

Purchase Order Terms and Conditions

1. Definitions
2. Documentation
3. Acceptance
4. Title / Risk of Loss
5. Invoices
6. Changes
7. Patent Infringement, Use and Consent
8. Small Business and Small Disadvantaged Business Subcontracting
9. Equal Opportunity
10. Davis Bacon
11. Contract Work Hours and Safety Standards Act
12. Clean Air and Water
13. Warranty
14. Indemnification
15. Representations/Certifications
16. Export Regulations
17. Publication and Press Releases
18. Disputes
19. Audits and Records
20. Termination
21. Assignment
22. Integration
23. Precedence
24. Severability
25. Survival
26. Law
27. Sales Tax Exemption Codes

The following Clauses are Incorporated by Reference with the same force and effect as if they were given in full text.

Seller shall provide AURA the items described on the face of the Purchase Order , or any attachment thereto, in accordance with the following Terms and Conditions:

1) DEFINITIONS: The following definitions apply to this Purchase Order:

1. **AURA** is the Association of Universities for Research in Astronomy, Inc., and Arizona corporation
2. **Procurement Manager** is the person acting on behalf of AURA;
3. **NOAO** is the National Optical Astronomy Observatory which comprises the Kitt Peak National Observatory, located in Tucson, Arizona, and the Cerro Tololo Inter-American Observatory, Located in La Serena, Chile, South America.
4. **NSF** is the National Science Foundation, and independent agency of the United States Government, with whom AURA has a cooperative agreement.
5. **NSO** is the National Solar Observatory.
6. **Purchase Order** is the agreement between the Seller and AURA.
7. **Seller** is the person or organization to whom this Purchase Order is issued.
8. **Work** is comprised of all material, equipment, components, supplies, services, to be provided by the Seller, as specified in this Purchase Order.

2) DOCUMENTATION: Include this Purchase Order, Terms and Conditions, and all other documentation and drawings attached hereto or incorporated by reference.

3) ACCEPTANCE: Seller's acceptance of this Purchase Order, or delivery of the Work to AURA by the delivery date specified in this Purchase Order, shall constitute Seller's acceptance of the terms and conditions of this Purchase Order. Any confirmation of this Purchase Order by Seller which purports to state terms which are additional to or different from the those stated in this Purchase Order shall be construed as a proposal to add such terms to the Purchase Order, and such different or additional terms shall not become a part of the agreement between Seller and AURA unless AURA expressly agrees to such terms in writing.

4) TITLE / RISK OF LOSS: Title to the Work shall remain with the Seller until completion and delivery of such Work to AURA at the address specified in this Purchase Order. Seller shall be responsible for, and shall bear all losses resulting from, any loss of and damage to, including complete destruction of, the Work or any portion thereof from any and all causes occurring prior to acceptance of such Work by AURA.

5) INVOICES:

1. Invoices in duplicate shall be mailed to AURA's Accounts Payable Department when items are shipped or as otherwise specified in this purchase order. The time for payment shall not commence before actual or scheduled receipt; whichever is later, of items at their destination or before complete performance by Seller in accordance with the requirements of this order. Without limiting AURA's other remedies, if product data is not furnished when scheduled, AURA may withhold remaining payments (or such portion thereof as AURA may deem equitable) until such data is furnished.
2. All taxes, when applicable, and freight charges shall be billed as separate items on Seller's invoice. Seller shall apply the appropriate tax exemption as indicated above.
3. Each invoice presented hereunder shall contain the certification:

"SELLER HEREBY CERTIFIES THAT THESE GOODS WERE PRODUCED IN COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF SECTION 6,7, AND 12 OF THE FAIR LABOR STANDARDS ACT, AS AMENDED, AND OF REGULATIONS AND ORDERS OF THE U.S. DEPARTMENT OF LABOR ISSUED UNDER SECTION 14 THEREOF.

6) CHANGES:

1. This Purchase Order may only be modified by a written document executed by AURA. All purported verbal modifications to this Purchase Order shall be null and void.
2. If any Change Order causes an increase or decrease in the cost of, or time required for completion of the Work, the Seller shall notify the Procurement Manager, or duly authorized representatives(s), in writing and shall request that an equitable adjustment be made to the time required for completion of the work, the amount payable for the work under this Purchase Order, or both. Such notice shall include a description of the change, the amount of equitable adjustment to be made for completion of the Work - detailed to enable AURA's analysis of all material, labor, equipment, transportation, and supplies required for such change or modification - or revised date for completion of the Work. Any claim for adjustment under this paragraph 6 b must be asserted in writing within thirty (30) days from the date of receipt by Seller of the Change Order. The Procurement Manager will, upon receipt of such notification, modify the Purchase Order to incorporate the change.

7) PATENT INFRINGEMENT, USE AND CONSENT:

1. Seller warrants that the Work and Seller's performance under this Purchase Order shall not infringe any valid United States or foreign patents, trademarks or copyrights, except where such infringement arises solely from a process or product specified by AURA under this Purchase Order unless Seller or its subcontractors have information that use of such process or product will or may cause an infringement, and fail to promptly notify AURA of such infringement. Seller shall report to the Procurement Manager, or his authorized representative, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Purchase Order of which the seller has knowledge.
2. In the event of any claim or suit against AURA on account of any alleged patent or copyrights infringement arising out of the performance of the Work or out of the use of any supplies furnished or Work performed hereunder. Seller shall furnish to AURA, when requested by the Procurement Manager, all evidence and information in possession of the Seller pertaining to such suit or claim. Seller agrees to defend at it's sole expense any suit against AURA or it's customers based on a claim that any item furnished under this purchase order or the normal use or sale thereof infringes any Patent, trademark, or copyright. Seller agrees to pay costs and damages finally awarded in any such suit, provided that Seller is notified in writing of the suit and given assistance at Seller's expense for the defense of the same. If the use or sale of said item is enjoined as a result of such suit, Seller further agrees, at no expense to AURA, to obtain for AURA and it's customers the right to use and sell said item, or shall substitute an equivalent item acceptable to AURA and extend the patent indemnity thereto.
3. The Government of the United States has given its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this Purchase Order or any part hereof or any amendment hereto or any subaward hereunder (including any lower-tier subcontract).
4. Seller shall pay all royalties and license fee related to this Purchase Order.

8) SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS

SUBCONTRACTING: It is AURA Policy that small business concerns and small socially and economically disadvantaged business concerns be given the maximum practicable opportunity to compete for subawards in order to assure maximum small business participation consistent with fulfilling AURA's contractual obligations in an efficient and economical manner.

9) EQUAL OPPORTUNITY: During performance of this Purchase Order, Seller agrees

1. It shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, or handicap.
2. Seller shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion sex, or national origin, or handicap.
3. Seller shall post in conspicuous places available to employees and applicants for employment the notices to be provided by AURA that explain this clause.
4. Seller shall, in all solicitations or advertisements for employees placed by, on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
5. The Seller shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", and the rules, regulations, and orders of the Secretary of Labor.
6. The Seller shall furnish to the National Science Foundation all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the

Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the date of the Purchase Order, unless filed within 12 months proceeding the date of the Purchase Order.

7. The Seller shall permit access to its premises, during normal business hours, by the subawarding agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Seller shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
8. If the OFCCP determines that the Subawardee is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this Purchase Order may be cancelled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further Government purchase orders, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subawardee as provided in Executive Order 11246, as amended, so these terms and conditions will be binding on each subawardee or vendor.
9. The Seller shall include the terms and conditions of subparagraphs 1 through 11 of this clause in every purchase order or subaward that is not exempt by the rules, regulations, or order of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each seller or subawardee.
10. The Seller shall take such action with respect to any subaward or purchase order as Procurement Manager may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Seller becomes involved in, or is threatened with, litigation with a subcontractor, as a result of any direction, the Seller may request the United States to enter into the litigation process to protect the interest of the United States.
11. Notwithstanding any other clause in this purchase order, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

10) DAVIS-BACON, as amended (40 U.S.C. 276a to a-7) (applicable to subawards for construction exceeding \$2,000.): All purchase orders for construction shall comply with the provision titled "Davis-Bacon Act (40 U.S.C. 276A to a-7) and as supplemented by the Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, the contract shall be required to pay wages to labor and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, subawardee shall be required to pay wages not less than once a week. The Subawardee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a subaward or purchase order shall be conditioned upon the acceptance of the wage determination.

The recipient shall report all suspected or reported violations to AURA.

11) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-333) (contracts for construction exceeding \$2,000.): Purchase Orders for construction, which, involve the employment of mechanics or labors shall include a provision for compliance with Section 102 and 107 of the Contract Work and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and

provides that no labor or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

12) CLEAN AIR AND WATER: (This clause is only applicable for awards exceeding \$100,000, or a facility to be used has been subject to of a conviction under the Clean Air Act (42 U.S.C 7413(cc) (1)) or the Clean Water Act (33 U.S.C. 1319© and is listed by EPA, or the award is not otherwise exempt.)

13) WARRANTY:

1. Seller warrants that the Work shall conform to the description given in this Purchase Order or any Attachment included with this order.
2. Seller warrants that the Work shall conform to all verbal and written descriptions of the Work given to AURA by the Seller, and shall conform to any statements of fact or promises given to AURA by Seller regarding the Work, whether given before or after the issuance of the Purchase Order.
3. Seller warrants that the Work shall conform to all descriptions, sample or model given to AURA by the Seller - either before or after this Purchase is issued - of the Work published by Seller or the manufacturer of the Work.
4. The warranties given in this section are in addition to any other warranties given by Seller, or provided by the Work's manufacturer.
5. Any purported disclaimers of implied warranty of merchantability or implied warranties of fitness fro a particular purpose contained in documents within the packaging of the Work shall be null and void.

14) INDEMNIFICATION: Seller agrees to indemnify, defend, and hold harmless AURA, including its directors, officers, employees, agents and representatives, from and against any and all damages, costs, liabilities, injuries, expenses, penalties, claims, actions or losses of any nature whatsoever incurred by the Indemnified Parties, including defense costs and attorney's fees through any appeal,

1. arising from or related to sickness disease, and injury to - including death of - any person(s) and damage to or loss of any property caused in whole or in part by any defective Work;
2. any design errors or omissions by seller; and
3. any default in performance by Seller or Seller's subcontractors under this Purchase Order.

15) REPRESENTATIONS/CERTIFICATIONS: The Seller certifies, that:

1. The Seller and/or any of its Principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any United States Federal agency;
2. "Principals" - for the purpose of this certification - means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

16) EXPORT REGULATIONS: Hardware, software, and related materials, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act, Arms Export Control Act, and their associated regulations, and may be subject to export or import regulations in other countries.

Upon receipt of ordered materials, AURA will accept responsibility to comply with all applicable export regulations should AURA decide to export the materials to an overseas location.

Subawardee agrees to:

1. Notify AURA when purchased materials are restricted for export by US government regulations, and
2. Strictly comply with all U.S. Export Control Regulations and acknowledges that, when applicable, it has the responsibility to obtain export licenses, or other export authority as may be required, for hardware, software, and related materials and services, including technical data, related to the performance of this Subaward, which are in its possession or under its control.

17) PUBLICATION AND PRESS RELEASES:

1. Sellers agrees to acknowledge NSF support in all news releases, publications, World Wide Web pages and other items prepared by the Seller, its employees, or subawardee's which describe AURA, or its respective centers, activities or the results of research using AURA or its respective centers facilities or archival data shall acknowledge the sponsorship of the NSF. This acknowledgment shall include the following:

"This material is based on work supported by the National Science Foundation under Cooperative Agreement No. AST 0132798.

2. The Seller shall include in all such press releases, Web pages, publications a disclaimer which states "Any opinions, findings, or recommendations expressed in this report represent the views of the author(s) and do not necessarily reflect the views of NSF or other affiliates of AURA."

18) DISPUTES:

1. The Seller shall, within 5 working days, notify AURA of any actual or potential labor dispute that may threaten to delay the timely performance of this Purchase Order. The Seller shall immediately provide notice, including all relevant information, to the Procurement Manager, or authorized designate.
2. The Seller agrees to insert the substance of this clause in any subcontract to which a labor dispute may delay the timely performance of this Purchase Order; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or AURA, as the case may be, of all relevant information concerning the dispute.

19) AUDIT AND RECORDS: (Applicable for Purchase Orders in excess of \$100,000.) The Seller agrees that the Procurement Manager, Director of the NSF, and Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three (3) years after final payment under this Purchase Order, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Seller for the purpose of performing audits, examination, excerpts, transcriptions, copies of such documents pertinent to the award of this Purchase Order. This right also includes timely and reasonable access to Seller's personnel for the purpose of interview and discussion related to such documents. Seller further agrees to include the substance of this clause in all subcontracts.

20) TERMINATION:

1. AURA, by written notice stating the extent and effective date, terminate this order for convenience in whole or in part at any time. AURA shall pay Seller as full compensation for performance until such termination:
 - o the unit or pro rata order price for the delivered and accepted portion; and
 - o a reasonable amount, not otherwise recoverable from other sources by Seller as approved by AURA, with respect to the undelivered or unacceptable portion of this order, provided compensation hereunder shall in no event exceed the total order price.
2. AURA may, by written notice of the Procurement Manager, terminate the Purchase Order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this Purchase Order, or so fails to make progress as to endanger performance and does not cure such failure within ten (10) days after receipt of written notice of such failure, or fails to complete the work within the time required by this Purchase Order, or any written extension thereof. If after receipt of notice of termination it is determined that Seller was not in default, or if AURA ascertains that Seller's failure to perform or make progress was a result of causes beyond the control and without the negligence or willful misconduct of Seller or its subcontractors (including acts of Force Majeur), termination shall be deemed for convenience of AURA, unless AURA determines that the Work could have been obtained from other sources in the time scheduled for delivery of the Work under this Purchase Order. Seller shall promptly provide AURA with written notice of any such delay, which shall contain all relevant details related to the delay.
3. If any delay in performance of the Work is due to the failure of AURA, and not caused by or contributed to by Seller, the time and price of this Purchase Order will be subject to the provisions of the clause titled "Changes."

21) ASSIGNMENT:

1. Neither this purchase order nor any interest herein nor claim hereunder may be assigned by Seller either voluntarily or by operation of law, nor may all or substantially all of this purchase order be further subcontracted by Seller without the prior written consent of AURA, Inc. No consent shall be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.
2. This purchase order is assignable to the United States government or the National Science Foundation. Unless this Purchase Order is assigned to the NSF, it does not bind or purport to bind the NSF or the United States of America. Any assignment of this Purchase Order by Seller without the prior written consent of AURA shall be void.

22) INTEGRATION: This Purchase Order is the final, complete, and exclusive statement of the agreement between the AURA and the Seller. Except as expressly provided otherwise in this Purchase Order, no terms, conditions, understandings, usages of the trade, courses of dealing, or agreements purporting to modify, vary explain or supplement this Purchase Order shall be binding unless agreed to by the parties in writing.

23) PRECEDENCE: Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:

1. typed provisions on the face of this order;
2. the printed portion of this order, including these purchase order Terms and Conditions;
3. purchase order attachments and,
4. specifications attached or incorporated by reference.

24) SEVERABILITY: The invalidity in whole or in part of any provision of this order shall not affect the validity of other provisions. AURA's failure to enforce a right hereunder promptly shall not be deemed a waiver of such right, and no waiver of a right under a provision shall constitute a waiver of any other right under such provision or any other provision. Time shall be of the essence hereunder, but Seller shall perform work and make deliveries hereunder no earlier than, and only to the minimum extent consistent with, delivery schedule and other requirements.

25) SURVIVAL: The terms, conditions, representations, indemnifications and warranties contained in this Purchase Order shall survive the termination of this Purchase Order and acceptance of the Work.

26) LAW: The Purchase Order shall be governed by and interpreted in accordance with the laws of the State of Arizona without regard for its rules related to conflicts of law, as if this transaction were entered into by residents of and fully performed within the State of Arizona. Any action to require compliance with any provision of this Subaward shall be brought in the State or Federal Courts of the State of Arizona or at any other jurisdiction reasonably selected by, or approved by AURA.

27) TAX EXEMPTION CODES APPLICABLE TO AURA PURCHASE ORDERS

The following are the descriptions of the Tax Codes assigned to and indicated on the face of the Purchase Order:

- 1** - Exempt from 50% of the AZ State Retail Sales Tax under ARS Section 42, Para. 5061, Part L.
- 2** - Exempt from 50% of the AZ Retail Sales Tax and City of Tucson Sales Tax in accordance with ARS Section 42, Para. 5061, Part L and the Tucson City Code, Ch. 19-465.14.b.
- 3** - Exempt from AZ Use Tax on purchases of property from Manufacturers, Modifiers, Assemblers or Repairers in accordance with ARS Section 42, Para 5159 Part A para 39 and on purchases of machinery or equipment used in Research and Development activities under ARS Section 42, Para 5159, Part B.14.
- 4** - Exempt from all of the AZ Sales Tax on purchases of property from AZ Manufacturers, Modifiers, Assemblers or Repairers under ARS Section 42, Para. 5061, Part K.1 and K.3.
- 5** - Exempt from all of the City of Tucson Sales Tax on purchases of property from Tucson Manufacturers, Modifiers, Assemblers or Repairers in accordance with the Tucson City Code, Ch. 19-465.14.a. and exempt from all of the AZ Sales Tax on purchases of property from AZ Manufacturers, Modifiers, Assemblers or Repairers under ARS Section 42, Para. 5061, Part K.1 and K.3.
- 6** - Exempt from all of the AZ Retail Sales Tax on purchases of machinery or equipment used in Research and Development activities under ARS Section 42, Para. 5061, Part B.14
- 7** - Exempt from New Mexico Gross Receipt Taxes for tangible personal property pursuant to Section 72-13-29, NMSA 1953. New Mexico ID No. 01-829635-00-4.
- 8** - Exempt from California and Louisiana Sales Tax in accordance with State regulations. Purchases are delivered to a licensed freight forwarder for shipment out of the United States. CA Tax Code Article 6396; LA Tax Code RS 47:305.10.B.
- 9** - NO TAX EXEMPTION CLAIMED