

Esri Purchase Order Terms and Conditions



1. Acceptance of Terms. The **Environmental Systems Research Institute, Inc.**, or **Esri Global, Inc.** ("Esri"), Purchase Order includes these Purchase Order Terms and Conditions and the Purchase Order form (collectively hereinafter "PO"). By acceptance or by Supplier's shipment of all or any part of the goods or performance of any of the services specified in this PO, Supplier agrees to all of this PO's specifications, terms, and conditions.

2. Delivery Location, Time, and Specification Requirements. Supplier shall deliver goods or perform services at the time and location ("Destination") and in accordance with the description and quality specified in this PO.

3. Time Is of the Essence. Supplier acknowledges that time is of the essence for this PO.

4. Shipping Instructions. Unless otherwise specified in this PO, goods and service deliverables (collectively hereinafter "Goods") shall be shipped at Supplier's risk and expense to the Destination. Title to the Goods shall transfer to Esri upon delivery to the Destination. All Goods delivered to Esri should be accompanied by a detailed packing list with Supplier's name, the number of this PO, and the box number for multiple box shipments (i.e., Box 1 of 5). If Goods are shipped in multiple boxes, the packing list should also specify the total number of boxes.

5. Final Inspection and Acceptance. Notwithstanding any prior payment or inspection by Esri, all Goods shall be subject to final inspection and acceptance by Esri at the Destination or in accordance with quality control standards otherwise specified in this PO. Should Esri reject any Goods for failure to conform to the requirements of the PO, Esri shall notify Supplier of the rejection, giving reasons for the rejection. Supplier shall then have the option to repair or replace the nonconforming Goods at the Destination within five (5) business days. Rejected Goods to be returned to Supplier shall be shipped at Supplier's expense. Should Supplier fail to act to correct any nonconforming Goods within eight (8) business days after notice by Esri, then Esri may, at Supplier's risk and expense, return any nonconforming product to Supplier.

6. Warranty. Supplier warrants that the Goods specified in this PO, including, without limitation, all Goods or parts thereof repaired or replaced pursuant to warranty, are free of defects in workmanship, materials, and design under normal use and service for the purpose for which they are designed and for Esri's intended use of such Goods. Supplier warrants that such Goods are in strict compliance with any specifications provided with respect to such Goods and meet applicable industry and professional standards. All warranties shall survive inspection, acceptance, and payment.

7. Regulatory Compliance. Supplier shall keep itself fully informed of all country, state, or local laws, regulations, codes, ordinances, standards, or rulings, including, without limitation, any of the foregoing not otherwise applicable but which are ordered applicable by any regulatory or certifying governmental agencies (collectively the "Laws") that in any manner affect the Goods or the sale, import, export, or delivery of the Goods as specified in this PO, and shall comply with all such Laws. Supplier warrants that the Goods comply with all such Laws. Furthermore, all permits, licenses, approvals, and inspections; the fees associated therewith; and sales or use taxes necessary for sale, import or export, and delivery of the Goods as specified in this PO shall be secured and paid by Supplier.

8. Indemnification against Infringement. Supplier warrants that any Goods purchased pursuant to this PO, and the sale or use thereof, will not infringe any patent, copyright, or trademark or misappropriate any trade secrets or any other right, and Supplier agrees to defend, indemnify, and hold harmless Esri, its officers, directors, employees, successors, assigns, customers, and users

of its Goods from any and all loss, liability, cost, or expense, including attorneys' fees arising from a claim for actual or alleged infringement of any patent, copyright, or trademark or misappropriation of trade secrets or any other right by reason of the manufacture, use, or sale of the Goods, and Supplier agrees at its own expense to undertake the defense of any suit against Esri brought on any such claim. If the manufacture, use, or sale of any such Goods is enjoined as a result of the suit, Supplier, at no expense to Esri, shall obtain for Esri and its customers the right to manufacture, use, and sell the Goods or shall substitute an equivalent item acceptable to Esri and extend this paragraph 8 to the item.

9. General Indemnity. Supplier agrees to defend, indemnify, and hold harmless Esri and its officers, directors, employees, successor, assigns, customers, and users against any and all loss, liability, cost, or expense including attorneys' fees, for death or injuries to persons or property arising out of or in connection with the failure of the Goods or Supplier's performance specified in this PO to comply with the requirements of this PO, unless caused by the gross negligence or willful misconduct of Esri.

10. Remedies. In addition to remedies provided in this PO, Esri shall have all other rights and remedies available under applicable law. In no event shall Supplier be entitled to payment from Esri for any indirect, special, incidental, or consequential damages in connection with any termination of this PO, or otherwise, in connection with this PO.

11. Waiver of Breach. Waiver, forbearance, or inaction by Esri of a breach by Supplier of any term of this PO shall not be deemed a waiver of future compliance with such term or all terms of this PO.

12. Assignment and Delegation. Supplier shall neither assign any right or interest in this PO nor delegate any obligation hereunder without the prior written consent of Esri. Any attempted assignment or delegation absent Esri's consent shall be wholly void and ineffective for all purposes.

13. Insurance. Supplier shall maintain business and worker insurance or protection funds that are required or standard practice for suppliers in Supplier's home country. If Supplier will be delivering Goods to Esri facilities within the United States, other than by common carrier, or performing services at such facilities, Supplier is also required to maintain, at no expense to Esri, insurance coverage in the following amounts:

- A. Commercial General Liability Insurance, including but not limited to, premises, products, completed operations and contractual liability, with limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate, for bodily injury and property damage. Said insurance shall be provided on an Occurrence form.
- B. Workers' Compensation and Employer's Liability Coverage if Supplier is an employer of one or more employees, Workers' Compensation and Employer's Liability Coverage with minimum limits of:
 1. Workers' Compensation: Statutory as required by law
 2. Employer's Liability: (i) Bodily injury by accident: one million dollars (\$1,000,000) each accident; (ii) Bodily injury by disease: one million dollars (\$1,000,000) each employee; and (iii) Bodily injury by disease: one-million-dollar (\$1,000,000) policy limit.

The Workers' Compensation policy is to allow for a waiver of subrogation by the insurance company in favor

of Environmental Systems Research Institute, Inc. If the policy requires this to be specifically endorsed on the policy to be effective, a copy of this endorsement shall accompany the insurance certificate.

- C. Comprehensive Automobile Liability insuring against bodily injury and property damage with one million dollars (\$1,000,000) combined single limit "any auto" coverage, which must include Non-Owned Automobile Liability Coverage.
- D. None of the foregoing requirements as to the type and limits of insurance to be maintained by Supplier are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Supplier under this PO.
- E. Each of Supplier's insurance policies:
 - 1. Will be issued by companies that are admitted insurers in the jurisdiction in which the Goods are being provided hereunder;
 - 2. Will be issued by companies that have a current A.M. Best rating of not less than "A-," and are in a size category which is not lower than "VIII;"
 - 3. Will be primary and noncontributory with any of Esri's insurance;
 - 4. Will name Environmental Systems Research Institute, Inc., including its affiliates, as an additional insured (except Workers' Compensation and Employer's Liability Coverage where a waiver of subrogation in favor of Esri is needed);
 - 5. Will provide Esri with thirty (30) calendar days' prior written notice of cancellation, nonrenewal, or any reduction or material change in the coverages or limits; and
 - 6. Will provide endorsements if it is required by the insurance policy that an endorsement is to be done by the insurance company showing Environmental Systems Research Institute, Inc., and its affiliates as additional insureds or that thirty (30) calendar days' written notice will be provided in the event of cancellation, nonrenewal, or any reduction or material change in the coverages or limits. A copy of such endorsements shall accompany the insurance certificates.
- F. Supplier shall cause its insurance carriers, brokers, or agents to issue to Esri certificates of insurance and, where necessary, endorsements evidencing all insurance coverages and limits required by this paragraph 13.
- G. If required by Esri for the Goods being provided by Supplier, Supplier must carry Professional Liability (Errors & Omissions) Insurance for at least one million dollars (\$1,000,000) per accident with a two-million-dollar (\$2,000,000) aggregate. This insurance is to be kept in effect for two (2) years after the last Goods supplied or services performed by Supplier.
- H. Any authorized subcontractors of Supplier must meet the same insurance requirements in this paragraph 13 and provide Esri with the required certificates of insurance and endorsements.

14. Payments and Invoices. Esri will pay for the Goods only at the price and on the terms specified in this PO. Esri will not pay for any Goods or services provided without a PO or not specified on a PO. Supplier's invoices must reflect such price and terms unless Supplier has received written authorization for changes prior to shipping the Goods or performing the services in question. Supplier's invoices shall contain the following information: (1) Esri's purchase order number; (2) part number or contract line item number applicable to the Goods; (3) description of the Goods shipped or services performed; (4) quantity of the Goods shipped; and (5) unit price applicable to the Goods. All local, state, and

country excise, sales, and use taxes, VAT, duties, and tariffs, when applicable, shall be stated separately on Supplier's invoices. All prices shall be stated in US dollars.

15. Esri's Design and Property. Supplier shall keep confidential the features or content of any proprietary information furnished by or on behalf of Esri ("Esri Furnished Property"), and will use the items only in performing under this PO. In no event shall Supplier use Esri Furnished Property in any other manner or allow others to do so by assignment, transfer, subcontract, or business succession, without Esri's prior written consent. Esri Furnished Property and all copies, embodiments, overages, or misprints thereof shall remain Esri's property and shall be identified clearly by Supplier as "Property of Esri." Upon the first to occur of the delivery of the Goods ordered or termination of this PO, Supplier shall return all such property to Esri or dispose otherwise as Esri directs or approves. Esri may remove such property from Supplier's premises at any time, with or without prior notice.

16. Right to Cancel. Effective upon written notice, Esri may cancel this PO, or any part hereof, at its sole convenience, and Supplier shall immediately stop work and shall be entitled to the unit price stated on this PO for shipped, conforming Goods, plus one hundred percent (100%) of the reasonable, nonrecoverable expenses sustained by Supplier for cancellation of unfinished or conforming special and nonstandard Goods that have not been shipped (collectively, "Unshipped Goods"). Supplier shall ship or dispose of Unshipped Goods in the manner directed by Esri.

17. Governing Law. This PO shall be governed by and construed in accordance with the laws of the State of California, USA. The federal and state courts residing in Riverside or San Bernardino counties, California, shall have jurisdiction over any claim brought under this PO, and the parties hereby consent to the personal jurisdiction of such courts. This PO shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

18. Severability. If any provision of this PO is held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby.

19. Government Flow Downs. In the event that Supplier is providing Goods under this PO that directly or indirectly apply to procurements under US government contracts, the following US laws and regulations apply: 52.203-13, Contractor Code of Business Ethics and Conduct (Apr. 2010); 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun. 2010); 52.219-8, Utilization of Small Business Concerns (Dec. 2010); 52.222-26, Equal Opportunity (Mar. 2007); 52.222-35, Equal Opportunity for Veterans (Sept. 2010); 52.222-36, Affirmative Action for Workers with Disabilities (Oct. 2010); 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec. 2010); 52.222-50, Combating Trafficking in Persons (Feb. 2009); 52.244-6, Subcontracts for Commercial Items (Dec. 2010); and 52.247-64, Preference for Privately Owned US-Flag Commercial Vessels (Feb. 2006). These clauses have the same force and effect as if they were stated in full text.

20. Integration. Subject to the terms and conditions of any related agreement signed by the parties, this PO constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter. Any modification(s) or amendment(s) to this PO must be in writing and signed by an authorized representative of each party. The terms of any related agreement signed by the parties shall prevail over the terms of this PO; and this PO shall prevail over any conflicting terms on any order, Supplier acknowledgment of an order, or any other document of Supplier.