vendor irrevocably consents to the jurisdiction of the courts located in the State of Wisconsin. Vendor may litigate any dispute arising hereunder or in connection herewith in a court of competent jurisdiction, provided, however, that no action may be instituted or maintained against KG&N in any state, without KG&N's prior written consent, except in the State of Wisconsin. Pending settlement or final judgment, Vendor shall proceed diligently with the performance of this Purchase Order.

5. **DELIVERY.** Time is of the essence in the performance by Vendor of this Purchase Order. KG&N may at any time postpone delivery of all or any of the products ordered herein for a reasonable time. KG&N may retain or return to Vendor at Vendor's expense products received in advance of their required delivery dates as specified in this Purchase Order. No such retention shall waive KG&N's rights to return subsequent shipments delivered in advance of the required delivery date, nor shall said retention accelerate the time for payment. Overshipments may be returned at Vendor's expense or retained by KG&N at no

increase in price. In the event of the return by KG&N to Vendor of advance or overshipments, KG&N shall charge to Vendor all shipping costs, both ways, plus a reasonable charge for its services in effecting such return. Vendor shall not, without KG&N's written consent, manufacture or procure materials in advance of vendor's normal flow time or deliver in advance of schedule. In the event of termination or change, no claims will be allowed for any such manufacture or procurement or delivery unless there has been such prior written consent by KG&N. It is Vendor's responsibility to furnish the proper quantity called for in this Purchase Order. No variations in the quantity specified herein shall be accepted as compliance with this Purchase Order except by KG&N's prior written consent.

6. **INSPECTION.** All products furnished pursuant to this Purchase Order must comply with specifications, or if no specifications are given, a standard quality as understood by the trade must be furnished. All products including raw materials, work in process, and end items shall be subject to inspection and test by KG&N or its designee at all times prior to shipment by Vendor and final inspection and acceptance at destination within twelve (12) months of receipt notwithstanding any prior payment or inspection and acceptance. Final inspection shall not relieve Vendor of its obligations under its warranties. KG&N may reject and hold at Vendor's expense, subject to Vendor's disposal, all products not conforming to applicable specifications, drawings, samples or descriptions. KG&N shall have the option of returning rejected products to Vendor at Vendor's risk and expense and KG&N shall charge to Vendor transportation both ways, plus a reasonable charge for KG&N's services in effecting such return. Without limiting any other rights it may have, KG&N at its option may require Vendor to repair or replace at Vendor's expense any products which fail to meet the requirements of applicable specifications, drawings, samples, or descriptions. Rejected products may not be reentered to KG&N by Vendor unless notification of such past rejection is submitted with the retender and KG&N has consented to such retender. KG&N shall have the option to retain defective products, in which event KG&N shall be entitled to an equitable reduction in price to be determined by KG&N. KG&N shall also have the option to perform or have performed by others the necessary repairs or to replace such products by contract or otherwise, and charge the cost of such repairs or replacements to Vendor. In the event that products furnished by Vendor fail to pass KG&N's usual inspection, KG&N may charge Vendor for the time required for such additional inspections as may be necessary. Vendor shall maintain an inspection and quality control system acceptable to KG&N. Vendor shall keep records of all inspections made of the products and shall at all reasonable times, including the period of manufacture, allow KG&N, the Government and regulatory agencies, KG&N's customers or the customer's representative to inspect and test the products and inspect the plants, including those of Vendor's subcontractors where the work is performed. The records of all inspections by Vendor shall be kept complete and available to KG&N during the performance of this Purchase Order and for the duration of any applicable warranties. Vendor shall provide without additional charge reasonable facilities and assistance for safe and convenient inspection or test. If this Purchase Order specifies that government source inspection is required prior to shipment from Vendor's plant, Vendor shall, upon receipt of this order, promptly notify the Government representative who normally services Vendor's plant so that appropriate arrangements for Government inspection can be made. In the event that the Government representative or office cannot be located, KG&N shall be notified immediately. All facilities used to perform the work must comply with the requirements of this Purchase Order.

7. **WARRANTIES.** In addition to all other warranties, express or implied in law, Vendor warrants that all products delivered hereunder shall be merchantable, free from defects in workmanship and materials, and shall strictly conform to applicable specifications including performance specifications, drawings and approved samples, if any, and will be fit and sufficient for the purposes intended, and, if of Vendor's design, will be free from design defects. Vendor further warrants that all products shall be in conformance with the most current standards established by the Occupational Safety and Health Act of 1970 and the Consumer Product Safety Act of 1972 as amended. All warranties including service warranties and guarantees shall run to KG&N, its customers and subsequent owners of the products or end products of which they are a part. In the event of a breach hereunder, KG&N may require that the products be repaired or replaced by Vendor, or KG&N may return all or some of the products to Vendor for refund or KG&N may retain the products. In the event KG&N retains the products, the price of this Purchase Order shall be equitably reduced. KG&N may replace such products with similar products and charge the Vendor the cost occasioned to KG&N thereby. KG&N shall also have the option to perform or have performed by others the necessary repairs and charge the cost of such repairs to Vendor. Transportation charges to and from Vendor's plant and other incidental expenses and responsibility for defective products while in transit shall be borne by Vendor. In the event of a breach of any of the warranties herein provided or of any warranties express or implied in law, Vendor agrees to pay and indemnify KG&N, its customers or subsequent owners for all liability, loss, costs and

expenses resulting from such breach including the cost of tests performed by KG&N in determining whether a breach has occurred, and all costs of disassembly and reassembly, attorney's fees and costs of litigation. The rights and remedies of KG&N herein provided shall not be construed to negate, replace, or limit, but shall be additional to any rights of KG&N as a result of breach of warranty by Vendor by virtue of any applicable laws or regulations. All warranties shall be construed as conditions as well as promises and shall not be deemed to be exclusive. Except for latent defects, fraud, or gross mistake amounting to fraud, the term of this warranty shall be twelve (12) months after delivery to and acceptance by KG&N's customer or twenty-four (24) months after delivery to and acceptance by KG&N, whichever first occurs. Any products corrected or furnished in replacement by Vendor pursuant to this paragraph shall also be subject to all the provisions of this paragraph to the same extent as products initially delivered. The warranty with respect to such products shall be equal in duration to that herein set forth and shall run from the date of delivery and acceptance by KG&N of such corrected or replaced products.

8. **PACKING AND SHIPPING.** All goods shall be prepared for shipment and packed by Vendor to prevent damage or deterioration, secure lowest transportation rates, and comply with carrier tariffs. All packages must bear KG&N's Purchase Order number and show gross fare and net weights and quantity. No additional charges will be made to KG&N for boxing, wrapping, packaging, packing, cartage or storage unless specified in this Purchase Order. When delivery is F.O.B. at a point other than KG&N's plant, Vendor shall not declare a value on the bill of lading except when a declaration of value will result in decreased cost of shipment; in such event, Vendor shall make such declaration of value that will result in the minimum transportation rates. If it appears Vendor will not meet the delivery schedule specified in this Purchase Order, Vendor shall, if requested by KG&N, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, the added cost to be borne by Vendor. This shall be in addition to KG&N's other remedies.

9. **INVOICES AND PAYMENTS.** Payment of Vendor's invoices is subject to adjustment for any shortage or rejection, or any other cause specified in this Purchase Order. Individual invoices must be issued for each shipment. Freight and other similar charges as well as any discounts to which KG&N is entitled, must be stated on the invoice.

10. **PRICES.** Vendor warrants that the prices for the products sold to KG&N under this Purchase Order are not less favorable than those currently extended by Vendor to any other customer for the same or substantially similar products in equal or lesser quantities. In the event that the price or prices shown in this Purchase Order are less favorable or in the event that Vendor reduces its price to any other customer for such products during the term of this Purchase Order, Vendor agrees to reduce the prices hereof correspondingly.

11. **SUBCONTRACTING OR ASSIGNMENT BY VENDOR.** No contract shall be made by Vendor with any other party to furnish any of the completed or substantially completed products, spare parts or work herein contracted for, nor shall Vendor sell or assign this Purchase Order or any part thereof or any monies due or to become due hereunder without the prior written consent of KG&N, except that a claim for monies due or to become due under this Purchase Order may be assigned by Vendor to a bank, trust company, or other financing institution, including any federal lending agency, without such consent. **KG&N shall be furnished with two (2) copies of the notice of assignment and two (2) copies of the assignment. The notice of assignment and assignment shall be signed by both the assignor and assignee.** Payment to assignee of any such claim shall be subject to set off or recoupment for any present or future claim or claims which KG&N may have against Vendor. KG&N reserves the right without notice to the assignee to make direct settlements or adjustments in price with Vendor, notwithstanding any assignment of a claim for monies due or to become due.

12. **NON-WAIVER.** The remedies herein set forth shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver by KG&N of any breach of any provision hereof shall constitute a waiver of any other or recurring breach of this or any other purchase order. Failure of KG&N to insist upon strict performance of any of the terms and conditions of this Purchase Order shall not constitute a waiver of such terms and conditions or a waiver of any default.

13. **DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION.**

(a) Drawings, specifications, data, designs, inventions, and other technical information supplied by KG&N shall remain KG&N's property and shall be held in confidence by Vendor. Such information shall not be reproduced, used or disclosed to others by Vendor without KG&N's prior written consent, and shall be returned to KG&N upon completion of this Purchase Order or upon demand. KG&N does not grant indemnity to Vendor for infringement of any patent, trademark, copyright or data rights. Any information which Vendor may disclose to KG&N with respect to the design, manufacture, sale or use of the products covered by this Purchase Order shall be deemed to have been disclosed as part of the consideration for this Purchase Order, and Vendor shall not assert any claim against KG&N by reason of KG&N's use of such information. All data generated or developed in the course of performance

of this Purchase Order shall be the sole property of KG&N and Vendor shall not use, duplicate or disclose such data for any purposes other than the performance of the work required hereunder without the prior written consent of KG&N. The purchase price of this Purchase Order is, in part, consideration for any design work performed by Vendor in connection with this Purchase Order and incorporated in the products to be delivered hereunder, and Vendor shall not supply such products to others without KG&N's prior written consent.

(b) To the extent authorized by the United States Government in a contract with Vendor or a subcontract to which Vendor is a party for the manufacture of products for the Government, and to the extent that such use will not interfere with Vendor's performance of this or any other purchase order from KG&N in effect at the time the Vendor enters into such contract or subcontract, and upon prior written notice to KG&N of such Government authorization and contract number, the Vendor shall have the right to use items mentioned in subparagraph (a) which the Government owns or has the right to use or the right to authorize others to use.

14. **TERMINATIONS.**

(a) The termination for convenience provisions set forth in Part 49 of FAR are incorporated herein by reference and made a part hereof, except that "Government" and "Contracting Officer" shall mean KG&N, "Contractor" shall mean Vendor, and "Contract" shall mean this Purchase Order. KG&N may terminate all or any part of this Purchase Order at any time or times for convenience by telegraphic or other written notice to Vendor, whether or not this Purchase Order includes a Government contract number. The rights and obligations of the parties shall be in accordance with FAR 52.249-1 or 52.249-2, as appropriate, provided, however, that Vendor must submit its termination claim to KG&N within sixty (60) days after the effective date of termination. The provisions of this subparagraph shall not limit or affect the right of KG&N to terminate this Purchase Order for default.

(b) The termination for default provisions set forth in Part 49 of FAR are incorporated herein by reference and made a part hereof. KG&N may terminate all or any part of this Purchase Order in accordance with FAR 52.249-8 except that "Government" and "Contracting Officer" shall mean KG&N, "Contractor" shall mean Vendor, and "Contract" shall mean this Purchase Order, and the references to a "Disputes" clause are inapplicable. If the parties fail to agree on the amount to be paid for items referred to in 52.249-8(e) of the default clause, the amount shall be the reasonable value thereof as determined by KG&N.

(c) KG&N may, by written notice to Vendor, terminate the whole or any part of this Purchase Order in the event that Vendor shall become insolvent or make a general assignment for the benefit of creditors, or a receiver or liquidator is appointed or applied for, or if Vendor admits in writing its inability to pay its debts as they become due, or if any proceeding under any Federal or State bankruptcy or insolvency law is brought by or against Vendor. Such termination shall be deemed for default in accordance with paragraph 14(b) of this Purchase Order and the rights and obligations of the parties shall be determined as therein provided.

15. **SUSPENSION OF WORK.** KG&N may order the indefinite suspension of all or part of the work. If the suspension has a material effect on cost or delivery, an appropriate adjustment shall be made in price (excluding profit) or delivery, but not to the extent that the work would have been otherwise interrupted. No claim shall be allowed unless made within thirty (30) days after the suspension ends.

16. **COMPLIANCE WITH LAWS.** Vendor warrants that in the performance of this Purchase Order, it will comply with all applicable Federal, State and local

laws and ordinances and all lawful orders, standards, rules and regulations thereunder now in effect or as hereafter amended, including but not limited to the Occupational Safety and Health Act of 1970 (Public Law 91-596), the Fair Labor Standards Act of 1938 as amended (29 U.S.C. Secs. 201-219), Walsh-Healey Public Contracts Act as amended (41 U.S.C. Secs. 35-45), the Contract Work Hours and Safety Standards Act (40 U.S.C. Secs. 327-333). Vendor covenants to save and hold KG&N harmless and to reimburse KG&N for any and all costs, damages, and expenses, including attorney's fees, suffered or occasioned to KG&N directly or indirectly through any failure of Vendor to comply with any such law, ordinance, order, standard, rule or regulation. On Vendor's invoice or in other form satisfactory to KG&N, Vendor shall submit certification that the products covered by this Purchase Order were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and of the regulations and orders of the U.S. Department of Labor issued thereunder.

17. **RELEASE OF INFORMATION.** Vendor shall not, without obtaining KG&N's prior written consent, disseminate the fact that Vendor has furnished or has contracted to furnish to KG&N the products covered by this Purchase Order, nor shall Vendor disclose any of the details connected with this Purchase Order to third parties. No news releases, photographs, films, advertisements, public announcements, confirmation or denial of this Purchase Order, its subject matter or any phase thereof, shall be made without KG&N's prior written consent.

18. **INSURANCE AND INDEMNITY.** Vendor agrees to defend and shall indemnify and hold harmless KG&N, its agents, customers, successors,

assigns and users of its products against any loss, damage and liability, including costs and expenses by reason of any and all claims and suits charging (a) personal injury, property or other damage or (b) actual or alleged infringement of any patent, copyright or trademark, arising out of the use or sale of the products purchased hereunder or arising from any alleged defect in the products, whether latent or patent, including allegedly improper construction and design, or from the failure of the products to comply with specifications or with any express or implied warranties of Vendor or arising out of the alleged violation of any statute, ordinance, administrative order, rule or regulation connected with the manufacture or sale of the products including but not limited to the Federal Occupational Safety and Health Act of 1970 as amended. If an injunction is issued as a result of any such infringement, Vendor agrees to refund to KG&N the amount paid to Vendor pursuant to this Purchase Order. Vendor shall have no liability with respect to patent infringement for products as to which KG&N furnished complete design specifications. The furnishing of performance specifications by KG&N to Vendor shall not relieve Vendor of indemnifying and holding harmless KG&N for any actual or alleged patent infringement. Vendor further agrees to obtain and maintain during the life of this Purchase Order at its expense, product liability insurance, with an endorsement in favor of KG&N, in such form and amount and by such company as may be approved by KG&N in writing. Satisfactory evidence of such insurance shall be submitted to KG&N upon request.

19. KG&N OR U.S. GOVERNMENT PROPERTY, MATERIALS, TOOLING OR TEST EQUIPMENT.

(a) Title to and the right to immediate possession of all tooling, materials or equipment furnished by KG&N or the Government under this Purchase Order shall remain in KG&N or the Government, respectively, at all stages of use or storage by Vendor. All such items shall be used only for the purpose of fulfilling this Purchase Order, except with respect to items furnished by the Government where the Government has authorized the Vendor to use them for other purposes. Such items shall be kept in good condition and repair by Vendor at its expense. Vendor shall be liable for safekeeping and the preservation of all KG&N or Government property. KG&N does not guarantee the accuracy of any tooling or the quality or suitability of any material supplied by the U.S. Government or KG&N. Vendor agrees to mark all Government property, whether furnished or acquired for account of the Government, with an identification number preceded by the letters "U.S.". Vendor further agrees to maintain adequate property control and records of Government property in accordance with the provisions of FAR 45.5. In the absence of any provision in this Purchase Order to the contrary, all KG&N and Government property shall be returned to KG&N in as good condition as when received by Vendor, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this Purchase Order. If this Purchase Order is for tooling, upon any payment therefor, title shall pass to either KG&N or the Government in accordance with the provisions of this Purchase Order and applicable Government regulations.

(b) To the extent authorized by the U.S. Government in a contract with Vendor or a subcontract to which Vendor is a party for the manufacture of products for the Government, and to the extent that such use will not interfere with Vendor's performance of this or any other purchase order from KG&N in effect at the time the Vendor enters into such contract or subcontract, and upon prior written notice to KG&N of such Government authorization and contract number, the Vendor shall have the right to use items mentioned in subparagraph (a) which the Government owns or has the right to use or the right to authorize others to use.

20. RESPONSIBILITY FOR SUPPLIES. Vendor shall not reserve title or a security interest in products shipped to KG&N. Except as otherwise provided in this Purchase Order, title to products purchased under this Purchase Order shall pass from Vendor to KG&N, or the Government, as appropriate, at the F.O.B. point designated on the face of this Purchase Order, regardless of the place of inspection. However, regardless of the passage of title, loss or damage discovered after transfer of title determined to be the result of faulty packaging or handling by Vendor shall be Vendor's responsibility. Acceptance by KG&N shall be final only after completion of inspection at KG&N's plant. Vendor shall bear all risks for rejected products after notice of rejection. Nothing herein shall limit any of KG&N's rights under the warranty clause of this Purchase Order.

21. WORK ON KG&N'S OR ITS CUSTOMER'S PREMISES. If Vendor's work under this Purchase Order involves operations by Vendor on the premises of KG&N or one of its customers, Vendor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work, and, except to the extent that any such injury is due solely and directly to KG&N's or its customer's negligence, shall indemnify KG&N and the customer against all loss which may result from any act or omission of Vendor, its agents, employees, or subcontractors. Vendor shall maintain and furnish KG&N with copies of such public liability, property damage and employer's liability compensation insurance as will protect KG&N and its customers from said risks and from any claim under any applicable Workers' Compensation and Occupational Disease Act.

22. TAXES. Except as otherwise specifically agreed or required by law, Vendor will pay or assume all taxes imposed upon or in connection with the sale or furnishing of the products, including all Federal, State or municipal excise and personal property taxes on any property in the possession of Vendor until title passes to KG&N. Vendor agrees to take advantage of any tax exemptions to which it is entitled and KG&N is entitled to a price reduction in the amount of any taxes for which Vendor could have obtained an exemption but failed to do so.

23. AFFIRMATIVE ACTION COMPLIANCE. The Vendor represents that it has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or that it has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

24. INDUSTRIAL LAWS. Vendor agrees that neither Vendor nor any of the persons furnishing materials or performing work or services required by this Purchase Order are employees of KG&N within the meaning or the application of any Federal or State Unemployment Insurance Law, Old Age Benefit Law, Social Security Law, Workers' Compensation Industrial Accident Law, or other Industrial or Labor Law. Vendor agrees at its own expense to comply with such laws and to assume all liability or obligations imposed by them.

25. NEW PRODUCTS. New and unused products only shall be furnished pursuant to this Purchase Order.

26. PRIORITIES. When a priority symbol (e.g., DO-A1) is included in this Purchase Order, the materials ordered are certified for National Defense use. Vendor is required to follow the provisions of DMS Reg. 1 or DPS Reg. 1 and of all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this Purchase Order.

27. GOVERNMENT CONTRACTS. If this Purchase Order contains a Government contract number, Vendor shall comply with all applicable Federal, State or local laws, rulings and regulations relating to Government procurement. Without limiting the foregoing, the following provisions of FAR and DFARS are incorporated herein by reference to the extent applicable and Vendor agrees to comply therewith. Except for Cost Accounting Standard clauses, the version of each FAR and DoD FAR Supplement in effect on the date of the Government prime contract under which this Purchase Order is issued, shall apply. Cost Accounting Standard clauses shall be effective as of the date of this Purchase Order. When necessary to make the context of the below-enumerated provisions applicable to this Purchase Order, the term "Contractor" shall mean Vendor, the term "Contract" shall mean this Purchase Order, and the terms "Government", "Contracting Officer" and equivalent phrases shall mean KG&N. The term "Subcontractor" shall include all lower tier subcontractors. Copies of FAR and DoD FAR Supplements may be obtained from the Government Printing Office, Washington, D.C. 20402.

