

# Isothermal Systems Research, Inc.

## Standard Purchase Order Terms & Conditions

**1. Definitions.** Whenever used in this Purchase Order, the following terms shall have the following definitions: (a) "Goods" means all of the goods, material, products, equipment, services, information, drawings and other items furnished or to be furnished to ISR under this Purchase Order; (b) "ISR" means Isothermal Systems Research, Inc.; (c) "Indemitees" means ISR, its successors and assigns, and the respective directors, officers, employees, agents and representatives of ISR and its successors and assigns; (d) "Purchase Order" means these Standard Purchase Order Terms and Conditions, together with any order or other agreement signed by both ISR and Vendor involving Goods and any additional terms, technical specifications, drawings, notes, instructions or other information specified on the face page or elsewhere on any order or other agreement signed by both ISR and Vendor; (e) "specified" means specified on the face page of or elsewhere on any order or other agreement signed by both ISR and Vendor; and (f) "Vendor" means the person, partnership, corporation, limited liability company or other entity specified as the vendor.

**2. Acknowledgement.** Vendor shall be deemed to have agreed to all of the provisions of this Purchase Order upon the first of the following to occur: (a) Vendor executes and returns a copy of this Purchase Order to ISR; (b) Vendor commences production of the Goods; or (c) Vendor acknowledges this Order by any other commercially acceptable means. ISR may, at any time prior to such occurrence, cancel this Purchase Order without any liability or obligation of, or cost to ISR.

**3. Price & Payment.** Payment of the specified prices shall constitute full compensation for the Goods and for satisfactory performance of all Vendor's obligations under this Purchase Order. All prices are firm and will be adjusted only as provided elsewhere in this Purchase Order. Unless otherwise specified, all prices specified herein include all charges for inspection, packaging, packing, transportation, and any and all taxes, duties, and assessments. Vendor shall send a separate invoice to ISR, in duplicate, that includes: (a) a detailed list of all Goods and item number(s); (b) a bill of lading; and (c) any such additional information requested by ISR. Unless otherwise specified, ISR shall make payment within forty five (45) days after the later of ISR's receipt of a correct invoice or ISR's acceptance of conforming Goods. ISR shall have the right at any time to set off any amount due Vendor (or any of its associated or affiliated companies) against any other amounts due Vendor (or any of its associated or affiliated companies) with respect to this Purchase Order or any subsequent Purchase Order or any other agreement between the parties.

**4. Packaging & Shipment.** Vendor shall pack all Goods to protect against damage or deterioration during shipment. Different types of Goods shall be separately packaged, each with labels that show: (a) the number of this Purchase Order; (b) the Good's weight; (c) the name of item; (d) handling and loading instructions; and (e) the addresses of Vendor and ISR. An itemized packing list shall also accompany each shipment. Vendor shall ship the Goods no later than the specified shipment date and shall deliver the Goods to ISR at its specified destination no later than the specified delivery date. All shipping charges to destination point shall be borne by Vendor and mode of shipment shall conform to ISR's instructions.

**5. Delay.** Time is of the essence in the performance of Vendor's obligations under this Purchase Order. ISR shall have the right to refuse delivery if made: (a) more than one week in advance of any specified delivery date; or (b) after the specified delivery date. However, Vendor shall not be liable for late deliveries that are not reasonably foreseeable and cannot be overcome by the exercise of reasonable diligence, provided that Vendor notifies ISR in writing promptly of any circumstances that threaten to delay the timely performance of this Purchase Order. Any such notice to ISR shall describe the circumstances of the delay, the anticipated duration of the delay and the action being taken by Vendor to overcome or mitigate the delay. In the event of such delay, ISR may at its option: (a) elect to take delivery of the Goods in an uncompleted state and to pay Vendor an equitable portion of the purchase price; or (b) extend the shipment and delivery dates to account for the delay. . . Notwithstanding the foregoing, in no event shall an act of subcontractors or suppliers of Vendor be a cause beyond Vendor's reasonable control.

**6. Title & Risk of Loss.** Title to Goods shall pass to ISR at the time ISR accepts the Goods at its destination.

**7. Inspection & Acceptance.** All Goods provided hereunder may be inspected and tested by ISR. Vendor shall provide, without additional charge, safe, sufficient and proper access, facilities, equipment and assistance necessary to inspect and test the Goods prior to shipment. No Goods shall be deemed accepted before final inspection by ISR at the specified destination. No acceptance of any Goods shall be construed to result from any inspections, tests or delays or failures to inspect or test by ISR. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or noncompliance by ISR shall relieve Vendor of any of its obligations under this Purchase Order or impair ISR's right to reject defective or nonconforming Goods or any other right or remedy of ISR, even if ISR knew of the defect or nonconformity, its substantiality or the ease of its discovery.

**8. Rejection.** ISR may reject, refuse acceptance of or revoke acceptance of any Goods, or any tender thereof, which does not strictly comply with the requirements of this Purchase Order. ISR shall notify Vendor of any such rejection, refusal or revocation. In any such event, ISR may, without prejudice to any other rights or remedies with respect to such noncompliance, elect to: (a) retain any or all of such Goods for repair, replacement or other correction by ISR or others; (b) retain any or all of such Goods without correction; or (c) return any or all of such Goods with or without direction for correction by Vendor. Vendor shall promptly comply with any direction by ISR for correction. ISR shall be entitled to recover from Vendor, by price reduction, credit, offset, invoice or otherwise, an equitable amount for the diminished value of any noncomplying, uncorrected Goods and all costs and expenses incurred by ISR in connection with such Goods, including, but not limited to, all costs and expenses of correction by ISR or others and all costs and expenses to return Goods to Vendor for correction.

**9. Warranty.** Vendor warrants that: (a) the Goods shall be free from defects in title, workmanship and material; (b) the Goods shall be free from defects in design, except to the extent that such Goods comply with designs provided by ISR; (c) the Goods shall be of good and suitable quality, if no quality is specified; (d) all materials, components, parts and other items incorporated in the Goods shall be new and of the most suitable quality for their intended purpose; and (e) the Goods shall conform with all the requirements of this Purchase Order. Vendor shall promptly correct any Goods that do not comply with this warranty. If ISR requests Vendor to make any such correction and Vendor thereafter fails or indicates its inability or unwillingness to do so, then ISR may correct (or cause to be corrected) the noncompliance by the most expeditious means available to it and charge to or otherwise recover from Vendor the cost thereof. If ISR rejects any Goods that do not comply with the foregoing warranty, Vendor shall have a reasonable time to correct the noncompliance; if Vendor fails to correct the noncompliance within a reasonable time, ISR may cancel this Purchase Order as to the noncomplying portion of the Goods or the entire Goods without any liability or obligation of, or cost to, ISR and without prejudice to any other rights or remedies of ISR with respect to such noncompliance (e.g., as to damages or cover) This warranty provision shall survive any inspection, delivery acceptance, payment, expiration or earlier termination of this Purchase Order, and such warranties shall run to ISR, its successors and assigns.

**10. Title, Patent & Copyright Indemnity.** Vendor releases and shall defend, indemnify and hold harmless the Indemitees from all claims, losses, liabilities, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees) and royalties related to any claim, action, suit or proceeding involving the Goods, which claim, action, suit or proceeding is based upon infringement (or alleged infringement) of any patent, copyright, trade name, trademark, trade secret or other proprietary right. Further, if any of the Goods constitutes an infringement of any patent, copyright, trade name, trademark, trade secret or other proprietary right, Vendor shall, at Vendor's option: (a) procure for ISR the right to use the infringing item; (b) replace the infringing item with a substantially equal but noninfringing item; or (c) modify the infringing item so that it no longer infringes. Vendor shall have no duty hereunder if the Goods are held to infringe solely by reason of Vendor's compliance with ISR's designs; provided that Vendor gives ISR prompt notice of any such claim.

**11. Changes & Termination.**

**11.1.** ISR may make changes to the requirements of this Purchase Order (including, but not limited to, additions to or deletions of any Goods, changes in quantities, drawings and specifications for the Goods, suspension of performance, changes in schedule and changes in shipment and delivery dates) by giving Vendor written notice of such changes. If any such change causes an increase or decrease in the cost of or the time required for performance of this Purchase Order, an equitable adjustment in the prices and schedule under this Purchase Order shall be made to reflect such increase or decrease.

**11.2.** ISR may terminate this Purchase Order as to all or any portion of the Goods not then delivered to and accepted by ISR by giving Vendor written notice of such termination. In the event of any such termination, an equitable adjustment shall be made in the prices payable under this Purchase Order with respect to the terminated Goods; provided that such adjusted prices shall in no event exceed the total prices otherwise payable under this Purchase Order for the terminated Goods, less the sum of (a) the estimated costs (plus a reasonable allowance for profit) which would have been incurred by Vendor to complete performance with respect to the terminated Goods and (b) the reasonable value of the terminated Goods at the time of such termination. No such termination shall relieve Vendor or ISR of any of their respective obligations under this Purchase Order as to any Goods not terminated. If ISR purports to terminate or cancel all or any part of this Purchase Order for Vendor's breach or default and it is determined that Vendor was not in breach or

default that would permit such termination or cancellation, then such termination or cancellation shall be deemed to have been a termination pursuant to this paragraph and the rights and obligations of the parties shall be determined accordingly.

**11.3.** Vendor must, within thirty (30) days after Vendor's receipt of any notice under paragraph 11.1 or 11.2 that does not set forth an acceptable equitable adjustment, submit to ISR a written statement of any adjustment claimed. Vendor shall not be entitled to any adjustment unless such written statement is submitted within such thirty (30) day period. Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment under paragraph 11.1 or 11.2, Vendor shall immediately proceed with performance of this Purchase Order in accordance with any notice under paragraph 11.1 or 11.2.

**11.4.** In making any equitable adjustment under paragraph 11.1 or 11.2, Vendor shall not be entitled to: (a) any profit on deleted or terminated Goods; (b) any allowance for profit, overhead, underutilization of facilities or indirect costs related to deleted or terminated Goods; (c) any reallocation of cost, overhead or profit; (d) any increase in the prices for Goods not changed or terminated; (e) any price or other compensation with respect to deleted or terminated Goods which are standard stock or off-the-shelf items of Vendor or any of Vendor's subcontractors or suppliers of any tier; or (f) any compensation for materials, components, parts, equipment or other items not purchased by Vendor specifically for performance of this Purchase Order. Vendor shall in any event use its best efforts to minimize any adjusted prices and shall make available to ISR for examination, copying and audit all records, receipts and other evidence of Vendor's costs, together with such other information and documents as ISR may reasonably request, to fully support and verify any adjustment. Vendor shall promptly repay ISR any amounts paid in excess of any adjusted prices.

**12. Indemnification.** Vendor releases and shall defend, indemnify and hold harmless the Indemitees from all claims, losses, liabilities, damages, costs, and expenses (including, but not limited to, reasonable attorneys' fees) arising out of any claim, action, suit or proceeding based on (a) a defect (or alleged defect) in any of the Goods or on negligence (or alleged negligence) in the design or manufacture of the Goods; or (b) any death or physical injury suffered by Vendor or any of Vendor's employees, subcontractors or agents while performing activities in connection with the Order on premises owned, leased, rented or possessed by Indemitees.

**13. Items Furnished by ISR or Others.** Unless otherwise specified, Vendor assumes and shall be responsible for any and all loss, damage and other risks associated with using ISR's materials, special dies, molds, patterns, jigs, parts, tooling or other property for performance of this Purchase Order. Unless otherwise specified, all materials, special dies, molds, patterns, jigs, parts, tooling and any other property furnished to Vendor by ISR, or specifically paid for by ISR, shall remain the property of ISR. As specified or otherwise upon the completion, termination or cancellation of this Purchase Order, Vendor shall deliver such property to ISR in the condition in which it was received by Vendor, except for reasonable wear and tear and except for such property as has been reasonably consumed in the performance of this Purchase Order. If Vendor's performance under this Purchase Order depends upon goods, services, property or other items furnished by ISR or others, Vendor shall, prior to commencing such performance, notify ISR in writing of any actual or apparent defects or deficiencies in such other items that render such items unsuitable for Vendor's performance under this Purchase Order. If any such defect or deficiency causes an increase or decrease in the cost of or the time required for performance of this Purchase Order, an equitable adjustment in the prices and schedules under this Purchase Order shall be made to reflect such increase or decrease and this Order shall be modified in writing accordingly.

**14. Proprietary Information: Design Right.** Vendor shall use any and all information and property obtained from ISR in connection with this Purchase Order, including but not limited to, any specification, drawings, blueprints, mask works for semiconductor devices or software, solely for performance of this Purchase Order and shall protect the same from any unauthorized use or disclosure. Where payment is made for experimental development or research work to be performed in accordance with ISR's requirements hereunder, all rights to any technology or inventions developed or conceived during such development or research work and all related patent, copyright, trade name, trademark, trade secret or other intellectual property right, shall be vested solely in ISR. Vendor shall sign any documents required to perfect ISR's interest in any such intellectual property right. Vendor shall not use ISR's name, trademarks or other identifiers, or any opinions of ISR's employees or other representatives, for advertisement or promotional purposes without the prior written consent of ISR. Upon ISR's request and in any event upon the completion, termination or cancellation of this Purchase Order, Vendor shall return all such information and property to ISR or dispose of them according to ISR's direction. Vendor shall ensure that all subcontracts, purchase orders and other agreements entered into by Vendor or any of its subcontractors or suppliers of any tier related to the Goods or this Purchase Order shall provide to ISR the same rights and protection with regard to such subcontractors and suppliers as are contained in this paragraph with regard to Vendor.

**15. Assignment.** Vendor shall not (by contract, operation of law or otherwise) assign this Purchase Order or any right or interest in this Purchase Order, or delegate performance of any of its obligations under this Purchase Order, without the prior written consent of ISR. Any such assignment or delegation without ISR's prior written consent shall be voidable at ISR's option. No such assignment or delegation, with or without ISR's prior written consent, shall relieve Vendor of any of its obligations under this Purchase Order. Subject to the foregoing restriction on assignment and delegation by Vendor this Purchase Order shall be fully binding upon, inure to the benefit of and be enforceable by Vendor, ISR and their respective successors, assigns and legal representatives.

**16. Governing Law.** This agreement shall be governed by the laws of the State of Washington, without regard to its conflict of laws principles to the contrary. Vendor shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of this Purchase Order, to recover damages for breach of or default under this Purchase Order, or otherwise arising under or by reason of this Purchase Order, other than in the federal and state courts located in Spokane County, Washington. The Parties irrevocably consent to the jurisdiction and venue of such courts and to service of process by U.S. mail. In the event that it becomes necessary for litigation or arbitration proceedings to be initiated to enforce this Purchase Order, the party not prevailing shall be responsible for the prevailing party's reasonable attorneys' fees and other costs incurred. Neither ISR nor Vendor will cease its obligations under this Purchase Order during any arbitration or other legal or quasi-legal proceedings, except by agreement between the parties.

**17. Unenforceable Provision.** If any provision, provisions or any portions of any provisions, of this Purchase Order shall be held to be invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible, provided that in such event the parties agree to negotiate in good faith substitute provisions which most nearly effect the parties' intent in the original unenforceable provisions at the time of entering into this Purchase Order.

**18. Notices.** All notices or demands of any kind which either ISR or Vendor may be required or desire to serve upon the other under the terms of this Purchase Order shall be in writing, and shall be served by personal service or by mail at the address of the receiving party set forth in this Purchase Order. All notices and demands by mail shall be by certified or registered mail, return receipt requested, and shall be deemed completed three (3) days after mailing.

**19. Compliance with Laws.** Vendor shall comply (and shall ensure that the Goods and Vendor's subcontractors and suppliers of every tier comply) with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority. Vendor shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, rules, regulations, orders, licenses, permits and other requirements required to be incorporated in agreements of this character are incorporated in this Purchase Order by this reference. Vendor certifies that all Goods shall be produced in compliance with the requirements of the Fair Labor Standards Act and all of the rules, regulations and orders issued thereunder, all as the same may have been or may be amended.

**20. Government Contracts.** If this Purchase Order is issued for any purpose that is either directly or indirectly connected with the performance of a prime contract or subcontract with the U.S. Government, all Federal laws, regulations and Executive Orders applicable to such contracts or subcontracts, including, but not limited to the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations ("DFAR") and all supplements thereto shall apply and be incorporated by reference to this Purchase Order. A list of the applicable FAR and DFAR can be found at [www.spraycool.com](http://www.spraycool.com), by clicking on "about us," "suppliers," "purchase order terms and conditions" and "Supplement 1 - (FAR)" and "Supplement 2 - (DFARS)."

**21. Export.** Vendor understands that designs, specifications, software and other technical data provided under this Purchase Order may be controlled for export by the U.S. Department of State under the International Traffic in Arms Regulations or by the U.S. Department of Commerce under the Export Administration Regulations. Vendor represents that it will comply with all applicable U.S. export laws and regulations and will not export any such designs, specifications, software or data from the U.S. without first obtaining all licenses or other approvals required by the U.S. Government. Vendor releases and shall defend, indemnify and hold harmless the Indemitees from any and all damages,

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penalties, legal fees, costs or other liability arising out of or related to Vendor's alleged or actual failure to comply with such requirements.

**22. Entire Agreement.** This Purchase Order sets forth the entire agreement, and supersedes any and all prior agreements, between Vendor and ISR regarding the Goods. No amendment or modification of any provision of this Purchase Order (other than any change or termination pursuant to section 11) shall be valid unless set forth in a written instrument signed by the party to be bound thereby. ISR shall not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this Purchase Order (whether or not it would materially alter this Purchase Order) and which has been proffered by Vendor in any quotation, invoice, shipping document, acceptance, confirmation, correspondence or otherwise, unless ISR specifically agrees to such provision in writing. The rights, remedies and warranties afforded to ISR pursuant to any provision of this Purchase Order are in addition to and do not in any way limit any other rights, remedies or warranties afforded to ISR by any other provisions of this Purchase Order, by any of Vendor's subcontractors or suppliers of any tier or by law. In the event of any conflict or inconsistency between the terms and conditions specified on the face page of or elsewhere on any order or other agreement signed by both ISR and Vendor and these Standard Purchase Order Terms and Conditions, the terms and conditions on the face page of or elsewhere on any order or other agreement signed by both ISR and Vendor will prevail.

**23. Activities on ISRs Premises.** Without limiting the scope of paragraph 10 or any other obligations of Vendor under this Purchase Order, if Vendor or any of its subcontractors or suppliers of any tier performs any activities on premises owned, leased, possessed or controlled by ISR, Vendor shall: (a) take all necessary precautions to prevent injury or death to persons and damage to any property or environment in connection with such activities; (b) release, defend, indemnify and hold harmless the Indemnitees from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, attorneys' fees) that may arise in connection with such activities; and (c) maintain in effect at all times during performance of such activities comprehensive general (including blanket contractual) and automobile (including owned, leased and nonowned coverage) liability insurance with limits not less than (i) \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury or death and (ii) \$1,000,000 per occurrence for property damage. Vendor shall ensure that any policy of insurance required under this paragraph, or that Vendor otherwise carries as insurance against property damage or liability for bodily injury, death or property damage that may occur in connection with such activities, shall name the Indemnitees as additional insureds with all the rights, benefits, and privileges afforded by the policy without any obligations to pay the premium of such policy, contain a waiver of the insurer's right of subrogation against the Indemnitees and be endorsed to provide that the policy shall not be terminated, canceled, modified or allowed to expire without giving thirty (30) days' advance written notice to ISR. Vendor shall promptly furnish to ISR such certificates of insurance and other evidence of the insurance required under this paragraph as ISR may request.