

Advanced Programs, Inc. (API) Purchase Order Terms and Conditions

1. **Definitions**-The word "Articles" means the goods, materials, products, technical data, software, intellectual property, drawings, or services identified in this purchase order. The term "Government" means the government of the United States of America or any department or agency thereof.
2. **Acceptance of Purchase Order**-This purchase order constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Seller either by signing and returning the acknowledgment form hereof, commencement of effort, or by prompt shipment of conforming Articles, whichever occurs first. This purchase order does not constitute acceptance by Buyer of any offer to sell, any quotation, or proposal. Reference in this purchase order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of the terms and conditions of this purchase order to any degree whatsoever. Any terms and conditions proposed by Seller in acknowledging or accepting Buyer's offer which are inconsistent with or in addition to the terms set forth in this purchase order shall not be binding upon Buyer and shall be void and of no effect, unless and to the extent expressly accepted in writing by Buyer's authorized procurement representative.
3. **Data**-Seller acknowledges that it has in its possession all applicable specifications, drawings and documents necessary to perform its obligations hereunder at the price and schedule set forth. All such documentation shall be deemed to be a part of this purchase order.
4. **Packaging and Shipping**-Deliveries shall be made as specified without charge for packaging or storage unless otherwise specified, and Articles shall be suitably packed to secure lowest transportation costs and in accordance with the requirements of common carriers. Articles shall be described on bills of lading. Buyer's order numbers must be plainly marked on all packages, bills of lading and shipping orders. Buyer's count or weight shall be final and conclusive on shipments. Except as consented to be Buyer, Seller shall not ship in advance of schedule and shall ship exact quantities ordered.
5. **Taxes and Duties**-The prices stated herein include all applicable taxes and duties, except state and local sales and use taxes which by statute may be passed on to Buyer. Such sales and use taxes shall be separately stated on Seller's invoice. This order shall include all related customs duty and import drawback rights, if any, including rights developed by substitution and rights which may be acquired from Seller's suppliers, which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of all such rights, and to supply such documents as may be required to obtain such drawbacks, unless waived by Buyer.
6. **Prices**-Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for items which are the same or substantially similar to the Articles, taking into account the quantity under consideration. Seller shall refund any amounts paid by Buyer in excess of such price.
7. **Set-Off**-Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer, any of its divisions or any of its affiliates or subsidiaries, against any amount payable at any time to Seller by Buyer and of its divisions or any of its affiliates or subsidiaries.
8. **Warranty**-Seller warrants that all Articles will conform to applicable specifications, drawings, descriptions, and samples, and will be of good workmanship and materials, and free from defect, claim, encumbrance, or lien. Unless manufactured pursuant to detail design furnished by Buyer, Seller assumes design responsibility and warrants the Articles to be free from design defect and suitable for the purposes intended by Buyer. If the Articles delivered or services furnished hereunder do not meet the warranties specified herein or otherwise applicable, Buyer may, at its option return at Seller's expense the defective or nonconforming Articles for credit or refund, or require Seller to correct, at no cost to Buyer, any defective or nonconforming Articles or services. Articles required to be corrected or replaced shall be subject to this clause and Clause 9 entitled "Inspection" in the same manner and to the same extent as Articles delivered under this order originally. Seller's warranties, together with its service guarantees, shall run to Buyer and its customers or users of the Articles and shall not be deemed to be exclusive. Buyer's inspection, approval, acceptance, use of or payment for all or any part of the Articles shall in no way affect its warranty rights whether or not breach of warranty had become evident at the time.
9. **Inspection**-The Articles may be inspected by Buyer at all times and places and at any stage of production, and if at the premises of Seller, Seller without additional charge shall provide all reasonable facilities and assistance required for safe and convenient test and inspection. The foregoing shall not relieve Seller of its obligation to make full and adequate test and inspection. Buyer may base acceptance or rejection of any or all Articles on inspection by sampling. From the time of notice of rejection of defective Articles upon inspection, or for a breach of warranty, risk of loss thereof shall be upon Seller until redelivery, if any, to Buyer. All rejected Articles may be returned to Seller at Seller's risk and expense or be held by Buyer at Seller's risk and expense subject to Seller's disposal.
10. **Default**-Buyer may, by written notice to Seller, cancel this purchase order for default, (a) if the Seller fails to deliver the Articles or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (b) if the Articles delivered do not conform to contractual requirements or if Seller fails to perform any of the other provisions of the purchase order, or so fails to make progress as to endanger performance of the contract in accordance with its terms; or (c) if Seller's financial conditions shall at any time become unsatisfactory to Buyer. Upon such cancellation Seller will deliver to Buyer any of the Articles, for which Buyer shall make written request at or after cancellation and Buyer will pay Seller the fair value of any such property so requested and delivered.
11. **Changes**-Buyer shall have the right by written notice to change the extent of the work covered by the purchase order, the drawings, specifications, or other description herein, the time, method or place of delivery or the method of shipment or packaging or to suspend work. Upon receipt of any such notice, Seller shall proceed promptly to make the changes in accordance with the terms of the notice. If any such change causes an increase or decrease in the cost of performance or in the time required for performance Seller shall provide prompt notice to Buyer of any change of costs or time for performance and an equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly.
12. **Tools and Materials**-Title to and the right of immediate possession of all tooling, equipment, or materials furnished or paid for by Buyer directly or indirectly for use hereunder shall be and remain in Buyer. Buyer does not guarantee or warrant the accuracy of any tooling furnished by it. Seller shall (a) be responsible for all loss or damage to such tooling, equipment, or materials while in its possession and insure its risk in this respect with adequate fire and extended coverage insurance; (b) clearly mark the same as belonging to Buyer, keep it segregated in Seller's plant and treat it confidentially; (c) keep the same in good operating condition; and (d) use the same exclusively for the performance of work for Buyer and not for production of larger quantities than specified or in advance of normal production schedules, except with Buyer's written consent. Tooling, equipment or materials furnished shall not include Government furnished items of this sort. Upon completion of this order, all such items shall be disposed of as Buyer directs.
13. **Patents, Copyrights, Trademarks and Trade Secrets**-The Seller shall defend at its expense and hold harmless Buyer, its subsidiaries, agents, customers and users from any and all loss, damages or liability (including legal expense) for or on account of, or resulting from, any claim of infringement of any existing or future patents, copyrights, or trademarks, or violation of any trade secrets, with respect to any of the Articles furnished under this purchase order. The fact that Buyer furnishes specifications to Seller with respect to any of the Articles, shall neither relieve the Seller from its obligations hereunder nor limit the Seller's liability therefor, nor shall the same be deemed to constitute an undertaking by Buyer to hold Seller harmless

Advanced Programs, Inc. (API) Purchase Order Terms and Conditions

- against any such claim which arises out of compliance with the specifications.
14. **Confidential Information**-Seller shall not disclose to any third party or use any confidential information concerning this purchase order or other material intended for use therewith without first obtaining the written consent of Buyer. The Buyer shall retain title at all times to such drawings, specifications, samples and other material, all of which, including copies thereof, upon request or upon completion of this order, shall be promptly returned to Buyer. Any knowledge or information which Seller may disclose to Buyer in connection with the purchase of any of the Articles shall not, unless otherwise specifically agreed upon in writing by Buyer, be deemed to be confidential information and shall be acquired free from any restriction as part of the consideration for this purchase order.
 15. **Terms**- Net 30 days APO. Advanced Programs, Inc. reserves the right to charge interest for all past due amounts at the lesser of 1.5% per month or the maximum rate allowed by applicable law
 16. **Equipment Returns**-All orders (within 15 days from delivery) not returned due to no fault of Advanced Programs Inc. will be subject to a 15% restocking charge. Products cannot be returned after 15 days from delivery.
 17. **Termination**-At any time Buyer may at its option with or without reason terminate this order for convenience in whole or in part by written or telegraphic notice. Any claim of Seller shall be settled on the basis of reasonable costs it has incurred in performance of this purchase order.
 18. **Compliance with Law**-Seller shall in the performance of the purchase order comply with all applicable laws, executive orders, regulations, ordinances, proclamations, demands and regulations of the Government, or of any state or local government authority which may now or hereafter govern performance hereunder.
 19. **Labor Disputes** -Whenever an actual or potential labor dispute or other event is delaying or threatens to delay the timely performance of this order, Seller will immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Seller shall insert the substance of this provision in its orders issued hereunder.
 20. **Assignment and Subcontract**-Neither this purchase order nor any duty or right thereunder shall be delegated or assigned by Seller without the prior written consent of Buyer. Seller agrees that it will not subcontract for completed or substantially completed Articles or major components thereof without Buyer's prior written consent. Any assignment not made in accordance with the terms and conditions of this paragraph is void and will have not effect
 21. **Advertising**-Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller contracted to furnish Buyer the Articles.
 22. **Indemnity**-Seller agrees to indemnify and hold Buyer harmless from any and all claims and liability, including but not limited to, legal fees and court costs, for injuries or death to persons or damage to or destruction of property caused by or resulting from the acts or omissions of Seller, its agents, suppliers or employees in the performance of this order and defend at Seller's expense all suits or proceedings arising out of any of the foregoing. If work or services under this order are to be performed within the premises occupied or controlled by Buyer or a customer of Buyer, then Seller agrees as follows: (a) to accept the premises in their present condition as safe and satisfactory for the work or services to be performed, (b) to hold Buyer and its customers harmless from all injuries, damages, and claims arising from such performance, (c) to maintain insurance that will protect Seller, Buyer, and its customers from claims under Workmen's Compensation Acts and from any other claims for damages, personal injury, or death to employees of Seller, Buyer, or its customers, or any other persons, which may arise from performance of work or services covered by this order, whether performed by Seller or any subcontractor, or anyone directly or indirectly employed by either of them, and (d) to file certificates of such insurance with Buyer, and to obtain Buyer's approval of the adequacy of protection whenever so required.
 23. **Hazardous Material**-Prior to shipment or transfer of any chemical substances compiled and published by the Environmental Protection Agency or Hazardous Material as defined in Appendix A of Federal Standard number 313A, Seller shall provide the Buyer with appropriate Material Safety Data Sheets.
 24. **U.S. Government Export Controls**-If Buyer provides or has provided to Seller Articles or technical data, identified as subject to U.S. export controls, for Seller's use in connection with performance under this purchase order, then Seller is responsible for compliance with U.S. Government export regulations 15 CFR 768-799, 22 CFR Parts 121-130, DOD Directive 5230.25 and other U.S. Government regulations applicable to the disclosure or export of Articles or technical data to Foreign Nationals of the United States. Buyer reserves the right to obtain any necessary U.S. Government export approvals, licenses, certifications and assurances.
 25. **Delivery**-Delivery according to schedule is a major condition of this order. Therefore, time is of the essence with respect to any delivery or service to be provided hereunder.
 26. **Waiver**-The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this purchase order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.
 27. **Independent Contractor**- It is understood and agreed that Seller shall be an independent contractor in all its operations and activities hereunder, that the employees furnished by the Seller to perform work under this order shall be Seller's employees exclusively without any relation whatever to Buyer as employees, agents, or as independent contractors; that such employees shall be paid by Seller for all services in this connection; that Seller shall carry worker's compensation insurance and that Seller shall be responsible for all obligations and reports covering social security, unemployment insurance, worker's compensation, income tax, and other reports and deductions required by Local, State and/or Federal law.
 28. **Governing Law and Disputes**-This purchase order and the performances of the parties hereunder shall be construed in accordance with and governed by the laws of the State of New York exclusive of its conflict of laws provisions.

Any dispute under this purchase order which is not settled by agreement of the parties may be settled by appropriate legal or equitable proceedings before any court of competent jurisdiction. It is understood and agreed that if any such dispute is litigated, it shall be for the purpose of obtaining a judicial determination of the question of law and/or fact, which is fair and reasonable; provided, further, that pending resolution of any such dispute by settlement or final judgment (including disputes not yet in litigation), Seller shall proceed in accordance with Buyer's written directions.
 29. **Government Contracts**-The following supplementary provisions shall be applicable for work involving or subject to a Federal Government Contract: A) Inspection and Audit--Seller agrees that its books and records and its plant, or such parts thereof as may be engaged in the performance of this order shall at reasonable times be subject to inspection and audit by any authorized representative of the Government except as to orders of less than \$10,000 in amount. B) Assignment to Government-This order is assignable by Buyer to the United States Government without further notice to Seller. C) Procurement Regulations- (1) The following clauses of the Federal Acquisition Regulation (FAR) and the Department of Defense FAR Supplement (as in effect on the date of this order and as modified below) are hereby incorporated by reference and Seller agrees to be bound as "Contractor" thereunder: FAR 52.203-6, Restrictions on Subcontractor Sales to the Government; 52.203-7, Anti-Kickback Procedures; 52.203-11, Certification and Disclosure Regarding

Advanced Programs, Inc. (API) Purchase Order Terms and Conditions

Payments to Influence Certain Federal Transactions; 52.208-1, Required Sources for Jewel Bearings and Related Items; 52.211-5, New Material; 52.211-15, Defense Priority and Allocation Requirements; 52.215-1, Examination of Records by Comptroller General; 52.215-2, Audit and Records-Negotiation; 52.215-27, Termination of Defined Benefit Pension Plans; 52.215-26, Integrity of Unit Prices; 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns; 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; 52.219-9, (Alternate I) Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; 52.220-3, Utilization of Labor Surplus Area Concerns; 52.222-1, Notice to the Government of Labor Disputes; 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation-General; 52.222-20, Walsh-Healey Public Contracts Act; 52.222-26, Equal Opportunity; 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans; 52.222-36, Affirmative Action for Handicapped Workers; 52.222-41, Service Contract Act of 1965, as Amended; 52.223-2, Clean Air and Water; 52.223-3, Hazardous Material Identification and Material Safety Data; 52.223-6, Drug-Free Workplace; 52.225-3, Buy American Act-Supplies; 52.225-10, Duty-Free Entry; 52.225-11, Restrictions on Certain Foreign Purchases; 52.227-1, Authorization and Consent; 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement; 52.227-3, Patent Indemnity; 52.227-6, Royalty Information; 52.227-9, Refund of Royalties; 52.227-11, Patent Rights-Retention by the Contractor (Short Form); 52.227-12, Patent Rights-Retention by the Contractor (Long Form); 52.227-14, Rights in Data-General; 52.227-19, Commercial Computer Software-Restricted Rights; 52.227-20, Rights in Data-SBIR Program; 52.227-21, Technical Data Certification, Revision, and Withholding of Payment-Major Systems; 52.227-22, Major Systems--Minimum Rights; 52.228-3, Workers' Compensation Insurance (Defense Base Act); 52.228-5, Insurance-Work on a Government Installation; 52.230-2, Cost Accounting Standards; 52.230-3, Disclosure and Consistency of Cost Accounting Practices; 52.230-5, Administration of Cost Accounting Standards; 52.236-13, Accident Prevention; 52.242-15, Stop-Work Order; 52.244-1, Subcontracts (Fixed-Priced Contracts); 52.244-5, Competition in Subcontracting; 52.245-2, Government Property (Fixed Price Contracts); 52.246-23, Limitation of Liability; 52.246-25, Limitation of Liability--Services; 52.247-63, Preference for U.S. Flag Air Carriers; 52.248-1, Value Engineering; 52.249-2, Termination for Convenience of the Government (Fixed Price). DOD FAR SUPPLEMENT 252.203-7001, Special Prohibition on Employment; 252.204-7000, Disclosure of Information; 252.208-7000, Intent to Furnish Precious Metals as Government-Furnished Material; 252.211-7021, Clauses to be Included in Contracts with Subcontractors and Suppliers--Commercial Items; 252.222-7000, Restrictions on Employment of Personnel; 252.225-7008, Supplies to be Accorded Duty Free ; 252.225-7010, Duty-Free Entry--Additional Provisions; 252.225-7014, Preference for Domestic Specialty Metals; 252.225-7026, Reporting of Contract Performance Outside the United States; 252.225-7037, Duty-Free Entry--NAFTA Country End Products and Supplies; 252.227-7013, Rights in Technical Data--Noncommercial Items ; 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; 252.227-7015, Technical Data--Commercial Items; 252.227-7016, Rights in bid or Proposal Information; 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions; 252.227-7019, Validation of Asserted Restrictions--Computer Software; 252.227-7020, Rights in Special Works; 252.227-7021, Rights in Data--Existing Works; 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; 252.227-7026, Deferred Delivery of Technical Data or Computer Software; 252.227-7027, Deferred Ordering of Technical Data or Computer Software; 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government; 252.227-7030, Technical Data--Withholding of Payment; 252.227-7032, Rights in Technical Data and Computer Software (Foreign); 252.227-7034, Patents--Subcontracts; 252.227-7036, Certification of Technical Data Conformity; 252.227-7037, Validation of Restrictive Markings on Technical Data; 252.227-7039, Patents--Reporting of Subject Inventions; 252.243-7001, Pricing of Contract Modifications; 252.247-7023, Transportation of Supplies by Sea; 252.247-7024, Notification of Transportation of Supplies by Sea. (2) If Buyer requires Seller to execute and furnish a

"Certificate of Current Cost or Pricing Data" as set forth in FAR 15-804-1, the following FAR clauses are incorporated herein by reference: 52.214-28, Subcontractor Cost or Pricing Data-Modifications-Sealed Bidding; 52.215-22, Price Reduction for Defective Cost or Pricing Data; 52.215-23, Price Reduction for Defective Cost or Pricing Data-Modifications; 52.215-24, Subcontractor Cost or Pricing Data; 52.215-25, Subcontractor Cost or Pricing Data-Modifications. (3) If this order is classified for security purposes or in its performance will require Seller to have access to classified information or material, the following FAR clauses shall also be applicable and incorporated by reference; 52.204-2, Security requirements; 52.227-10, Filing of Patent Applications-Classified Subject Matter. (4) All special tooling, the full cost or substantial portion of which is charged to Buyer, is subject to the clause set forth in FAR 52.245-17, which is hereby incorporated by reference. All special test equipment, the full cost or a substantial portion of which is charged to Buyer, is subject to the clause set forth in FAR 52.245-18, which is hereby incorporated by reference. (5) If this order has as one of its purposes experimental, developmental, or research work, the patent rights provisions in Buyer's Government contract are incorporated by reference. Annual and final reporting of inventions are made directly to the Government with notice to Buyer that such reports have been made. Further, when this order includes FAA or FA contract number, the FAA "Recovery of Development Cost" clause, the "Background Patents" clause and the "Rights in Data" clause are incorporated herein by reference; or if a NASA contract number appears on this purchase order, the "NASA new Technology" clause, the "Data Requirements" clause and the "Rights in Data" clauses are incorporated herein by reference; or if a Department of Energy (DOE) contract number appears on this purchase order, the background patent and data provisions in said contract are incorporated herein by reference. (6) Where necessary to make the context of Government contract clauses incorporated by reference applicable to this order, the terms "Government", "Contracting Officer" and equivalent phrases shall mean "Buyer" and the term "Contractor" shall mean "Seller", and the terms "Contract" or "Subcontract" or equivalent terms shall mean this order. Insofar as the examination of records, audit, patent rights and data rights clauses are concerned, these substitutions are made solely for the benefit of the U.S. Government.

30. Entire Agreement - This purchase order constitutes the entire agreement and exclusive statement of the terms between the parties with respect to the purchase and sale of the Articles hereunder and supersedes all previous communications, representation, or agreements between the parties with respect thereto. No alteration, modification or amendment of any of the provisions hereof shall be binding unless in writing and signed by Buyer's authorized procurement representative.
31. **Note:** The FAR is contained in 48 CFR Chapter 1. The DOD FAR Supplement is contained in 48 CFR Chapter 2. Both the FAR and the DOD FAR Supplement are obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402