MARINE BIOLOGICAL LABORATORY – General Conditions for Goods and Services

1) **Acknowledgments.** Acceptance of this Purchase Order must be in accordance with and strictly limited to the Terms and Conditions contained herein. An attempted acknowledgment or acceptance which contains provisions conflicting or additional to the Terms and Conditions herein set forth or which varies any term or condition shall have no force or effect. Performance by the Contractor without an effective acknowledgment shall be deemed to be performance in accordance with the Terms and Conditions of this Purchase Order.

2) **Contractor's Work and/or Materials.** Contractor agrees to fully execute and perform the services required by, and reasonably inferable from, the Purchase Order (the "Work") and/or to supply goods, products, supplies, parts, assemblies, equipment, systems or other items required by the Purchase Order ("Materials") (collectively the "Work and/or Materials")

3) **Invoices.** Render a separate invoice for each Purchase Order. All items on an invoice must conform to item numbers shown on this Purchase Order. Invoice must show MBL’s Purchase Order number. If the name of Contractor on the invoice will be other than that shown on the face of this Purchase Order, both names must be indicated on the invoice. Failure to do this can result in delayed payment. MAIL INVOICE(S) AND STATEMENTS TO: The MARINE BIOLOGICAL LABORATORY, ACCOUNTS PAYABLE, 7 MBL St, Woods Hole, MA 02543 or email: AP@mbl.edu.

4) **F.O.B. Point.** F.O.B. DESTINATION, The Marine Biological Laboratory, “Freight Prepaid”, unless otherwise shown on Purchase Order.

5) **Discount Period.** When applicable, will start from date of acceptable invoice or receipt of material whichever is later.

6) **Interest Charged on Invoices.** Interest charges referenced on an invoice will not be accepted by the MBL.

7) **Labeling of Packages.** All packages should be marked as per "DELIVER TO" instructions and showing Purchase Order number.

8) **Title and Delivery.** Title to goods shall pass to the MBL upon delivery to the F.O.B. point. Risk of loss of any goods shall pass to the MBL upon delivery to the MBL. Deliveries shall be made in accordance with the written order of the MBL or as stated in the Purchase Order at the times and places and in the amounts specified. Receipt of any early or late deliveries shall not constitute a waiver of any of the rights of the MBL under this Purchase Order. Deliveries before or after the specified date may be made only with the prior written approval of the MBL.

9) **Termination for Cause or Convenience.** The MBL may terminate this Purchase Order for cause, in whole or in part, in the event that Contractor fails or refuses to deliver any of the Work and/or Materials specified in the Purchase Order within the time provided (except as set forth under the Paragraph 13 (Delays)), or otherwise violates any of the conditions of this Purchase Order, or if it becomes evident that Contractor is not performing or providing the Work and/or Materials in accordance with the Purchase Order, applicable specifications or with diligence so as to permit completion and delivery on or before the specified completion or delivery date, and in either of the latter two events does not cure such failure within a period of ten (10) days (or such longer period as the MBL may authorize in writing) after receipt of notice from the MBL specifying such failure. The MBL may withdraw from the Contractor those completed/delivered parts or portions that are acceptable and instruct others of its choosing to complete or deliver the Work and/or Materials and the MBL may cancel this Purchase Order, but such withdrawal of completed/delivered Work and/or Materials and cancellation shall not constitute a waiver of the MBL’s rights to damages arising from such default. Contractor shall be liable for any excess or additional cost or damages occasioned the MBL by reason of the Contractor’s breach. The MBL reserves the right to terminate this Purchase Order in whole or in part for its convenience by written notice to the Contractor. If the Purchase Order is so terminated, the MBL shall make an equitable adjustment in the purchase price to compensate Contractor for all reasonable costs incurred by Contractor in connection with said Purchase Order plus a reasonable profit with respect to all necessary work performed by Contractor to the date it received notice for such termination.

10) **Inspection and Acceptance.**

a) The Work and/or Materials called for by this Purchase Order together with that portion of the Contractor’s plant devoted thereto and all materials (which term throughout these Terms and Conditions includes without limitation, raw materials, components, intermediate assemblies and end products) shall at all reasonable times and to the extent practicable be subject to inspection and test by MBL. If any inspection or test is made by the MBL on the premises of the Contractor, the Contractor shall provide all reasonable facilities and assistance for the safety and convenience of the MBL.

b) If any Work and/or Materials are found to be defective, Contractor shall promptly repair or replace such Work and/or Materials at the Contractor’s expense and risk. Upon authorization by the Contractor, or if the Contractor is unable, refuses or does not proceed promptly with such repair or replacement, the MBL may by contract or otherwise, on the MBL’s premises or elsewhere repair or replace such defective Work and/or Materials and assess the Contractor the excess cost and damages incurred by the MBL thereby.

c) Regardless of the form or content of any receipt given the Contractor at the time of delivery, and despite any payment which may have been made there under, all Work and/or Materials delivered shall be subject to final inspection by the MBL following delivery.
to the MBL at destination. In the event of rejection, the Contractor shall be responsible for the quick removal of the rejected property within a reasonable time after receiving notification of rejection and shall bear all risks and loss after such notification.

d) Acceptance of all property and services ordered hereunder shall be affected by the MBL within a reasonable time after delivery. Except as otherwise provided for in this Purchase Order, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

11) **Delays.** Delays in performance or delivery beyond the time specified in this Purchase Order due to causes beyond the control and without the fault or negligence of Contractor may be excused by the MBL if Contractor notifies the MBL in writing of the cause of such delay within a reasonable time from the beginning thereof. When such excuse is given, the MBL, by written notice to the Contractor, will extend the time for performance by such period of time as the MBL determines to be commensurate within the period of delay.

12) **Force Majeure.** Neither party will be liable for any failure or delay in performing its obligations under this Agreement, or for any loss or damage resulting therefrom, due to acts of God, the public enemy, terrorist activities, riots, fires, health advisory alerts designated by the Center for Disease Control & Prevention, World Health Organization or similar governmental or international organizations, and similar causes beyond such party’s control. In the event of such failure or delay, the date of delivery or performance will be extended for a period not to exceed the time lost by reason of the failure or delay; provided, that the party affected by such delay is using commercially reasonable efforts to mitigate or eliminate the cause of such delay or its effects and, if events in the nature of the force majeure event were reasonably foreseeable, used commercially reasonable efforts prior to its occurrence to anticipate and avoid its occurrence or effect. Neither party will have an obligation to make any payments to the other during the period of such other party’s failure or delay. Each party will notify the other in writing promptly of any failure or delay in, and the effect on, its performance.”

13) **Warranties/12 Month Correction of the Work Period.** Unless otherwise agreed to in writing by the parties, Contractor warrants that: i) all workmanship shall be first class; ii) the Materials purchased will be supplied according to the terms and conditions of the Purchase Order and applicable specifications; and iii) except as otherwise provided in the specifications, all goods incorporated in the work shall be new and of the most suitable grade of their respective kinds for the purpose. Such warranties together with Contractor’s service warranties and guarantees, if any, shall survive inspection tests, acceptance of and payment for the goods and shall run to MBL, its successors and assigns. In addition to the warranty obligations set forth herein, the Contractor shall, within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost to the MBL any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after delivery or completion of the Work unless a different correction of the work period is provided in this Purchase Order. MBL, at its option, may either return for credit or require prompt correction or replacement of any defective or nonconforming Work or Materials or part thereof. If Contractor is unable to or refuses to promptly correct or replace such defective or nonconforming Work or Materials or part thereof, MBL, may, by contract or otherwise, repair or replace such work or materials and assess Contractor the excess cost occasioned the MBL thereby. The one-year correction of the work period shall not operate to reduce the statutory period of limitations for suit for breach of contract nor is it intended to limit or eliminate any legal remedy, statutory or otherwise.

14) **Means/Methods.** The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention and shall employ a competent superintendent and necessary assistants who shall be in attendance at the site during performance of the Work. Contractor shall solely have control over or charge of and will be solely responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Contractor shall be solely responsible for failure to carry out the Work in accordance with the Purchase Order. The Contractor shall be responsible to the MBL for acts and omissions of the Contractor’s employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its subcontractors.

15) **Changes.** The MBL may at any time, by written order, and without notice to its sureties, if any, make changes to the Work and/or Materials, within the general scope of this Purchase Order, including, without limitation, in any one or more of the following manners: i) changes to drawings, designs, or specifications; ii) changes in the method of shipment or packing; and/or iii) changes to the place of delivery. 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 shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim made by the Contractor for adjustment under this Paragraph must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of changes, provided, however, that the MBL, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. However, nothing in this Paragraph, shall excuse the Contractor from proceeding with the Purchase Order changed. Except as otherwise provided herein no payment for extra work shall be made unless such extras and the price thereof have been authorized in writing by the MBL.

16) **Notice and Assistance Regarding Patent and Copyright Infringement and Patent Indemnity.** The Contractor shall report to the MBL, 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 Contractor has knowledge. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Purchase Order or out of the use of any Materials furnished or Work performed hereunder, the Contractor shall furnish to the MBL for transmittal to the Government when requested by the MBL, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government. The Contractor shall indemnify the MBL and the Government, their officers, agents, and employees against liability, including costs for infringement of U.S. Letters Patent resulting from the Contractor’s: i) furnishing or supplying standard parts or components which have been sold or offered for sale to the public on the commercial open market; or ii) utilizing its normal practices or methods which
shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified contractors.

Contractor agrees as follows:

a) Clean Water Act (33 U.S.C. 1319 (c)) and is listed by EPA as a violating facility, or the Purchase Order is not otherwise exempt, the Contractor:

b) if the requirement is applicable, the Contractor will comply with the Uniform Federal Acquisition Regulation (FAR), and applicable state or local laws and regulations.

c) if the requirement is applicable, in performance of the work under this Purchase Order, the Contractor will not use any hazardous material, the Contractor will:

17) General Indemnity. To the fullest extent permitted by law, the Contractor will protect, indemnify, defend and hold harmless the MBL, its and their respective trustees, directors, officers, agents and employees, individually and collectively (the “Indemnified Parties”) from and against any and all liabilities, claims, demands, actions, costs, suits or matters in connection therewith (including, without limitation, reasonable attorneys’ fees, expert fees, court costs and expenses), if caused directly or indirectly by reason of or as a result of:

i) the use, possession or ownership of the goods or from the services provided by Supplier pursuant to this Purchase Order

ii) breach of this Purchase Order

iii) notice of lien, claim for lien, or suit to foreclose a lien filed, given, made or maintained by a subcontractor, sub-subcontractor or supplier; or

iv) hazardous materials, whether based upon or claimed to be based upon statutory, contractual, tort or other liability hereunder. To the extent prohibited by applicable laws, no person or entity indemnified under the terms of this Paragraph 16, shall be indemnified for claims arising from such person’s or entity’s sole negligence. The obligations of the Supplier pursuant to this Paragraph 16 are not to be construed to negate or reduce any other right or obligation of indemnification which would otherwise exist as to any party or person described in this Paragraph 16. Contractor shall fully compensate the MBL for harm to the MBL’s real or personal property caused by the acts or omissions, negligent or not, of Contractor or Contractor’s partners, directors, officers, employees, subcontractors, invitees, or agents under this Contract.

18) Examination of Records. The Contractor agrees that the MBL, the Federal sponsoring agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor, involving transactions related to this Purchase Order. The term “Purchase Order” as used in this Paragraph excludes: i) Purchase Orders not exceeding $10,000; and ii) subcontracts or Purchase Orders for public utility services at rates established for uniform applicability to the general public.

19) Assignment. The MBL may at any time, without Contractor’s consent, assign this Purchase Order or any of its rights hereunder to the United States Government or any other person or entity. Neither this Purchase Order, nor any payments, claims, or interests there under, are assignable or transferable by Contractor without MBL’s written approval.

20) Non-Discrimination and Equal Opportunity. By acceptance of this order Contractor certifies that it will comply with all applicable provisions of E.O. 11246 and E.O. 11375, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1974; E.O. 11701; the Rehabilitation Act of 1973; E.O. 11758; and the rules, regulations and relevant orders of the Secretary of Labor. MBL and Contractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

21) Contract Work Hours and Safety Standards Act. (Applies only where the Purchase Order has a federal contract number, it is for more than $100,000, and it is not for goods available in the open market.)

a) Overtime Requirements. Neither the Contractor nor any subcontractor contracting for any part of the Work under this Purchase Order which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on Work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

b) Working Conditions. If this Purchase Order involves construction work, neither the Contractor nor any subcontractor contracting for any part of the work under this Purchase Order shall require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

c) Subcontracts. The Contractor shall insert paragraphs a) through c) of this Paragraph in all subcontracts, and shall require their inclusion in all subcontractor contracts of any tier subject to the Act.

22) Clean Air and Water. If this Purchase Order exceeds $100,000, or orders under an indefinite quantity contract in any one year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 7413 (c) (1)) or the Clean Water Act (33 U.S.C. 1319 (c)) and is listed by EPA as a violating facility, or the Purchase Order is not otherwise exempt, the Contractor agrees as follows:

a) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 7414, et seq., as amended) and section 308 of the Clean Water Act (33 U.S.C. 1318, et seq., as amended), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Clean Air Act and the Clean Water Act, respectively, and all regulations and guidelines issued there under before the award of this Purchase Order.
b) That no portion of the work required by this Purchase Order will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Purchase Order was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

c) To use best efforts to comply with clean air standards and clean water standards at the facilities in which the Purchase Order is being performed.

d) To insert the substance of the provisions of this Paragraph in any nonexempt subcontract, including this paragraph d).

23) **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,’’ the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,’’ and any implementing regulations issued by the awarding agency.

24) **Labor Standards for Construction Work.** (Applies only where the Purchase Order has a federal contract number, the terms of that contract make federal construction labor standards applicable, and the work involves construction labor in excess of $2000.) The Contractor shall follow the terms of the Davis-Bacon Act, Copeland Anti-Kickback Act and related laws and Department of Labor regulations respecting construction labor. These Acts, among other things, require contractors to pay laborers and mechanics wages at rates not less than prevailing wages as determined by the U. S. Department of Labor, and prohibit inducing any employee to give up any part of the compensation to which the employee is entitled.

25) **Bonding.** For construction or facilities improvements Purchase Orders or contracts exceeding $100,000 the Contractor shall maintain a performance bond for 100 percent of the contract price, and a payment bond for 100 percent of the contract price. These bonds shall be obtained from companies holding certificates of authority as acceptable sureties and shall be on AIA A312 (1984) bond forms or other form approved by MBL.

26) **Insurance.** Contractor shall procure and maintain during the life of this contract, at Contractor’s sole expense: (i) commercial general liability insurance on an occurrence basis to protect from claims for damages of personal injury and property damage ($1,000,000 each occurrence, $1,000,000 general aggregate); (ii) automobile liability insurance ($1,000,000 combined single limit per accident for bodily injury and property damage); (iii) worker’s compensation as required by law; and (iv) employer’s liability insurance ($500,000 each accident, $500,000 disease-each employee, $500,000 disease-aggregate). The Marine Biological Laboratory, and all of its respective trustees, officers, agents, directors, employees, volunteers, affiliates, parent and subsidiary entities, and consultants shall be named as additional insured under the general liability policy and the automobile liability policy. Contractor shall provide evidence of such insurance to MBL prior to commencing or delivering any Work and/or Materials hereunder.

27) **Byrd Anti-lobbying Amendment.** If any portion of this Purchase Order is federally funded, and the amount is in excess of $100,000, the Contractor shall file all required certifications under the Byrd Anti-lobbying Amendment (31 U.S.C. 1352). This Amendment requires each contractor or subcontractor to certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352, and shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

28) **Debarment and Suspension.** In acceptance of this Purchase Order and its fulfillment the Contractor hereby certifies that Contractor is not currently a listed vendor in the Federal General Services Administration’s “List of Parties Excluded from Federal Procurement or Non-Procurement Programs” in accordance with Presidential Executive Orders 12549 and 12689, “Debarment and Suspension”.

29) **Employee Notice.** "To the extent applicable to contracts, subcontracts or purchase orders involving federal funds in excess of $100,000, the provisions of 29 CFR 470 (Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees) are hereby incorporated by this reference."

30) **Electrical Equipment.** Contractor warrants that all electrical equipment and/or appliances that may be furnished under this Purchase Order have been tested and approved by an OSHA recognized Nationally Recognized Testing Laboratory to the extent required by the Town of Falmouth ordinances and bylaws. Contractor will not ship Materials that do not conform, and will contact the MBL’s Procurement and Payment Services for instructions regarding any non-conforming Materials.

31) **Export Compliance.** Contractor agrees that it will provide the export control classification associated with the commodity being purchased, to the extent that this item is controlled either under the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR). For EAR-controlled items, the correct ECCN classification based on the Commerce Control List will be provided. For ITAR items, the correct USML Category will be provided. In both cases, to the extent that the item includes technical data such as operational manuals, such data must also be classified. In the event that the Contractor is unable to comply with this instruction, it will notify MBL within five (5) days of purchase order, indicating the reason for non-compliance and recommended solution.