

## Terms and Conditions of Purchase TC-01

**1. Definitions.** The following definitions apply unless otherwise specified: (a) **"PO"** or **"Purchase Order"** or **"Order"** or **"Contract"** – the Purchase Order along with these Terms and Conditions of Purchase, and any referenced special or supplemental provisions, drawings, technical data, specifications, statement of work, quality provisions (in all cases including any changes), and all other documents incorporated herein; (b) **"Buyer"** – the legal entity issuing this PO, as listed on the face of the PO; (c) **"Procurement Representative"** – the individual authorized to issue this PO as the Buyer's authorized representative; (d) **"Seller"** or **"Contractor"** or **"Offeror"** – the legal entity contracting with the Buyer; (e) **"Work"** – all required labor, articles, materials, products, supplies, parts, assemblies, data, drawings, goods, items, and services constituting the subject matter of this PO; (f) **"Due Date"** – the date of receipt at destination (not the ship date) irrespective of FOB point; (g) **"Subcontractor"** – any legal entity contracting with the Seller or its lower tier subcontractors under this PO; (h) **"Seller Engaged Personnel"** – any of Seller's employees; Seller's contingent, contract, or temporary workers; or Seller's agents or Subcontractors (and their employees) engaged, directed, or allowed by Seller to provide Work, directly or indirectly, to Buyer under this PO; (i) **"U.S."** – the United States of America. Further, the term **"including"** shall not be limited by any list of examples provided thereafter.

**2. Entirety of Agreement.** (a) Seller agrees to provide and sell to Buyer the Work, per the requirements and the Due Date(s) described in the PO.

(b) This PO constitutes the complete and entire agreement between the parties hereto and unless agreed in writing otherwise, supersedes all previous negotiations, discussions, communications, representations, course of dealing, usage of trade, or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof. No agreement or understanding varying, contradicting or extending the terms or conditions of this PO, including Seller provided terms and conditions included within a quote, proposal, order acknowledgement, or like document, will be binding unless in writing, expressly incorporated in the PO, and signed by duly authorized representatives of both parties. This PO constitutes an offer by Buyer in accordance with the terms set forth herein. Acceptance of this PO by the Seller will be by any one of the following: (1) acknowledgment in writing, (2) commencement of performance by the Seller; or (3) delivery in whole or in part of the Work called for hereunder.

(c) Any inconsistencies among the documents comprising the PO shall be resolved in accordance with the following descending order of precedence: (1) provisions contained in the text of the PO excluding any attachments; (2) these Terms and Conditions of Purchase; (3) the specifications and/or statement of work; and (4) other provisions attached or incorporated by reference to or in the PO..

**3. Seller's Obligations.** (a) Seller shall comply with this Order and all referenced documents as written. Seller acknowledges that it has thoroughly examined all schedules, exhibits, specifications, statements of work drawings, data, information and riders which may be attached hereto and referenced herein as part of this Order. Seller further

acknowledges that it has available to it all required specifications, drawings and data incorporated in this Order, and that such specifications, drawings and data are complete and adequate to enable Seller to perform the Work in accordance with all technical specifications, requirements documents and delivery schedule set forth herein.

(b) Seller shall request clarification of any discrepancies and/or inconsistencies with Buyer in a timely manner and before proceeding with the Work. If Seller determines during the performance of this Order, that any portion of this Order is inaccurate, inconsistent or incomplete, it shall promptly notify Buyer in writing specifying full particulars and request resolution before proceeding with the work effort in question. In the event that the Seller fails to contact Buyer in a timely manner or proceeds with any work in question to resolve said discrepancies and/or inconsistencies, Seller shall be deemed to have proceeded on its own accord and shall be solely responsible for any errors and associated cost and/or schedule impacts resulting therefrom.

(c) Seller acknowledges that it is fully competent in all phases of the work involved in producing and supporting the work called for under this Order. Seller agrees that Buyer and Buyer's customers are entitled to and have relied upon the Seller, and the Seller shall not deny any responsibility or obligation hereunder to Buyer or Buyer's customers on the grounds that Buyer or Buyer's customers provided recommendations and/or assistance in any phase of the Work, including the acceptance by Buyer or specifications, data or the Work.

**4. Changes.** Buyer may unilaterally and at any time by a written order issued by its Procurement Representative, suspend performance of this PO in whole or in part, and make changes within the general scope of this PO, including changes to the following: drawings, designs, specifications, provisions and instructions of this PO, method of shipment and/or packing, delivery schedule, place of delivery, quantity of Work, scope of Work, Buyer furnished material and property, and inspection and acceptance requirements. Seller shall proceed immediately to perform this PO as changed. If any such change causes an increase or decrease in the cost of or the time required for performance of this PO, or otherwise affects any other provisions of this PO, an equitable adjustment shall be made in the purchase price and/or delivery schedule as agreed to in writing by Buyer, and the PO modified in writing accordingly. Any claim by the Seller for adjustment under this Clause must be asserted in writing within twenty (20) days from the date of the notification of change, and such request must include pertinent cost and/or pricing data sufficient to permit Buyer to evaluate any such claim; provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon a claim for adjustment asserted at any time prior to final payment under this PO. Where the cost of property made obsolete or excess as a result of a change is included in the Seller's claim for adjustment (and supported by inventory schedules), the Buyer shall have the right to prescribe the manner of disposition of such property. Nothing in this Clause, nor the failure of the parties to agree on an equitable adjustment, shall excuse the Seller from proceeding with the PO as changed.

**5. Product Changes/ Part Obsolescence.** Seller shall provide written notification to Buyer prior to making any changes to Seller's tooling, facilities, materials, or processes,

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and/or shall provide written notification to Buyer upon becoming aware of any such changes by Seller's Subcontractors at any tier, that could affect the Work in this PO. This requirement includes changes to fabrication, assembly, handling, inspection, acceptance, testing, manufacturing location, parts, materials, or suppliers. Seller shall notify Buyer of any pending or contemplated future action to discontinue Work purchased pursuant to this PO and shall allow Buyer to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the Work. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to the actual discontinuance. Seller shall extend opportunities to Buyer to place last time buys of such Work with deliveries not to exceed one hundred eighty (180) days after the last time buy date. Seller shall flow down to Subcontractor(s) the requirements of this Clause and all other applicable flow down provisions.

**6. Delivery and Notifications.** (a) Time is of the essence and Seller shall furnish the Work covered by this PO in accordance with the Due Date(s) stated on the face of this PO. Unless otherwise agreed to in writing by Buyer, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time reasonably required to meet the Due Date(s). Seller shall strictly adhere to this PO's Due Date(s) and completion schedule(s). Seller shall not make deliveries in advance of the Due Date(s) unless authorized in writing by Buyer. Work delivered to Buyer in advance of the Due Date(s) without Buyer's authorization may be returned or stored by Buyer at Seller's expense and without any obligation to Buyer. Deliveries will be made even in the event of a strike at Seller's location, unless otherwise authorized by Buyer. If the Seller fails to deliver in accordance with the schedule, Buyer will be entitled, at its election and its sole discretion, to either a price reduction for late deliveries, or the right to terminate this PO for default for late deliveries. Any expenses, costs or damages (including refund of monies paid by Buyer in advance of delivery) incurred by Buyer as a result of such default or any other non-compliance with the terms of this PO may, at the discretion of Buyer, and in addition to any other remedies at law or in equity, be offset against any sum owing under this or any other PO between Buyer and Seller, or charged back to Seller.

(b) The Seller shall furnish sufficient labor and management personnel, plant and equipment and any other resources required in performance of this Order and shall work such hours, including overtime, additional shifts, weekend and holiday work, as may be required to ensure compliance with the Due Date(s) as set forth herein at no change in Order price.

(c) In the event of any anticipated or actual delay in the performance of this PO, Seller will immediately notify the Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay along with a proposed written recovery schedule. If Buyer requests, Seller shall, at Seller's expense, ship via air or other expedited routing to avoid or minimize any delay. Seller shall also immediately notify Buyer in writing of any events that could affect contract performance, such as bankruptcy proceedings, strikes, accidents, etc. Seller agrees to flow this Clause down to its Subcontractors, and promptly notify Buyer in writing when there exists such events and/or there

are anticipated or actual delays at its Subcontractors that could affect performance under this PO. Notification shall not relieve Seller of its obligation to comply with PO delivery requirements including Due Date(s).

(d) In the event of a termination for convenience or change by Buyer, no claim will be allowed for any manufacture or procurement in advance of Seller's normal lead time(s) or in excess of what is reasonably required to meet the Due Date(s) in the absence of Buyer's prior written consent.

**7. Disputes.** In the event of any dispute arising under or relating to this PO, the parties agree to make diligent and reasonable attempts to resolve through negotiations all such disputes prior to resorting to any remedy available in law or equity. Any action at law, suit in equity, or judicial proceeding of any kind arising directly, indirectly, or otherwise in connection with this PO or the relationship between the parties shall be brought only in a court of competent jurisdiction within the Commonwealth of Virginia. Each party hereby agrees to irrevocably submit and consent to the exclusive jurisdiction and venue of courts located in Virginia and each hereby waives its rights to challenge the personal jurisdiction of those courts over it. Pending resolution of any such dispute by settlement or by final judgment, Seller shall proceed diligently with performance unless otherwise directed by Buyer in writing. In the event litigation is pursued, the prevailing party shall be entitled to recover its reasonable costs and expenses including its reasonable attorneys' fees and costs.

**8. Waivers/Approvals.** (a) Failure of Buyer to enforce at any time any provision of this PO, or any rights in respect thereto, or to exercise any election therein provided, shall in no way be considered to be a waiver or relinquishment of the right to thereafter enforce such provisions or rights or exercise any subsequent elections. Any and all of the rights and remedies conferred upon Buyer under this PO shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law. If any provision of this PO becomes void or unenforceable by law, the remaining shall be valid and enforceable.

(b) No waiver, alteration, or modification of any of the provisions of this PO shall be binding on Buyer unless evidenced by a written change or modification to this PO signed by the Procurement Representative. Buyer's approval of Seller's design or Work shall not relieve Seller of the warranties or any other requirements of this PO. Acceptance of deliveries shall not be deemed a waiver of Buyer's right to hold Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of the Seller's obligation to make future deliveries in accordance with the Due Date(s) or other requirements of this PO.

(c) Waivers by Buyer of any drawings or specification requirements for one or more Work items shall not constitute a waiver of such requirements for the remaining Work unless so stated in writing by Buyer.

**9. Technical Direction and Seller Responsibilities.** (a) All communication between Seller and Buyer affecting the Work to be furnished shall be through the Procurement Representative. Buyer technical personnel may provide written technical direction. However, technical direction and management surveillance shall not impose tasks and requirements upon the Seller that are additional to or different from the general tasks and requirements established in the PO.

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The technical direction, to be valid: (1) must be issued in writing consistent with the general scope of the Work as set forth in this PO; and (2) shall not commit Buyer to any adjustment of the price, schedule or other PO provisions.

(b) If any technical direction is interpreted by the Seller to fall within Clause 4, Changes ("Changes Clause"), Seller shall not implement such direction, but shall notify Buyer's Procurement Representative in writing of such interpretation within ten (10) working days after Seller's receipt of such direction. Such notice shall: (1) include the reason upon which the Seller bases its belief that the technical direction falls within the purview of the Changes Clause; and (2) include the Seller's best estimate as to revision in estimated price, performance time, delivery schedules and any other issues that would result from implementing the technical direction.

(c) If, after reviewing the information, the Buyer is of the opinion that such direction is within the purview of the Changes Clause and considers such changes desirable, Buyer will issue unilateral direction to proceed pursuant to the authority granted under the Changes Clause.

(d) In the event the Buyer determines that it is necessary to avoid a delay in performance of the PO, Buyer may, in writing, direct the Seller to proceed with the implementation of the technical direction pending receipt of the information to be submitted under paragraph (b) above. Should Buyer later determine that change direction is appropriate; the written direction issued hereunder shall constitute the required change direction.

(e) Failure of the Seller and the Buyer to agree on whether direction is technical direction or a change within the purview of the Changes Clause shall be a dispute under Clause 7, Disputes. Any action taken by the Seller in response to any direction that falls within the purview of the Changes Clause given by any person other than the Procurement Representative shall be at the Seller's own risk.

**10. Counterfeit Parts.** (a) For purposes of this Clause, the term "**Parts**" consists of those parts delivered under this PO that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). The term "**Counterfeit Part**" means a Part that fulfills any or all of the following: 1) is or contains items misrepresented as having been designed, produced and/or tested under an approved system or other acceptable method; 2) is an item altered to resemble a product without authority or right to do so, or is an imitation of another product, with the intent to mislead or defraud by presenting the imitation as original or genuine; 3) is an approved Part that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; or 4) is a used, refurbished, sample, or reclaimed item passed off as a new one.

(b) Seller agrees and shall ensure that Seller and Seller Engaged Personnel shall deliver no Counterfeit Parts to Buyer. Seller shall only purchase items to be delivered or incorporated as Parts directly from the original component manufacturer /original equipment manufacturer, or through an authorized distributor. Parts shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. Seller shall, at its expense, promptly replace any delivered Counterfeit Part with a genuine Part conforming to the requirements of this PO. Notwithstanding any other provision herein, Seller shall be liable for all costs relating to the removal and

replacement of Counterfeit Parts, including costs borne by Buyer, its customer or subcontractor associated with removing Counterfeit Parts, of reinserting replacement Parts and of any testing necessitated by the need to identify the Counterfeit Parts and the reinstallation of Parts after Counterfeit Parts have been exchanged. The remedies contained in this Clause are in addition to any remedies Buyer may have at law, equity or under other provisions of this PO.

**11. Intellectual Property.** (a) This entire Clause 11 is subject to any U.S. Government rights. All technical work product, including ideas, information, data, documents, drawings, software, software documentation, designs, specifications, and processes produced by or for Seller, either alone or with others, in the course of or as a result of any Work performed by or for Seller under this PO shall be the exclusive property of Buyer and be delivered to Buyer promptly upon request.

(b) All inventions conceived, developed, or first reduced to practice by or for Seller, either alone or with others, in the course of or as a result of any Work performed by or for Seller under this PO, and any patent application and patents based on or relating to any such inventions (both domestic and foreign), shall be the exclusive property of Buyer. Seller shall promptly disclose all such inventions to Buyer in written detail, and execute all papers, cooperate with Buyer, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications to Buyer.

(c) All works of authorship, including documents, drawings, software, software documentation, photographs, video tapes, sound recordings, and images, created by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller under this PO, together with all copyrights subsisting therein, shall be the sole property of Buyer. To the extent permitted under United States copyright law, all such works shall be works made for hire, with the copyrights therein vesting in Buyer. The copyrights of all other such works, including all of the exclusive rights therein, shall be promptly transferred and formally assigned free of charge to Buyer. Buyer shall have the right, at no additional charge, to use and/or reproduce Seller's and/or Seller's Subcontractors applicable literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature.

(d) Buyer shall have an unlimited, worldwide, irrevocable, perpetual royalty-free right and license to make, have made, sell, offer for sale, import, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivatives of, and authorize others to do any, some or all of the foregoing, any and all technical work product, and works of authorship, conceived, developed, generated, or delivered in performance of or in connection with this PO ("PO Work Product"). If any pre-existing intellectual property of Seller is included or incorporated in any PO Work Product, Seller grants to Buyer an irrevocable, nonexclusive, worldwide, perpetual, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.

(e) Buyer shall have a royalty-free, worldwide, irrevocable, nonexclusive license to use and license others to

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use Seller's software, patents, designs, processes, know-how, drawings, and technical data relating to the supplies and services as defined in this Order solely for purposes of producing and selling the Work required to be supplied by the Buyer's existing or follow-on orders with its customers if (1) at any time during the performance of this Order, Seller suspends business operations or becomes bankrupt or insolvent, or (2) at any time within five (5) years from the end date of this Order, Seller, for any reason, discontinues acceptance of follow-on orders for Work ordered hereunder.

(f) In the event of any inconsistency between this Clause and any U.S. Government clause incorporated by reference into this PO, the incorporated U.S. Government clause shall govern.

**12. Title to Drawings, Specifications and Work Product.**

(a) This entire Clause 12 is subject to any U.S. Government rights. Buyer and/or its customers shall at all times have title to: (1) all drawings and specifications furnished by Buyer to Seller, and (2) all documents (including all drawings and specifications) and work product, in any form, generated by, for or on behalf of Seller in connection with this PO. The Seller shall, upon Buyer's request or upon completion of this PO, promptly return or deliver all documents and work product, including all copies, to Buyer.

(b) The Seller hereby assigns and agrees to assign to Buyer the Seller's entire right, title and interest in and to (1) any and all documents and work product referred to in paragraph 12(a)(2) above, (2) any and all applications for patent, domestic and foreign, that may be filed on said documents and work product, (3) any and all patents that may issue or be granted on such applications, and (4) any and all trademarks and copyrights in material related to said documents and work product. Seller shall, upon request by Buyer, immediately sign or have signed and deliver to Buyer, without further consideration, any and all documents necessary to perfect the assignments granted in this Clause.

**13. Rights in Computer Software.** This Clause is subject to any U.S. Government rights. Seller hereby assigns to Buyer all rights, title and interest in computer software, including computer programs, databases and documentation thereof (individually and collectively, "Software"), developed in the performance of this PO, including the right to apply for and register copyrights and patents in the U.S. and any other country, the right to all extensions and renewals thereof, unrestricted and complete rights of publication or reproduction, the right to use and license others to use said Software, and right to exclude others from reproducing the Software. Seller shall obtain from its Subcontractors all rights necessary to fulfill the Seller's obligation to Buyer under this PO. Seller agrees to execute any and all documents Buyer may require to perfect the above assignment. Buyer shall have an unlimited, irrevocable, paid-up, perpetual royalty-free right and license to make, have made, sell, offer for sale, import, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivatives of, and authorize others to do any, some or all of the foregoing, any and all Software conceived, developed, generated, or delivered in performance of or in connection with this PO.

**14. Confidential or Proprietary Information/Property.**

Seller shall keep confidential and protect from disclosure all information and property obtained from Buyer in connection with this PO and identified orally or in writing as confidential or proprietary, or which reasonably would be considered to be confidential or proprietary, as well as all documents and work product generated by Seller under this PO. Unless otherwise expressly authorized herein by Buyer, Seller shall use such information and property, and the features thereof, only in the performance of and for the purpose of this PO. Seller shall not, at any time during or after performance of this PO, disclose to others (except those Seller Engaged Personnel with a need to know) the terms of this PO or any other information, knowledge, or data (including business, technical, financial, or information of a proprietary or trade secret nature) that Seller: (a) receives from Buyer; or (b) conceives, develops or acquires in the performance of this PO. Nothing in the foregoing shall affect compliance with U.S. Government requirements. Upon Buyer's request, and in any event upon the completion, termination or cancellation of this PO, Seller shall return all such information and property to Buyer or make such other disposition thereof as directed by Buyer. **Seller shall not sell or dispose of any scrap or any completed, partially completed, or defective proprietary property before receiving written authorization and disposition instructions from Buyer.** Seller shall flow down to its Subcontractors receiving such information or property these requirements to provide to Buyer the same rights and protection as contained in this Clause.

**15. Release of Information and Use of Name.**

The Seller shall not, without the prior written consent of Buyer, publicly release any information regarding the subject matter or existence of this PO. This includes advertisements, brochures, news releases (including photographs, films, public announcements, or denial/confirmation of the same, or interviews with news media) and the like. Seller shall not use or allow to be used, Buyer's name, logo or trademarks without the prior written approval of Buyer. The Seller shall include the substance of this Clause, including this sentence, in all of its subcontracts.

**16. Seller's Compliance with Applicable Laws.**

(a) Seller warrants and certifies it has complied and will comply with all applicable international, federal, state and local laws, statutes, ordinances, rules, regulations, programs, plans, and orders (collectively referred to as "**Laws**") in its performance of this PO and that all Work delivered hereunder complies with all applicable Laws.

(b) Without limitation to the foregoing, Seller warrants that it is in compliance with all Laws regarding prohibitions on bribery of public officials and kickbacks, including the Foreign Corrupt Practices Act and similar laws of foreign countries. Seller further warrants that it is in compliance with all Laws pertaining to firearms, ammunition, and explosive materials, which include but are not limited to the Federal Gun Control Act (18 USC § 921 et. seq.; 27 CFR Part 478), the National Firearms Act (26 USC § 5801 et. seq.; 27 CFR Part 479) and Federal explosives law, as amended by the Safe Explosives Act (18 USC § 841 et. seq.; 27 CFR Part 555). Seller also warrants that it will accurately label all deliverables consistent with the requirements of 40 CFR Part 82 "Protection of Stratospheric Ozone; Labeling." Work under this PO may be in a hazardous environment. Access to Work on this PO by persons under the



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age of 18 will be in compliance with the laws of the State where the Work is being performed. Seller agrees to defend, indemnify, and hold harmless Buyer from and against any Damages (as defined in Clause 18 below) relating to any actual or alleged non-compliance by Seller or Seller's Subcontractors of any Laws. Buyer's approval of Seller's facilities, processes, or Work does not relieve Seller of its obligation for compliance to all applicable Laws.

**17. Hazardous Material Identification And Material Safety Data.** Prior to shipment of any hazardous material or chemical (as determined by OSHA regulation at 29 CFR § 1910.1200[d], Federal Standard No. 313, or the Hazardous Materials table under 49 CFR 172.101) onto Buyer property or work sites, Seller shall provide to Buyer one copy of OSHA Form 20 or 174, Safety Data Sheet or equivalent, for each such material or chemical. The form shall include the Buyer stock number or the material specification number as defined in this PO and all of the information required by 29 CFR § 1910.1200(g). The packaging, labeling, handling, and shipping of all hazardous items must conform to all Laws, including Title 49 of the CFR Hazardous Material Regulations and carrier regulations. In addition to application of proper shipping labels on the outside container, each container of hazardous items shall be marked with the appropriate precautionary label according to the Code of Federal Regulations. Any failure to comply with the above submission requirement shall be grounds for withholding payments due the Seller hereunder.

**18. Indemnification.** (a) Seller agrees to defend, indemnify and hold harmless Buyer, its officers, directors, employees, agents, representatives, dealers, distributors, customers, and their subcontractors from any and all lawsuits, claims, fines, penalties, offsets, liabilities, judgments, losses, damages, costs and profit disallowed, or expenses (including reasonable attorneys' fees) (collectively, "Damages") for: (1) property damage or personal injury including death, of whatever kind or nature arising out of, as a result of, or in connection with Seller or Seller Engaged Personnel's performance or failure to perform pursuant to this PO; (2) any liability which arises as the result of failure of Seller or Seller Engaged Personnel to comply with any Law or Clause of this PO; (3) liability from any actual or alleged patent, copyright, trademark, or trade secret infringement by reason of any manufacture, use, or sale of any Work delivered by Seller under this PO, or for any items manufactured from reports, drawings, blueprints, data, or technical information delivered by Seller under this PO; and (4) any breach of Seller's obligations, warranties, representations, certifications, or guarantees provided under this PO.

(b) If the use or sale of any Work or deliverable, in respect to which Seller indemnifies Buyer under paragraph 18(a)(3), is enjoined as a result of any action or proceeding, Seller, at no expense to Buyer, shall obtain for Buyer and its customer(s), the right to use and sell said Work or deliverable or shall substitute an equivalent item acceptable to Buyer and extend this indemnity with respect to such equivalent item. In the event that Seller is unable to secure such right of use for Buyer and/or its customer(s), Seller shall indemnify Buyer and its customer(s) for any and all losses, damages, costs, and expenses (including reasonable attorneys' fees) sustained by reason of such injunction.

**19. Inspection.** (a) Upon request of the Buyer, Seller agrees to allow Buyer, its customer representatives (at any tier), a cognizant regulatory authority, and, in the case of Work purchased for a U.S. Government contract or subcontract, the U.S. Government to visit at all reasonable times the Seller's and Seller's Subcontractors' production facility(ies) where this PO is to be performed, in whole or in part, to inspect and test the Work pertaining to the requirements of this PO. Buyer may, at its option, assign representatives from Buyer and/or Buyer's customer as resident or itinerant representatives to be located at Seller's plant. Seller shall inform Buyer when the Work is ready for inspection. If such inspection or testing is made on Seller's premises, Seller shall provide, without additional charge, all reasonable facilities, equipment and assistance for such inspections and tests, and provide for the inspectors' safety while at Seller's plant. No inspection (including source inspection), test, approval (including design approval), or acceptance of the Work shall relieve Seller from responsibility for any defects in the Work or other failure to meet the requirements of this PO, or for latent defects, fraud, such gross mistakes that amount to fraud, or Seller's warranty obligations.

(b) Seller shall, in its own inspection and testing of the Work, provide and maintain an inspection system in accordance with sound business practices, or, if required by Buyer, use an inspection system accepted by Buyer in writing. All inspection records relating to the Work shall be kept complete and made available to Buyer during performance of this PO and for six (6) years after final payment unless otherwise directed by Buyer in its acceptance of Seller's inspection system. Prior to Seller's destruction of inspection and testing records, Seller shall offer Buyer in writing, at no cost to Buyer, the option to either extend Seller's period of retention for any remaining period required by Buyer's prime contract or provide copies of all such records to Buyer for its own retention requirements. Seller's quality control, inspection system, and manufacturing process are subject to review, analysis and verification by Buyer's Quality Assurance representative.

(c) Final inspection and acceptance by Buyer shall be at point of delivery unless otherwise specified in this PO. Such inspection shall be in accordance with the customary established inspection procedures of the location of Buyer where the Work is received. If Buyer determines that the Work is likely to be rejected under Buyer's normal inspection level under such procedures, Buyer may, at its option, conduct an above-normal level of inspection, up to 100% inspection, and charge Seller the reasonable costs thereof.

**20. Acceptance.** Buyer shall accept Work or give Seller notice of rejection within a reasonable time, notwithstanding any payment or prior test or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this PO or impair any rights or remedies of Buyer or its customer. In case any Work is defective or otherwise not in strict conformance with the requirements of this PO, Buyer shall have the right either to reject it, require its correction, or accept it with an equitable adjustment in price or other consideration. Buyer acceptance of nonconforming Work does not release Seller from its warranty or latent defect obligations. Any Work that has been rejected or requires correction shall promptly be replaced or corrected at Seller's expense, including transportation charges. In addition, Buyer reserves the right to charge Seller a rejection processing fee of

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four hundred dollars (\$400.00) for each time Work is rejected. If Seller fails to promptly replace or correct any Work within the schedule for the Due Date(s), Buyer may: (a) return, re-perform, repair, replace, or re-procure the non-conforming Work at Seller's expense; and (b) terminate this PO in accordance with the Termination for Default Clause established herein and recover from Seller any monies paid toward the rejected Work. Should Buyer's customer or other circumstances require acceptance of non-conforming Work, payment will be made at an equitable reduction in price.

**21. Delivery, Title, and Risk of Loss.** (a) Unless this PO specifically provides otherwise, the delivery point shall be FOB Buyer's location designated on the face of this PO.

(b) Title to Work delivered under this PO shall pass to Buyer upon formal acceptance, regardless of when or where Buyer takes physical possession, unless the PO specifically provides for earlier passage of title.

(c) Risk of loss or damage to the Work shall remain with the Seller until, and shall pass to Buyer, upon the latter of acceptance or delivery to the FOB point. The risk of loss of nonconforming Work remains with the Seller until cure and acceptance of conforming Work.

(d) A reference on the PO to "FOB Origin" shall be considered FOB Shipping Point-Freight Allowed (SPFA), and the total amount paid by Buyer for the freight shipment(s) of the Work shall be deducted from the Seller's invoice(s) when payment is made by Buyer.

**22. Invoices and Payment.** (a) Seller shall prepare at time of shipment (or delivery at F.O.B. Origin) full and complete invoices for the Work performed and shall deliver one (1) legible copy of invoices by mail or email as directed in the PO. Seller shall verify email address accuracy to avoid payment delays. Seller shall be paid the prices stipulated herein for supplies delivered and accepted, less applicable deductions, if any. Buyer has no obligation to pay for items not included in the PO. Payment due date, including prompt payment discounts if applicable, shall be based on the date Work is received or completed, or the date a proper invoice is received for Work accepted by Buyer, whichever is later. For purposes of earning the discount, payment is deemed made on the date of mailing Buyer's check or completion of wire transferred funds. Buyer may, at its option, make payment to the Seller prior to the delivery and/or acceptance of Work.

(b) Each Seller invoice shall be for delivery/completion of Work on only one PO. Seller shall limit the number of submitted invoices on this PO to one (1) per month, with multiple items on a given invoice. Each Seller invoice shall contain as a minimum the PO number and total invoice amount, and for each Work item include: PO line item, Work description (including serial numbers, if required), quantity delivered and invoiced, and invoiced amount. Invoiced unit costs for each Work item must exactly match what is in the PO. Tax and freight charges, when applicable, shall be separately stated on the invoice. Unless the PO specifies otherwise, prices shall not include any sales or use taxes for which Buyer provided an exemption. Buyer shall be entitled at all times to off-set any amounts owed by Seller to Buyer against any amount payable by Buyer to Seller. Unless the PO specifies otherwise, no payment for extras shall be made unless such extras and the price therefore are authorized in writing by the Procurement Representative. Unless

specified otherwise on the face of the PO, terms of payment shall be net forty five (45) days from Buyer's receipt of a proper invoice from Seller.

**23. Packing, Marking, and Shipping Documents.** All Work shall be packed, marked, and shipped strictly in accordance with the requirements specified in the PO. If no specific instructions are provided, the Seller shall utilize good commercial practices to ensure protection in shipment and storage and compliance with applicable Laws. Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking, or method of shipment shall be reimbursed by Seller. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage, or storage unless specifically stated in the PO. Seller will strictly adhere to Buyer's routing instructions on the PO. Seller shall forward to Buyer, with invoice, the express receipt of bill of lading; signed by the carrier evidencing the fact that shipment was made. On containers, Seller shall mark handling and loading instructions, shipping information, PO number, item and account number, shipment date, and names and addresses of Buyer and Seller. Each shipment of Work shall also include a separate packing list in a waterproof envelope or wrapper.

**24. Representations, Warranties and Guarantees.** By acceptance of this PO, Seller warrants for at least twenty-four (24) months from the date of acceptance or re-sale by Buyer, whichever is earlier ("Warranty Period"), that all Work: (a) shall be new, suitable for the uses intended, of the grade and quality specified and free from all defects in design, material and workmanship; (b) shall strictly conform to all applicable specifications, drawings, descriptions, samples furnished and other requirements of the PO; (c) shall be adequately packaged and labeled; (d) shall be of good and merchantable title, free of liens and encumbrances; and (e) are not in violation of any Laws. The foregoing warranties are in addition to all other warranties, expressed or implied, and shall survive delivery, inspection, acceptance and payment by Buyer. If the Work is found not to meet the warranties and guarantees specified herein, Buyer may, within its sole discretion, return such Work to Seller at Seller's expense, for correction, replacement, re-performance or credit, plus transportation charges. If repair, or replacement, or re-performance of the Work is not timely, Buyer may elect to return, repair, replace, or re-procure the non-conforming Work at Seller's expense. Any Work corrected, replaced, or re-performed shall be subject to the provisions of this Clause to the same extent as the Work initially furnished hereunder for the remaining Warranty Period or for twelve (12) months from acceptance of the corrected, replaced or re-performed Work, whichever is longer. Should Buyer's customer require acceptance of the Work not conforming to this warranty, payment will be made at an equitable reduction in price. This warranty shall run to Buyer, its successors, assigns, customers, and users of its products. These rights granted to Buyer under this Clause are in addition to any rights or remedies provided elsewhere in this PO or in law and equity and shall not be deemed to be exclusive.

**25. Seller Compliance with Labor and Employment Laws.** Seller and Seller Engaged Personnel are not employees of Buyer and are not entitled to any Buyer employee benefits or privileges. Seller shall comply with all applicable federal,

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state, and local labor and employment laws, regulations, and executive orders, including those specific to U.S. Government contractors, Form I-9 requirements, and requirements for the use of E-Verify. Seller shall pay all wages due to its employees and all related employment taxes and workers' compensation and unemployment insurance amounts. Seller shall indemnify and hold harmless Buyer against all Damages arising out of any alleged failure to comply with labor and employment laws applicable to any Seller Engaged Personnel.

**26. EEO and Affirmative Action Obligations.** Buyer is an equal opportunity and affirmative action employer. Seller represents and warrants that it will assign Seller Engaged Personnel without regard to race, color, creed, religion, sex, national origin, disability, age, status as a covered veteran, or any other legally protected characteristic. Seller and its Subcontractors may be subject to the provisions of 41 CFR §§ 60-1.40, 60-300.5, and 60-741.5 with respect to affirmative action program requirements.

**27. Assignment and Subcontracting.** Seller shall not assign this PO or any rights or obligations under this PO without the prior written consent of the Procurement Representative. Any prohibited assignment under this PO shall be null and void. This PO shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns. None of the Work to be delivered under this PO shall be acquired by Seller from a Subcontractor or third party in completed or substantially completed form without the prior written consent of Buyer.

**28. Financial Responsibility.** (a) Seller shall, prior to commencing work under this PO, furnish such financial data and related information as may be required by Buyer to permit a determination of financial capability/responsibility under this PO. Seller shall, at no increase in PO price, promptly submit interim financial data as may be requested by Buyer to determine continuing financial capability/responsibility during the progress of work under this PO.

(b) If Seller's financial capability/responsibility are determined by Buyer to be such as may jeopardize performance hereunder, Buyer shall have the right to request, and Seller shall promptly deliver at no increase in PO price, a complete and current manufacturing data package sufficient to enable Buyer to complete or have completed the Work hereunder. Upon such request by Buyer, Seller shall be deemed to have immediately granted to Buyer a non-exclusive royalty-free, worldwide, unlimited, irrevocable license and rights to utilize such data and patents, if furnished hereunder. Buyer agrees that, so long as Seller is not in default, Buyer will not use the drawings for such manufacture. Upon completion and acceptance by Buyer of the Work required to be performed hereunder, Buyer shall return to Seller such manufacturing data package.

**29. Liens.** Seller agrees that no liens, security interests, encumbrances or property rights of any kind ("**Liens**") shall lie or attach upon or against the Work or any Buyer Property, or any part thereof, for or on account of any work performed, provided, or service furnished by Seller pursuant to this PO. If any Lien is asserted against the Work or Buyer Property,

or any part thereof, Buyer shall have the right to discharge the same by filing a bond or security, or in its discretion, by paying the amount of such claim, and in such event, Buyer shall have the right to deduct from the PO price the amount thus paid. If the PO price has been paid, Seller shall repay to Buyer, upon demand, the amount thus paid by Buyer for the purpose of discharging such claim, plus all administrative and legal expenses incurred by Buyer.

**30. Choice of Law.** Irrespective of the place of performance, this PO shall be governed by and construed according to the laws of the Commonwealth of Virginia, without regard to its conflict of laws or choice of laws provisions, except that when Federal law of U.S. Government contracts exists on substantive matters requiring construction under the PO, such Federal law shall apply in lieu of State law. The parties expressly reject the application of the United Nations Convention of Contracts for the International Sale of Goods to this PO.

**31. Records.** Unless a different period is set forth elsewhere in this PO, Seller shall retain all pertinent books, documents, papers, and records involving transactions related to this PO for a period of six (6) years after final payment on this PO. At the conclusion of this time period, Seller shall make written request to the Procurement Representative, for permission to (1) destroy such records; (2) package and ship same to Buyer; (3) maintain said records at Seller's facilities; or (4) any combination of the above.

**32. Termination for Convenience.** (a) Buyer may terminate performance of Work under this PO in whole or, from time to time, in part when Buyer determines that it is in its best interest. Buyer shall terminate by issuing to the Seller a "Notice of Termination" specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by Buyer, the Seller shall immediately proceed with the following obligations in addition to any specifically included in the Notice of Termination: (1) Stop work as specified in the Notice of Termination; (2) Place no further subcontracts or orders except as necessary to complete the continued portion of this PO; (3) Terminate all subcontracts to the extent they relate to the Work terminated; (4) Complete performance of the Work not terminated; (5) As directed by Buyer, transfer title and deliver to Buyer: (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and (ii) the completed or partially completed plans, drawings, information, and property that, if the PO had been completed, would be required to be furnished to Buyer; and (6) Comply with the instructions by Buyer in the Notice of Termination and any subsequent written instructions.

(c) Seller shall submit a final termination settlement proposal to Buyer in the form and with the certifications prescribed by Buyer. Seller shall submit the proposal promptly, but no later than ninety (90) calendar days from the Notice of Termination. If the Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay that amount. Such determination shall be conclusive.

(d) Subject to paragraph (c) of this Clause, the Seller and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid due to the termination. The

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Seller shall be reimbursed for actual, reasonable, and allowable cost incurred up to the date of termination plus a reasonable profit on work performed (a loss rate would apply if the Seller would have sustained a loss on the entire PO had it been completed) not to exceed the total price to be paid for the remaining Work on the PO. In no event shall Buyer be obligated to pay for Seller's anticipatory profit or unabsorbed overhead on the Work terminated. Unless a later date is determined by Buyer, if within ninety (90) days of the Notice of Termination or the Seller's Settlement Proposal, whichever is later, the Seller and Buyer have not agreed on the entire amount to be paid, Buyer shall pay the Seller the amount determined by Buyer to be due the Seller. Failure of the parties to reach agreement shall be a dispute under the "Disputes" Clause. A dispute shall not excuse Seller's obligation to continue performance on any non-terminated portion of this PO.

**33. Termination for Default.** (a) Buyer may, subject to paragraphs (d) and (e) of this Clause, by written notice of default to the Seller, terminate this PO in whole or in part if the Seller: (1) Fails to deliver the Work within the time specified in this PO or any extension; (2) Fails to make progress, so as to endanger performance of any Work and/or this PO; (3) Fails to perform or breaches any of the provisions of this PO; or (4) Files a petition of any type as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or goes into liquidation or receivership.

(b) Buyer may terminate this PO under paragraphs (a) (2) and (a) (3) of this Clause if the Seller does not cure such failure within ten (10) days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.

(c) If Buyer terminates this PO in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Work similar to those terminated, and the Seller will be liable to Buyer for any excess costs of such Work. However, the Seller shall continue the Work not terminated.

(d) Except for defaults of Subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform the PO arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include: (1) acts of God or public enemy; (2) acts of the Federal Government in its sovereign or contractual capacity; (3) fires or floods; (4) epidemics; (5) quarantine restrictions; (6) freight embargoes; and (7) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(e) If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and Subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted Work were obtainable from other sources in sufficient time for the Seller to meet the Due Date(s).

(f) If this PO is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed Work and partially completed Work that the Seller has specifically produced or acquired for the terminated portion of this PO. Upon

direction of Buyer, the Seller shall also protect and preserve property in its possession in which Buyer has an interest.

(g) Buyer shall pay the PO price for completed Work delivered and accepted. Seller and Buyer shall agree on the payment for other Work delivered and accepted and for the protection and preservation of all Work not yet delivered to Buyer. Failure to agree will be a dispute under the "Disputes" Clause. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss due to outstanding liens or related claims.

(h) If, after termination, it is determined that the Seller was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Buyer. Seller agrees that any assistance given them by Buyer on this PO or any acceptance of delinquent or nonconforming Work will be solely for the purpose of mitigating damages. It is not the intention of Buyer to condone any delinquency, waive any defect, or waive any rights Buyer has under this PO. The rights and remedies of Buyer in this Clause are in addition to those provided by law or under this PO.

**34. Buyer Property.** (a) Buyer may provide or make available to Seller certain real or personal property or material owned by either Buyer or its customer, including tooling and raw material inventories ("**Buyer Property**"). Buyer Property also includes items Buyer or its customer may take title to in accordance with the terms of this PO. Buyer Property shall be used only for the performance of this PO. Buyer shall at all times retain title to Buyer Property, which title shall not be affected by the incorporation or attachment thereof to any other property; nor shall such Buyer Property or any other part thereof be or become a fixture or lose its identity as Buyer Property by reason or affixation to any realty. Seller shall manage, maintain, and preserve Buyer Property in accordance with good commercial practice. Seller shall dispose of Buyer Property (including scrap) only in accordance with Buyer's direction. Seller's property records for equipment shall include a complete, current, auditable record of all Buyer Property transactions and shall include: ownership, description (including identification and serial numbers), quantity, unit cost, accountable contract number/code, location, disposition, inventory date, and traceability to shipping, receiving, storage, and utilization documents. Such records shall be available for Buyer review. Seller shall provide to Buyer an equipment inventory listing on an annual basis by 15 September. Seller shall clearly mark (if not so marked) all Buyer Property (wherever practical each individual item thereof) to show its ownership as "Property of Orbital ATK, Inc." or as otherwise directed for property of Buyer's customer. Seller shall not substitute any property for Buyer Property.

(b) Unless otherwise provided on the face of this PO, all Buyer Property shall be provided "AS IS" and without warranty. Buyer shall have access at all reasonable times to the premises on which Buyer Property is located for the purpose of inspecting or retrieving the Buyer Property when deemed necessary by Buyer. Buyer Property, while in Seller's custody or control, shall be held at Seller's risk and Seller shall be responsible for any loss, damage, or destruction thereof except for reasonable wear and tear, and except to the extent that such property is reasonably consumed in the performance of this PO. Seller shall immediately notify the Buyer if Buyer Property is lost, damaged, or destroyed. At the completion or termination



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of this Order, or when instructed by Buyer, Seller shall deliver Buyer Property to Buyer, F.O.B. Seller's address.

(c) In the event that Buyer provides to Seller property or material owned by the U.S. Government, or if Buyer otherwise acquires property to which title is held by the U.S. Government (collectively "**Government Property**"), Seller shall establish and maintain a property system in accordance with FAR Part 45. If Seller acquires Government Property from a source other than the Buyer, Seller promptly shall furnish to Buyer copies of purchase orders, work orders, receiving reports or other pertinent data reasonably needed to facilitate Buyer's addition of these items to its own Government Property records. If the Seller has a U.S. Government-approved Property Control System ("**System**"), Seller shall keep Buyer informed of the Government approval status of that System. In the event that the U.S. Government determines Seller's System to be "unsatisfactory," or that three or more separate categories of the System are "unsatisfactory," Seller shall notify Buyer immediately and provide a copy of the U.S. Government's findings and the Seller's corrective action plan.

(d) In addition to this Clause, the Government Property clause incorporated by reference into this PO shall apply to Government Property.

**35. Export Compliance.** (a) The following terms are defined in the referenced regulations: "**Defense Article**" (ITAR: 22 CFR §120.6), "**Commodity**" (EAR 15 CFR Part 772), "**Technology**" (EAR Part 772), "**Software**" (ITAR § 121.8(f) and EAR Part 772), "**Defense Services**" (ITAR §120.9), and "**US Person**" (ITAR §120.15)

(b) Seller warrants and certifies it has complied and will comply with the International Traffic in Arms Regulations, 22 CFR 120, et seq. ("**ITAR**") and the Export Administration Regulations ("**EAR**"). If Seller is a U.S. company that engages in the business of either manufacturing or exporting Defense Articles or furnishing Defense Services, the Seller certifies by acceptance of this PO that it shall maintain an active registration with the U.S. Department of State Directorate of Defense Trade Controls throughout the performance of Work under this PO. In recognition of Seller's obligations under the U.S. export control laws, Seller agrees that if Seller at any time becomes aware of any potential violations of the U.S. export laws relating to this PO, Seller shall immediately notify Buyer in writing.

(c) Seller shall control the disclosure of and access to Defense Articles, Commodities, Technical Data/Technology, and Software (collectively, "**Export Controlled Items**") received under this PO in accordance with U.S. export control laws and regulations, including the ITAR and EAR. Seller agrees that no Export Controlled Items provided by the Buyer in connection with this PO, whether in their original form or after being incorporated into other end-items, shall be provided to any non-US Persons, including any non-US Person employees, students, or interns or a foreign subsidiary of Seller, without the express written authorization of the Buyer and the Seller's obtaining of the appropriate export authorizations.

(d) As necessary to support this PO, Seller shall, at its own expense, prepare any necessary documentation and request any necessary United States Government approval for exports or re-exports in a timely manner. In the event that approval to export or re-export data, information, hardware,

or software is denied, significantly delayed, or returned without action, or contains restrictions or limitations from the United States Government that prohibit the transfer of required data, information, hardware or software, Seller shall not be considered to have breached this PO provided that Seller demonstrates it has exercised good faith, commercially reasonable efforts to obtain export approvals. In such an event, Buyer may terminate this PO for convenience in accordance with Article 32 (Termination for Convenience).

(e) It shall be the responsibility of Seller to notify and properly mark, including jurisdiction and classification of, all Export Controlled Items provided under this PO to Buyer. If any Export Controlled Item is received by the Buyer from the Seller and is not properly marked, the Buyer shall request from the Seller, and the Seller shall provide the Buyer with the proper jurisdiction and classification markings.

(f) Seller shall immediately notify Buyer in writing if it or any parent, subsidiary or affiliate: (i) is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or on the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom; or (ii) if it has had its export privileges denied, suspended, or revoked in whole or in part by any U.S. Government agency..

(g) The Buyer may be required to obtain information concerning nationality or export status of Seller Engaged Personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct. Seller shall defend, indemnify and hold harmless Buyer for all Damages that may be imposed on or incurred by the Buyer in connection with Seller's violations of export and import laws and regulations.

(h) Should the Seller's Work originate from a foreign location, such Work may also be subject to the export control laws/regulations of the country in which the Work originates. Seller agrees to comply with all applicable export control laws/regulations of that originating country.

(i) In the event Seller is shipping any Work to Buyer from a location outside the US, Seller or Seller Engaged Personnel must be listed as the U.S. importer of record and fulfill all applicable U.S. customs entry requirements. Seller must notify, and provide the country of origin of such Work to, the Procurement Representative in writing no less than five (5) days prior to such shipment.

(j) In carrying out its responsibilities under this PO, Seller will not directly or indirectly authorize, promise, offer or make any political contributions as defined in 22 CFR 130.6 or any fees or commissions as defined in 22 CFR 130.5. This Section applies only if this PO involves Defense Articles or Defense Services.

**36. Foreign Personnel.** If the Work includes software maintenance support, Seller agrees that all "On Call" Technical Service numbers will be in the U.S. and that only U.S. Persons will monitor Buyer technical calls due to restrictions on receiving export controlled technical data.

**37. Prohibited Software.** (a) Seller shall not use Prohibited Software in connection with this PO or deliver Prohibited Software or any Work containing Prohibited Software to Buyer unless Seller has the prior written consent of Buyer. Prohibited Software means any software that: (1) Seller does not have full rights to either sell to Buyer or license to Buyer as may be specifically provided for in this PO; (2) may cause harm to the

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Buyer – such as a virus, worm, malicious logic, trap door, software lock, trojan horse, etc; (3) may interfere or disable the delivered software/Work from accomplishing its intended purpose and; (4) incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (a) open source, publicly available, or “free” software, library or documentation, or (b) software that is licensed under a Prohibited License, or (c) software provided under a license that (i) subjects the delivered software to any Prohibited License, or (ii) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (iii) obligates Buyer to license, sell, loan, distribute, disclose or otherwise make available or accessible to any third party the delivered software, or any portion thereof, in object code and/or source code formats, or any products or Work incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(b) Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any Damages relating to the use of Prohibited Software in connection with this PO or delivery of Prohibited Software or Work containing Prohibited Software.

(c) As used herein, “Prohibited License” means the General Public License (“GPL”) or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including licenses referred to as “GPL-Compatible, Free Software License.”

**38. Insurance.** (a) Seller shall secure and keep in force during the term of this PO, and Seller shall require all Subcontractors, prior to commencement of an agreement between Seller and the Subcontractor, to secure and keep in force during the term of this PO, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in the relevant state(s) of operation under this PO, the following insurance coverages:

(1) Commercial general liability (ISO form CG 0001 12/04 or newer equivalent), including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$5 million per occurrence, and a \$5 million general aggregate, and a \$5 million products / completed operations aggregate, unless other values are specified in the PO. Products / completed operations coverage must be maintained for a minimum of two (2) years past the end of this PO. [Item (1) is not required (a) for the purchase of non-modified commodity materials; or (b) if Seller is only providing aviation products and will not be at Buyer’s site.] (2) Aviation liability, including Aircraft Products and Completed Operations, with a minimum limit of \$10 million per occurrence and \$10 million aggregate, unless otherwise specified in the PO. Such insurance shall remain in effect for two (2) years after the expiration or termination of this PO. In addition, for any Seller who will be responsible for aircraft in their care, custody and control, Hangarkeeper’s Liability Insurance with a limit of at least the value of the aircraft. [Item (2) is only required for Work that includes the sale of non-COTS products, component parts, materials (except non-modified commodity materials) or services to be incorporated or

applied to aviation products.] (3) Errors and omissions or professional liability covering the Seller’s scope of work under this PO. Coverage limits must be at least \$1 million per claim or per occurrence, and not less than a \$2 million annual aggregate limit, unless other values are specified in the PO. If coverage is on a “claims-made” basis, equivalent coverage must be maintained in force for a minimum of two (2) years after the termination of this PO. [Item (3) is only required for Work that includes product or process design services.] (4) Automobile Liability, with minimum limits of \$1 million per accident and \$1 million aggregate. [Item (4) applies if Seller uses its owned or leased/hired automobile while performing the Work.] (5) Transit Insurance to cover the replacement value of the cargo being transported [Item (5) applies if Seller is responsible for any type of product, component parts, or materials while in transit.]

(b) The insurance coverages listed above are subject to the following additional requirements: (1) any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Seller; (2) this insurance must be placed with insurers rated “A-” or better by A.M. Best Company, Inc. Less than an “A-” rating must be approved by Buyer; (3) the duty to defend, indemnify, and hold harmless Buyer under this PO shall not be limited by the insurance required in this PO; and (4) Buyer and its subsidiaries, officers, and employees shall be endorsed as an additional insured on the applicable commercial general liability and/or Aviation liability policies, including any excess policies to the extent applicable. Buyer shall have all the benefits, rights and coverages of an additional insured under these policies. Further, Seller shall provide Buyer 30-day’s advance notice in the event of cancellation of any of the foregoing required policies.

(c) The insurance required in this PO, through a policy or endorsement, shall include: (1) Subrogation terms that allow Seller to waive the insurer’s rights of recovery against Buyer; (2) a provision that Seller’s insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by Buyer and that any insurance, self-insurance or self-retention maintained by Buyer shall be in excess of the Seller’s insurance and shall not contribute with it; (3) severability of interests wording in all policies and endorsements; The legal defense provided to Buyer under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for Buyer is necessary.

(d) The insolvency or bankruptcy of the insured Seller shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Seller from meeting the retention limit under the policy.

(e) The Seller shall furnish a certificate of insurance to the Buyer within 30 days of the date Buyer issues this PO. Failure to effect, maintain, and provide evidence of the insurance required in this PO is a material breach of contract entitling Buyer to terminate this PO immediately. Limits required may be met by any combination of primary and umbrella/excess insurance.

**39. Non-Representation.** It is understood and agreed that the Seller is an independent contractor in the performance of its obligations hereunder and that its employees shall not be deemed to be Buyer’s employees under any circumstance. Seller shall have no power or right, express or implied, to commit, obligate or make any representations on behalf of

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Buyer.

**40. Code of Ethics.** Seller represents and agrees that it has not participated in and shall not participate in any conduct in connection with this Purchase Order that violates Buyer's Code of Ethics and Business Conduct (which is available on Buyer's website at <http://phx.corporate-ir.net/phoenix.zhtml?c=81036&p=irol-govHighlights>). In the event that Seller has an equivalent Business Ethics and Conduct Standards, the word "Buyer's" in the preceding sentence shall be replaced with "Seller's." If, at any time, Buyer determines that Seller is in violation of the applicable Standards of Business Ethics and Conduct, Buyer may cancel this Purchase Order upon written notice to Seller, and Buyer shall have no further obligation to Seller.

**41. Conflict Minerals.** Seller acknowledges that Buyer must comply with the Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Act"), codified at 15 U.S.C. § 78m(p), and any implementing regulations of the Securities and Exchange Commission, which set forth certain reporting requirements for conflict minerals that originate in the Democratic Republic of the Congo and its adjoining countries. To that end, Seller will cooperate with Buyer's efforts to comply with the Act and upon request will timely provide information to Buyer related to the Act. Further, Seller shall no later than thirty (30) days following Buyer's request for reasonable country of origin (RCOI) for delivered Work under this PO, complete and return to Buyer a single and comprehensive Conflict Minerals Reporting Template, using the form provided by Buyer. Seller shall perform an appropriate review of its supply chain in order to fulfill the obligations of this clause.

**42. Miscellaneous.** (a) If any part, term, or provision of this PO shall be held void, illegal, unenforceable, or in conflict with any Laws having jurisdiction over this PO, the validity of the remaining portions of provisions shall not be affected thereby. The parties agree, to the extent possible, to include a replacement provision, construed to accomplish its originally intended effect, that does not violate such Laws.

(b) Upon termination of this PO for any reason, Clauses 5, 7, 11 through 16, 18, 24, 31 and 35 shall survive.

(c) The rights and remedies provided to Buyer under this PO shall be cumulative and in addition to any rights and remedies provided by law or equity. The failure of Buyer in any one or more instances to insist upon exact performance of any of the provisions of this PO or to exercise any right or privilege shall not be construed as thereafter waiving any provisions, rights or privileges which shall continue and remain in full force and effect.

(d) The headings of Clauses herein are used for convenience and ease of reference only and do not limit the scope or intent of the Clause, nor shall any priority be implied by the order in which they appear in this PO.

**43. Incorporation of Other Terms and Conditions.** If the face of the PO references any of the following document(s), such document(s) shall be deemed to be incorporated herein to these Terms and Condition of Purchase, TC-01 (Firm Fixed Price Procurement): (a) TC-02 (Work on Buyer's Premises); (b) TC-03 (Government Flow Down Provisions – Fixed Price Procurement); (c) TC-04 (Government Flow

Down Provisions – Cost Reimbursement Procurement); or (d) TC-05 (International Terms). When TC-03 is referenced, and there is a conflict between it and any other term of this PO, TC-03 shall take precedence.

**44. Additional Flowdown Clauses.** In the event that any clause which is not already incorporated herein is required to be included in this PO by applicable Law, a prime contract, or higher-tier subcontract, or in the event that Buyer's prime contract or higher-tier subcontract is modified subsequent to the date Buyer issues this PO so as to modify or add any additional such clause or requirement, Seller agrees to enter into a modification of this PO to insert any such clause or requirements. If any such additional clause or requirement causes an increase or decrease in the cost of, or the time required, for the performance of any part of the Work under this PO, an equitable adjustment shall be made in the PO price or delivery schedule, or both, pursuant to Clause 4, Changes.