

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

### **TITLE AND CLAUSE NUMBER**

ASSIGNMENT, SUBCONTRACTING, AND PLACE OF PERFORMANCE	3
BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE	2
CHANGES	4
CHOICE OF LAW	5
COMPLIANCE WITH LAWS AND REGULATIONS	6
DEFECTIVE WORK	12
DELIVERY	13
DISPUTES	15
ENTIRE AGREEMENT	33
EXPORT RELATED REQUIREMENTS	34
FEDERAL ACQUISITION REGULATION (FAR), DEPT. OF DEFENSE (DOD) FAR SUPPLEMENT (DFARS)	40
FEDERAL, STATE, AND LOCAL TAXES	16
FIRST TIER SUBCONTRACT REPORTING	36
GENERAL/ACCEPTANCE	1
GOVERNMENT OR BUYER PROPERTY	17
INDEMNITY AND INSURANCE	18
INSPECTION	8
INTELLECTUAL PROPERTY INDEMNITY	19
INTELLECTUAL PROPERTY RIGHTS	27

### **TITLE AND CLAUSE NUMBER**

INVOICING AND PAYMENT	20
LIENS	21
MATERIAL AUTHENTICITY	11
NEWS OR ADVERTISING RELEASES	23
NON-WAIVER AND REMEDIES	39
NOTICE TO BUYER OF POTENTIAL DELAYS	24
OFFSET NOTIFICATION	25
ORDER OF PRECEDENCE	26
PROTECTION OF INFORMATION	28
QUANTITY	14
RESEARCH INVOLVING HUMAN SUBJECTS	35
RESPONSIBILITY FOR SUPPLIES	9
SECURITY REQUIREMENTS	22
SPECIALTY METALS	37
STANDARDS OF SERVICES	38
STOP-WORK ORDER	29
SUBSTITUTIONS	10
TERMINATION	7
TOXIC SUBSTANCES CONTROL ACT	31
WARRANTY	32

1. **GENERAL/ACCEPTANCE** - This purchase order (which term shall be deemed to include plans, specifications, regulations 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 Seller are objected to and are hereby rejected unless the same shall be accepted in writing by Buyer.
2. **BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE** - (a) Buyer's Authorized Purchasing Representative is the individual authorized by Buyer's cognizant procurement organization to administer and/or execute the purchase order. Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the purchase order.  
(b) Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the supplies or services being provided under this purchase order. No such action shall be deemed to be a change under the Changes clause of this purchase order and shall not be the basis for an equitable adjustment.
3. **ASSIGNMENT, SUBCONTRACTING, AND PLACE OF PERFORMANCE** - (a) Neither this purchase order nor any payments, claim or interest hereunder are assignable or transferable, in whole or in part, 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.  
(b) Neither the entirety nor any part of this purchase order may be further subcontracted without the prior written consent of Buyer. This provision shall not apply to purchases of standard commercial articles, including electronic components or raw materials including casting, forgings, and rough welded structures on which Seller will perform further work.  
(c) Seller further agrees that no subcontract placed under this purchase order shall provide for payment on a cost-plus-a-percentage-of-cost basis and Seller agrees to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this purchase order.

- (d) Seller shall notify Buyer of any change in the place of performance, including but not limited to change in design, manufacturing, process, assembly, integration, or testing location of components or lower subassemblies, with regard to the requirements of this purchase order. Such notification shall be made to the Buyer's Authorized Purchasing Representative not less than thirty (30) days prior to the change to the place of performance. Buyer may charge to Seller any additional cost of inspection or requalification in connection with any change in the place of performance of this purchase order.
4. **CHANGES** - (a) Buyer's Authorized Purchasing Representative 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: (1) drawings, designs, statement of work or specifications, or other technical documents; (2) method of shipment or packing; (3) time and place of inspection, delivery or acceptance; (4) quantities, where reasonable; (5) delivery schedules, where reasonable; and (6) the amount of Buyer/Government-furnished property. Seller acknowledges any such direction provided by anyone other than Buyer's Authorized Purchasing Representative is of no force and effect and Seller accepts all risks of accepting and/or otherwise proceeding with such unauthorized direction.  
(b) If any authorized change causes an increase or decrease in the cost of, or the time required for, performance of any work under 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 the parties, after Seller's receipt of the notice of the change. Seller will make available its books and records for Buyer's examination to allow Buyer, its authorized representatives, and its customer, including the U.S. Government, to verify any claim for adjustment by Seller. If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the Disputes provision of this purchase order. Pending resolution of any such adjustment, Seller will diligently pursue the performance of the order as changed.
5. **CHOICE OF LAW** - Irrespective of the place of performance, this purchase order shall be governed and construed and all disputes arising under or related to this purchase order shall be resolved according to the law of the state from which this purchase order is issued, without regard to its conflict of laws principles.

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

- 6. COMPLIANCE WITH LAWS AND REGULATIONS** - (a) Seller shall comply with any applicable laws, Executive Orders, or regulations (including export administration regulations).

(b) Seller agrees to indemnify Buyer against any loss, cost, liability or damage by reason of Seller's violation of any applicable laws, Executive Order, or regulation.

(c) Seller agrees that performance of this purchase order is subject to the laws and regulations of the Department of Defense, Department of Energy, or other Federal Government agency, including but not limited to those identified in this purchase order and conditions. Any knowing willful act to falsify, conceal, or alter a material fact, or any false, fraudulent, or fictitious statement or representation, in connection with the performance of work under this purchase order may be punishable in accordance with applicable Federal statutes.

- 7. TERMINATION** - Buyer may terminate all or any part of the work under this purchase order and process Seller's claims therefore in accordance with the provisions of the Termination Clause set forth in FAR 52.249-6, with its Alternate IV as in effect on the date of this purchase 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 52.249-6, change both instances of "120 days" to "3 months." In paragraph (f), change "1 year" to "6 months". Paragraph (j) of 52.249-6 is deleted; however, any disputes shall be handled in accordance with the Disputes Clause of this purchase order.

- 8. INSPECTION** - (a) Seller shall provide and maintain an inspection system acceptable to Buyer covering the supplies fabricating methods, special tooling and/or services under this purchase order. Complete records of all inspection work performed by Seller shall be maintained and made available to Buyer during performance of this purchase order and for as long afterwards as required by Seller's recordkeeping system for Government contract documents.

(b) All materials furnished and services performed by Seller under this purchase order shall be subject to inspection and test by Buyer and, if the goods or services are for ultimate delivery to the Government, as evidenced by a Government Contract Number on Buyer's purchase order, the Government, to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance by Buyer and, if applicable, the Government, through any authorized representative, may inspect the plant or plants of the Seller or of any of its lower-tier subcontractors engaged in the performance of this purchase order.

(c) If any inspection or test is made by Buyer or, if applicable, the Government on the premises of Seller or a lower-tier subcontractor, Seller shall provide and shall require its lower-tier subcontractors to provide all reasonable facilities and assistance for the safety and convenience of Buyer and/or Government inspectors in the performance of their duties. All inspections and tests by Buyer and, if applicable, the Government shall be performed in such manner as will not unduly delay the work.

(d) Except as otherwise provided in this purchase order, acceptance of services performed and materials furnished under this purchase order shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

- 9. 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.

- 10. SUBSTITUTIONS** - Seller shall not substitute materials or accessories without written consent of Buyer.

- 11. MATERIAL AUTHENTICITY** - All material delivered under this purchase order shall be authentic and traceable to the original manufacturer. If electrical, electronic, electro-mechanical, and mechanical components, assemblies and materials are delivered

under this purchase order or contained in assemblies delivered under this purchase order it shall be either: (i) authenticated as prescribed by the quality requirements included in this purchase order; or (ii) if no specific quality requirements addressing the authentication process are called out in this purchase order, shall be otherwise traceable to the original manufacturer. Seller shall provide such authenticity records to Buyer upon request. In the event that Seller delivers items that are determined not to be authentic, Seller shall take corrective action as and to the extent required by the terms of this purchase order. Seller shall establish and maintain a material authenticity process which ensures the requirements of this clause are met. Seller's obligation to substantiate authenticity shall survive acceptance of and payment for supplies delivered under this purchase order. The substance of this clause shall be incorporated into any subcontract or purchase order entered into by Seller for the performance of any part of the work under this purchase order.

- 12. DEFECTIVE WORK** - (a) Notwithstanding any prior acceptance, Buyer, at its option, may reject or require prompt correction (in place or elsewhere), of any supplies or services which are, in Buyer's judgment, defective in material or workmanship or otherwise fail to meet the drawings, designs, statement of work, specifications or other technical documents, or other requirements of this purchase order.

(b) All supplies furnished under this purchase order shall be subject to inspection at Buyer's facility or other destination as identified in this purchase order notwithstanding any previous source inspection, and Seller shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the supplies and all records (such as affidavits, test reports, drawings, etc.) required to be furnished.

(c) All services performed under this purchase order shall be performed in accordance with the standards of care and diligence customarily exercised by persons performing such services in the industry.

(d) Buyer may, in addition to any rights it may have by law, prepare for shipment and ship the supplies to Seller, require Seller to remove them, direct their correction in place or, with authorization by Seller, correct them and the expense of any such action, including transportation both ways, if any, shall be borne by Seller. If Seller fails promptly to remove such supplies and to proceed promptly to replace or correct them, Buyer may replace or correct such supplies at the expense of Seller, including any excess cost.

(e) If Seller delivers nonconforming services, Buyer may require Seller to promptly correct or replace the nonconforming services. Redelivery to Buyer of any corrected or replaced services shall be at Seller's expense. In addition, Buyer may (i) correct the nonconforming services or (ii) obtain replacement services from another source at Seller's expense.

(f) Buyer may recover by set off or otherwise any and all costs, expenses and damages paid, incurred or suffered as a result of or relating to holding, returning, replacing, correcting or rejecting defective or nonconforming supplies or services. Seller shall not again tender rejected or corrected supplies or services unless Seller discloses the former tender and rejection or requirement of correction.

(g) All repair, replacement and other correction and redelivery shall be completed within the original delivery schedule unless otherwise directed by Buyer's Authorized Purchasing Representative.

(h) Seller shall immediately notify Buyer upon discovery of actual or potential nonconformance affecting delivered product.

- 13. DELIVERY** - (a) The parties expressly agree that time is and shall remain a material element of this purchase order and no acts of Buyer, including without limitation, modifications to this purchase order or acceptance of late deliveries, shall constitute a waiver of this clause.

(b) Seller will deliver acceptable supplies and services in strict conformity with any delivery schedule and shipping instructions set forth in this purchase order. Unless otherwise provided in this purchase order, delivery in whole or in part shall not be made more than ten (10) days prior to required delivery dates. Buyer may return earlier deliveries at Seller's risk and expense. Seller shall comply with

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

the delivery schedule but shall not make material or production commitments in advance of such time as Seller reasonably believes necessary to meet the schedule without prior written approval by Buyer. Representatives of Buyer, the Government, or both, shall at all reasonable times have access to Seller's plant for the purpose of assuring delivery in accordance with the schedule.

(c) If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to: (1) terminate this purchase order, or (2) fill such purchase order or any portion thereof, from sources other than Seller and to reduce Seller's purchase order quantities accordingly at no increase in unit price, without any penalty to Buyer. Alternatively, Buyer may require Seller to provide consideration for the late delivery. This condition shall not limit Buyer's rights or remedies under the Termination clause of this purchase order.

- 14. QUANTITY** - Buyer need not accept any variation in quantity except as specified in this purchase order. Over-shipments may be returned to Seller at Seller's expense, which shall include a reasonable cost for Buyer's handling, or be retained by Buyer at no increase in price. To the extent that supplies covered by this purchase order are produced in accordance with drawings or specifications which are proprietary to Buyer or to Buyer's customer, Seller shall not manufacture or retain for the purpose of display, or otherwise, any more such supplies, or parts thereof, than are required to be delivered under this purchase order. Any such excess supplies, or parts thereof, shall be delivered free of charge to Buyer at the designated delivery point at Seller's risk and expense or destroyed and the destruction certified by Seller.
- 15. 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 of the state from which the 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 Buyer.
- 16. FEDERAL, STATE AND LOCAL TAXES** - Except as may be otherwise provided in this purchase order, the price includes all applicable federal, state and local taxes and duties.
- 17. GOVERNMENT OR BUYER PROPERTY** - If, in connection with the performance of this purchase order, any property is furnished to Seller by Buyer or by the Government, Seller shall assume the risk of, and be responsible for, any loss, theft, destruction of or damage to the property while in Seller's possession or control except to the extent that this purchase order, with the prior approval of Buyer or the Government, as applicable, provides for the relief of Seller from such liability. In the absence of such approval, Seller shall return all such property in a condition as good as when received except for reasonable wear and tear for the utilization of such property in accordance with the provisions of the prime contract. Seller shall establish and maintain a system in accordance with the provisions of FAR 52.245-1 for the control of the Government or Buyer owned property. Seller shall also notify Buyer if approval of its property system has been withdrawn by the Government. At all times, Buyer and the Government shall have access to Seller's facilities for the purpose of reviewing its compliance with the management of Government or Buyer property related to this purchase order.
- 18. INDEMNITY AND INSURANCE** - (a) Seller will defend, indemnify and hold harmless Buyer and its affiliates, and their officers, agents, employees, successors and assigns, against any claims, loss, damage or expense, including, without limitation, payment of direct, special, incidental and consequential damage, and expenses of defending claims, including attorneys' fees, for property loss and/or damage, and personal injury and/or death, which may be sustained by third parties and/or by Buyer, its agents, employees or subcontractors, at any tier, which results from Seller's performance or nonperformance of this purchase order except for claims resulting from the sole negligence of Buyer. Buyer will inform Seller of any claim, demand or suit asserted or instituted against it and, to the extent of Buyer's ability to do so, permit Seller to defend the same or make settlement in respect thereof.

(b) Buyer, at its option, may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification provided above but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify. Seller and its subcontractors, at their sole cost and expense, will at all times, prior to commencement and throughout the period of performance of this purchase order, maintain with reputable insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed, insurance coverage in at least the minimum amounts as follows:

- (1) Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed sufficient to cover all of its general and special employees and such insurance shall provide waiver of subrogation against Buyer.
- (2) Employer Liability insurance in the amount of \$1,000,000.
- (3) Commercial General Liability (CGL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage. Coverage shall include premises and operations, products and completed operations and contracts.
- (4) Commercial Automobile Liability (AL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage covering all owned, hired and non-owned vehicles.

Renewal insurance certificates, if applicable, shall be provided to Buyer at least fifteen (15) days prior to the expiration date of the insurance policies.

Additional insurance types and/or limits will be necessary if the work involves extra hazardous operations. The extra hazardous operations include but are not limited to aviation operations or products, nuclear hazard operations, professional engineering advice, large construction projects, hazardous waste, medical care, food service, crane operation, work above ground, work below ground, and demolition or explosives operations.

At Buyer's request, Seller will name Buyer as an additional insured under required liability policies, will provide Buyer a certificate(s) of insurance and provide Buyer ten (10) days' prior written notice of cancellation or material change of any such coverage.

(c) Seller shall comply with the provisions of FAR 52.215-10, 52.215-11, 52.215-12, and 52.215-13 which are incorporated herein by reference to the extent that such clauses are or become applicable to this purchase order. Seller shall indemnify and hold harmless Buyer from any amount, loss and expense, including interest assessed by the Government under 10 U.S.C. § 2306a, by which this purchase order is determined by the Government to have been defectively priced because of Seller's or Seller's subcontractor's failure to comply with such provisions. The rights of the parties under this clause shall survive completion or termination of this purchase order.

- 19. INTELLECTUAL PROPERTY INDEMNITY** – (a) Seller shall indemnify Buyer, Buyer's customer and/or the Government and their respective officers, agents and employees against liability and losses, including costs, for infringement of any patent, copyright, trademark, or other intellectual property arising out of the manufacture or delivery of supplies or performance of services under this purchase order or out of the use or disposal by, or for the account of, Buyer, Buyer's customer and/or the Government of such supplies or services. This indemnity shall not apply unless Seller shall have been informed as soon as practicable by Buyer, Buyer's customer and/or the Government of the suit or action or other proceedings alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

(b) Notwithstanding the above, when this purchase order is performed under the authorization and consent of the Government to infringe United States patents, Seller's liability for Seller's patent infringement under this purchase order shall be coextensive with Buyer's liability.

- 20. INVOICING AND PAYMENT** - When invoices are required, a separate invoice shall be issued for each shipment, and should include the relevant Buyer purchase order number. Unless otherwise

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

specified in this purchase order, the provisions of FAR 52.216-7, "Allowable Cost and Payment", in effect on the date of this order are incorporated in this paragraph by reference. 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".

**21. LIENS** - Seller warrants that it has title to the supplies to be delivered under this purchase order and shall deliver same free of all liens, claims and encumbrances. If this purchase order provides Seller with advance payments or milestone billings during its performance, title to all property under this purchase order shall vest in Buyer immediately upon acceptance of this purchase order. For purposes of this clause, property includes all parts, material, inventories, works in progress, special tooling or special test equipment to which Buyer is entitled to acquire title, nondurable tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, drawing and technical data to the extent Seller is required to deliver such under this purchase order.

**22. SECURITY REQUIREMENTS** - (a) Seller shall be responsible for safeguarding all classified information in accordance with the provisions of Seller's Security Agreement with the Department of Defense and with all applicable Government requirements including, without limitation, of FAR 52.204-2, "Security Requirements", which is incorporated herein by reference. The "Changes" clause referenced in 52.204-2(e) shall mean the Changes clause within these terms.

(b) Seller shall include the substance of this clause in its purchase orders issued at all tiers under this purchase order that require access to classified information.

**23. NEWS OR ADVERTISING RELEASES** - No news release in any way relating to Buyer or Seller concerning this purchase order shall be made by either party to any news media or to the general public without prior approval of the other party. Seller will not, and will require its suppliers and subcontractors to not, advertise or publish the fact that Buyer has ordered supplies or services from Seller, or the terms or nature of such order. Seller will not, and will cause its employees and other representatives to not, disclose such information in company periodicals, press releases, public lectures, sales or other promotional literature, or otherwise. The parties agree that in the event a news release is so approved and made, such news release will recognize Buyer and Seller.

**24. NOTICE TO BUYER OF POTENTIAL DELAYS** - (a) Whenever Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof, including all relevant information with respect to the delay, to Buyer. Such occurrences shall include, but not be limited to: (1) actual or potential labor disputes or strikes; (2) fires, floods, unusually severe weather; (3) acts of nature, (4) acts of the Government in either its sovereign or contractual capacity, and any other cause for delay. Neither receipt of such notice by Buyer nor any provision of this purchase order will be deemed to be a waiver by Buyer of any of its rights under any purchase order, these terms, at law or otherwise.

(b) Seller agrees to insert this clause including this subparagraph (b) in any purchase order or subcontract hereunder.

**25. OFFSET NOTIFICATION** - This clause shall only apply to purchase orders in excess of fifty thousand dollars (\$50,000.00).

(a) Definition: "Offset" means the obligations that Buyer undertakes, in order to market or sell its products, to assist a customer country in reducing any trade imbalance caused by its purchase of Buyer's products or to meet other customer country national objectives.

(b) To the exclusion of all others, Buyer or its assignees shall be entitled to all benefits or Offset credits which might result from this purchase order. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for Offset credits.

(c) Seller agrees to use reasonable efforts to identify the foreign content of items that Seller either produces itself or procures from subcontractors for work under this purchase order. Promptly after selection of a non-U.S. subcontractor for work under this purchase

order, Seller shall notify Buyer of the name, address, subcontractor point of contact (including telephone number) and dollar value of the subcontract.

(d) Seller shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this purchase order.

**26. ORDER OF PRECEDENCE** - The various documents constituting this purchase order shall, insofar as is possible, be interpreted so 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 later listed items: (a) provisions required by statute, regulation or Government contract; (b) typed purchase order form; (c) this terms and conditions document; (d) statement of work; (e) specifications; and (f) drawing(s).

**27. INTELLECTUAL PROPERTY RIGHTS** - (a) The rights of the U.S. Government in technical data, computer software and inventions pertaining to the supplies and/or services delivered under this purchase order are set forth in the applicable FAR and DFARS clauses incorporated by reference. Buyer shall have the right to utilize the supplies and/or services in performance of Buyer's contractual obligations to its customer, including the right to copy and modify any technical data and computer software delivered under this purchase order and the right to deliver such technical data and computer software to Buyer's customer if it is required as a deliverable under Buyer's contract with its customer.

(b) This purchase order does not confer or grant to Seller, in any manner whatsoever, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Buyer, except as needed to perform the work ordered by Buyer under this purchase order.

**28. PROTECTION OF INFORMATION** - (a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller which relates to the subject matter of this purchase order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and paragraphs (b) through (g) of this clause shall not apply.

(b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller, paragraphs (c) through (g) of this clause apply.

(c) For purposes of this clause, "Information" shall mean information disclosed to Seller by Buyer in connection with this purchase order, which is either identified to Seller as being proprietary or which is information a reasonable person would understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer's products, services, equipment or processes, as well as duplicates, copies or derivative works thereof. Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Seller from a third party without obligation of confidence. The prohibitions in this clause are meant to co-exist with DFARS 252.204-7000, incorporated by reference herein. To the extent there is any conflict with this clause and DFARS 252.204-7000, or other applicable U.S. Government Procurement Regulations incorporated into this Purchase Order, the latter shall, when applicable, take precedence over any conflicting provision to the extent that such regulations so require.

(d) Information furnished to Seller shall remain Buyer's proprietary property, shall be duplicated only as authorized in writing by Buyer, and shall be returned to Buyer upon request or when no longer required for the performance of this purchase order. Seller shall not disclose Information to any third party, and shall take all reasonable

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

precautions to prevent the disclosure of Information to third parties, including any foreign national, firm or country, and foreign nationals employed by or associated with Seller's company except as specifically authorized by Buyer. Seller agrees not to use Information to develop any product, service or system, or to support any third party in the development of any product, service or system.

(e) Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller's proprietary data and information will be used by Buyer only upon approval by Seller.

(f) Seller's obligations with respect to Information disclosed hereunder prior to the performance in full or termination of this purchase order shall not, except as expressly set forth herein, be affected by such performance in full or termination.

(g) Buyer or its authorized representatives may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. Seller will, in all of its contracts with its suppliers relating to any Buyer purchase order, include provisions which secure for Buyer all of the rights and protections provided for by this clause.

**29. STOP WORK ORDER** – In accordance with the provisions of the "Stop-Work Order" clause set forth in FAR 52.242-15 in effect on the date of this purchase order, Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by any purchase order for a period of ninety (90) days after the order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of such an order, Seller will immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the indicated 90-day period, Buyer will take the actions prescribed in FAR 52.242-15. Where necessary to make FAR 52.242-15 applicable to this purchase order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and "Government" shall mean "Buyer" or the "Government".

**30. Reserved.**

**31. TOXIC SUBSTANCES CONTROL ACT** - Seller warrants that each and every chemical substance delivered under this purchase order shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act (Title 15 U.S.C. § 2601).

**32. WARRANTY** – (a) Seller warrants, at the time of delivery to Buyer, that the supplies or services covered by this purchase order will conform to the design, specifications, drawings, samples and/or other descriptions referred to in this purchase order; will be free from defects in material and workmanship and, to the extent that the Seller knows or has reason to know of the purpose for which the supplies or services are intended, will be fit and sufficient for such purpose. The warranties contained in this paragraph shall run to Buyer and its customers.

(b) Seller further warrants that supplies and services provided under this purchase order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which would interfere in any manner with Buyer's property rights as described in the Intellectual Property Rights and Protection of Information clauses in this purchase order. In so far as the FAR 52.227-1, Authorization and Consent, regulation incorporated by reference below applies as to any patent infringement claim, no warranty of non-infringement of any such patent claim is provided.

**33. ENTIRE AGREEMENT** - This purchase order, including attachments and documents incorporated herein by reference, constitutes the entire agreement between Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller. No amendment or modification of this purchase order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller. The rights and remedies afforded to either party pursuant to any part or provision of this purchase order are in addition to any other rights and

remedies afforded by other parts or provisions of this purchase order, by law, or otherwise.

**34. EXPORT RELATED REQUIREMENTS** – (a) Export Compliance. Seller is advised that its performance of this purchase order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either: 1) a U.S. Person as that term is defined in the Export Laws and Regulations; or 2) that it has disclosed to Buyer's Authorized Purchasing Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Foreign Personnel/Persons. Seller shall not give any Foreign Person (including Seller's own non-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. § 1101 and 8 U.S.C. § 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph (b) shall relieve Seller of its obligations to comply with the provisions of paragraph (a) or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph (a), nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

(c) Indemnification. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this clause and breach of the warranty set forth in paragraph (a). Any failure of Seller to comply with the requirements or any breach of the warranty contained in this clause shall be a material breach of this purchase order.

(d) Subcontracts. The substance of this clause shall be incorporated into any subcontract or purchase order entered into by the Seller for the performance of any part of the work under this purchase order.

**35. RESEARCH INVOLVING HUMAN SUBJECTS** - No research involving human subjects, as defined in 45 CFR Part 46, may be performed by Seller under this purchase order without prior written approval of Buyer's Authorized Purchasing Representative. Any Buyer approved research involving human subjects must, at all times; (a) conform to any conditions or restrictions provided in Buyer's written approval; (b) be guided by "Ethical Principals and Guidelines for the Protection of Human Subjects," The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, April 18, 1979 ("The Belmont Report"); and (c) remain in full compliance with the applicable regulations of the Government agency or instrumentality funding the research (e.g., 32 CFR Part 219 for the Department of Defense).

**36. FIRST TIER SUBCONTRACT REPORTING** – If this purchase order is for an amount of \$25,000 or greater and issued pursuant to a government prime contract as a "first-tier subcontract" as that term is defined under FAR 52.204-10, Seller understands that certain information concerning the content of this purchase order is reportable by Buyer under the requirements of FAR 52.204-10 and will be made available to the public. Seller is required as a condition of acceptance of this purchase order to provide

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

necessary information required by FAR 52.204-10, including executive compensation of Seller's top five executives, unless an exception or exemption applies. Failure to provide such information shall be a material breach by Seller.

clauses do not apply to a particular purchase order, such clauses are considered to be self-deleting.

### **a) All Orders**

52.203-3	Gratuities
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity
52.211-5	Material Requirements
52.211-15	Defense Priority and Allocation Requirements
52.215-15	Pension Adjustments and Asset Reversions
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.215-19	Notification of Ownership Changes
52.215-20	Requirements for Certified Cost or Pricing Data Other Than Certified Cost or Pricing Data
52.219-8	Utilization of Small Business Concerns
52.222-21	Prohibition of Segregated Facilities
52.222-26	Equal Opportunity
52.222-41	Service Contract Act of 1965
52.222-50	Combating Trafficking in Persons
52.223-7	Notice of Radioactive Materials
52.225-1	Buy American Act –Supplies
52.225-3	Buy American Act –Free Trade Agreements – Israeli Trade Act
52.225-8	Duty-Free Entry
52.225-13	Restrictions on Certain Foreign Purchases
52.227-10	Filing of Patent Applications – Classified Subject Matter
52.227-11	Patent Rights – Ownership by the Contractor
52.227-14	Rights in Data – General
52.233-3	Protest After Award
52.244-6	Subcontracts for Commercial Items
52.245-1	Government Property (except in clauses (e)(1),(e)(2)(ii),(e)(3)(i),(f)(1)(ii), the term "Government" shall remain)
52.247-63	Preference for U.S.-Flag Air Carriers
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels
252.204-7000	Disclosure of Information
252.222-7000	Restrictions on Employment of Personnel
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials
252.225-7001	Buy American Act and Balance of Payments Program
252.225-7008	Restriction on Acquisition of Specialty Metals
252.225-7013	Duty-Free Entry
252.225-7028	Exclusionary Policies and Practices of Foreign Governments
252.225-7030	Restriction on Acquisition of Carbon, Alloy and Armor Steel Plate
252.225-7036	Buy American Act –Free Trade Agreements– Balance of Payments Program
252.227-7013	Rights in Technical Data - Noncommercial Items (the term "Government" shall remain through this clause, the term "Contracting Officer" shall mean both "Contracting Officer and Buyer")

### **37. SPECIALTY METALS** – Specialty metals incorporated in articles delivered to Buyer must comply with the requirements of this clause. The following articles are specifically exempt:

Circuit Card Assemblies (CCAs) and components designed or intended for use on CCAs or substrates, such as diodes, capacitors, resistors, transistors and integrated circuits; however, assemblies and components are not exempt if they incorporate high performance magnets (samarium cobalt).

Any other waivers, Domestic Non-Availability Determinations, deviations, or other forms of exemption from this requirement do not apply to this purchase order, unless otherwise stated in the Purchase Order Line Item Material Details text.

(a) *Definitions.* As used in this clause—

(1) "Qualifying country" means any country listed in subsection 225.003 of the Defense Federal Acquisition Regulation Supplement.

(2) "Specialty metals" means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States or its outlying areas.

(c) This clause does not apply to specialty metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country.

(d) The Supplier shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including commercial subcontracts, for items containing specialty metals.

### **38. STANDARDS OF SERVICES** – All services hereunder shall be performed by employees or agents of Seller who are experienced and highly skilled in their professions and in accordance with the highest standards of workmanship in their profession. Seller shall not change or transfer such employees once assigned except for good cause. Buyer shall have the right to request and have replaced any personnel who fail to perform to Buyer's satisfaction.

### **39. NON-WAIVER AND REMEDIES** - A party's failure at any time to enforce any provision of any purchase order shall not constitute a waiver of the provision or prejudice a party's right to enforce that provision at any subsequent time. The parties' rights and remedies as provided in this purchase order are in addition to others provided by law; any failure to state a right or remedy herein does not constitute a waiver of such other rights and remedies.

### **40. FEDERAL ACQUISITION REGULATION (FAR), DEPARTMENT OF DEFENSE FAR SUPPLEMENT (DFARS)** - The following clauses set forth in the FAR and DFARS as in effect on the date of this purchase order, unless otherwise noted, are incorporated herein by reference. Where necessary to make the clauses applicable to this purchase order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and the "Government" shall mean "Buyer" or the "Government" whenever appearing in the clauses, unless otherwise noted. Seller shall include the following clauses in its lower-tier purchase orders as required. If any of the following FAR or DFARS

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (the term "Government" shall remain through this clause, the term "Contracting Officer" shall mean both "Contracting Officer and Buyer")

252.227-7016 Rights in Bid or Proposal Information

252.227-7019 Validation of Asserted Restrictions – Computer Software

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

252.227-7030 Technical Data - Withholding of Payment

252.227-7037 Validation of Restrictive Markings on Technical Data

252.228-7001 Ground and Flight Risk

252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles

252.231-7000 Supplemental Cost Principles

252.246-7001 Warranty of Data

### **b) All Orders Greater than \$3,000**

52.222-54 Employment Eligibility Verification

### **c) All Orders Greater than \$10,000**

52.222-20 Walsh-Healey Public Contracts Act

52.222-35 Equal Opportunity for Veterans

52.222-36 Affirmative Action for Workers with Disabilities

52.222-37 Employment Reports Veterans

52.222-40 Notification of Employee Rights Under the National Labor Relations Act

### **d) All Orders of \$25,000 or Greater (\$30,000 or Greater if Prime Contract dated on or after September 28, 2006)**

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

### **e) All Orders Greater than \$100,000 or Above**

52.203-6 Restrictions on Subcontractor Sales to the Government

52.203-7 Anti-Kickback Procedures (except its subparagraph (c)(1))

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

52.215-2 Audit and Records – Negotiation

52.215-14 Integrity of Unit Prices

52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation

52.223-13 Certification of Toxic Chemical Release Reporting (if prime contract dated on or before May 31, 2011)

52.223-14 Toxic Chemical Release Reporting (if prime contract dated on or before May 31, 2011)

52.248-1 Value Engineering

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies

252.249-7002 Notification of Anticipated Contract Termination or Reduction

### **f) All Orders of \$500,000 or Above**

52.219-9 Small Business Subcontracting Plan

52.230-2 Cost Accounting Standards

52.230-3 Disclosure and Consistency of Cost Accounting Practices

52.230-5 Cost Accounting Standards – Educational Institution

52.230-6 Administration of Cost Accounting Standards

252.219-7003 Small Business Subcontracting Plan

### **g) All Orders of \$550,000 or Above**

52.214-26 Audit and Records – Sealed Bidding

52.214-27 Price Reduction for Defective Certified Cost or Pricing Data – Modifications – Sealed Bidding

52.214-28 Subcontractor Certified Cost or Pricing Data – Modifications- Sealed Bidding

52.215-12 Subcontractor Certified Cost or Pricing Data

52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications

252.225-7006 Quarterly Reporting of Actual Contract Performance Outside the United States

### **h) All Orders Greater than \$1 Million**

252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements

### **i) All Orders Greater than \$5 Million**

52.203-14 Display of Hotline Poster(s)

252.203-7004 Display of Fraud Hotline Poster(s)

### **j) All Orders of \$5 Million or Greater and Period of Performance of 120 days or greater**

52.203-13 Contractor Code of Business Ethics and Conduct

(Notwithstanding any alterations to this clause to reflect the relationship between Buyer and Seller, all disclosures of violation of the civil False Claims Act or of federal criminal law shall be directed to the Office of the Inspector General of the agency issuing the prime contract, with a copy to the Contracting Officer of the prime contract.)