

TERMS AND CONDITIONS – Commercial Items Under U.S. Government Contract

GENERAL PROVISIONS

1. General/Acceptance

The purchase order (which term shall be deemed to include plans, specifications, and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the supplies/services subject to the terms and conditions herein. Any of the following shall constitute seller's unqualified acceptance of this purchase order: (a) acknowledgment of this purchase order; (b) furnishing of any part of the supplies/services under this purchase order; (c) acceptance of any payment for the supplies/services or (d) commencement of performance under this purchase order. Any additional or different terms proposed by the seller are objected to and are hereby rejected unless the same shall be accepted in writing by the buyer. Failure of any party to enforce its rights under this purchase order shall not constitute a waiver of such rights or of any other rights under this purchase order or otherwise.

2. Assignment

Neither this order nor any payments hereunder are assignable or transferable without buyer's written approval, which approval will not be unreasonably withheld. Buyer shall be entitled to the right of set-off against any amounts payable under this purchase order.

3. Changes

Buyer's purchasing representatives may at any time, by written order, without notice to any surety, make changes or additions within the general scope of this purchase order in any one or more of the following: (a) drawings, designs, statement of work or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; (d) quantities, where reasonable; (e) delivery schedule, where reasonable, and (f) the amount of buyer furnished property.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of this purchase order, whether changed or not changed by any such written order. Seller shall notify buyer in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this purchase order. Any claim by seller for such adjustment must be asserted within fifteen (15) days, or such other period as may be agreed on in writing by all the parties, after seller's receipt of notice of the change. Nothing contained in this paragraph shall excuse seller from proceeding with the contract as changed.

4. Disputes

Any dispute arising under this purchase order which is not settled by agreement of the parties will be litigated in the state or federal courts (as applicable) of the state from which the buyer's purchase order is issued. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this purchase order, seller shall proceed diligently with the performance of this purchase order in accordance with the decision of the buyer.

5. Definitions.

The clause at far 52.202-1, definitions, is incorporated herein by Reference.

6. Excusable Delays

The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The contractor shall notify the buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the buyer of the cessation of such occurrence.

7. Invoice And Payment

A separate invoice shall be issued for each shipment. Unless otherwise specified in this purchase order, no invoice shall be issued prior to shipment of goods and no payment will be made prior to receipt of goods and a correct invoice. Payment due dates, including discount periods, will be computed from the date of receipt of goods or the date of receipt of a correct invoice (whichever is later) to the date buyer's check is issued. Unless freight and other charges are itemized, any discount taken will be taken on full amount of

8. Risk Of Loss

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Seller.

9. Taxes.

The contract price includes all applicable Federal, State, and local taxes and duties.

10. Termination

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Without limiting Buyer's right to cancel this order for default of Seller as provided below, Buyer may terminate all or any part of the work under this order and process Seller's claims therefore in accordance with the provisions of the Termination Clause set forth in Part 52.249-2 of the Federal Acquisition Regulation as in effect on the date of this order. Where necessary to make this FAR part applicable to this purchase order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and "Government" shall mean "Buyer" or the "Government". In paragraph (d) of 52.249-2, change "1 year" to "6 months or any extension thereto."

11. Warranty

Seller warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

12. Compliance With Laws

Seller shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

13. Year 2000 Compliance

If this order is for the procurement of technology that will be required to perform date/time processing, by acknowledging this order Supplier verifies that such supplies are Year 2000 compliant. Year 2000 compliant means information technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, Year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

14. Order Of Precedence

The various documents constituting this purchase order shall, insofar as is possible, be so interpreted as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this purchase order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than latter listed items: (a) Schedule A, (b) Typed Purchase Order form, (c) Statement of Work, (d) Representations and Certifications Incorporated by the Schedule (Forms other than BAPD-TBD), (e) Specification, (f) Drawing(s),

15. Responsibility For Supplies

Except as specifically otherwise provided in this purchase order, Seller shall be responsible for supplies meeting the requirements of this purchase order until final inspection and acceptance thereof by Buyer and shall bear all risks as to rejected supplies or supplies requiring correction after notice of rejection notwithstanding any prior acceptance.

16. Compliance With Laws Unique To Government Contracts.

Seller agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

17. Federal Acquisition Regulations

The following clauses set forth in the FAR/DFAR as in effect on the date of this purchase order are incorporated herein by reference.

(a) All Orders

- 52.219-8 Utilization of Small Business Concerns
- 52.222-26 Equal Opportunity
- 52.247-64 Preference For Privately Owned U.S.-Flag Commercial Vessels

(b) Orders Of \$10,000 And Over:

- 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
- 52.222-36 Affirmative Action for Workers with Disabilities

(c) Orders Of \$100,000 And Above:

- *252.225-7014 Preference for Domestic Specialty Metals, Alternate I
- *252.247-7023 Transportation of Supplies by Sea
- *252.247-7024 Notification of Transportation of Supplies by Sea

* Denotes DFAR's