

## **TERMS AND CONDITIONS - Time and Material Under Commercial Contract**

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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 and/or services subject to the terms and conditions. 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 hereunder are assignable or transferable, in whole or in part, without Buyer's prior 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 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 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: (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 schedule, where reasonable, and; (6) the amount of Buyer furnished property. Seller acknowledges any such direction provided by anyone other than Buyer's Authorized 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 all the parties, after Seller's receipt of 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, 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 relating to this purchase order shall be resolved according to the laws of the state from which Buyer's purchase order is issued, without regard to its conflict of laws principles.
  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 law, executive order, or regulation.

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7. **DEFAULT OF SELLER** - In the event that Seller: (i) becomes bankrupt or otherwise insolvent; (ii) commences or becomes the object of any proceeding involving Seller's insolvency, bankruptcy, reorganization, dissolution, liquidation, or any similar proceeding for the relief of financially distressed debtors, and such proceeding is not dismissed within sixty (60) days, or; (iii) fails in any material way to perform any of Seller's obligations under this purchase order, or so fails to make progress as to endanger such performance and does not cure such failure within ten (10) days of receipt of Buyer's notice of such failure, then Buyer may, at its sole election, by notice to Seller, terminate this purchase order, in whole or in part, for default. Seller shall pay to Buyer any excess costs for Buyer's re-procurement of such supplies, goods, or services. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law under this purchase order or otherwise.
8. **INSPECTION** - (a) Buyer may inspect and test material, work in progress and supplies at all times and places, during manufacture and otherwise. If inspection and test are made on Seller's premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Inspections and tests by Buyer shall be performed in such manner as not to delay the work unduly. Buyer may charge to Seller any additional cost of inspection and test when material, work or supplies are not ready at the time such inspection and test is requested by Seller. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. Except as otherwise agreed in writing, all shipments and supplies furnished under this purchase order shall be subject to final inspection and acceptance by Buyer after receipt by Buyer at destination notwithstanding any previous source inspection or acceptance. Seller shall maintain an inspection and quality control system acceptable to Buyer.
- (b) The inspection, review or approval by Buyer of any work, or of any drawing, design, or other document, will not be deemed to relieve Seller of any of its obligations under any purchase order, or to constitute a waiver of any defects or nonconformities. The acceptance by Buyer of any supplies or services under any purchase order will not be deemed to limit or affect any warranty or right of indemnity granted by Seller under such purchase order, these terms and conditions or otherwise.
- (c) Except as otherwise agreed in writing, all shipments and supplies furnished under this purchase order shall be subject to final inspection and acceptance by Buyer after receipt by Buyer at Buyer's facility or other destination as identified in this purchase order notwithstanding any previous source inspection or acceptance, the earlier passing of title to Buyer, any prior payment by Buyer, or any prior inspection of any type. Seller shall maintain an inspection and quality control system acceptable to Buyer and its customer.
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 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** - (a) All material delivered under this purchase order shall be authentic and traceable to the original manufacturer. Seller shall provide authenticity and traceability records to Buyer upon request. Seller shall immediately notify Buyer if Seller cannot provide electronic parts, components, and/or assemblies traceable to the original component manufacturer (OCM)/the original equipment manufacturer (OEM). Upon receipt of such notification, Buyer reserves the right to terminate the purchase order at no cost to Buyer or provide specific material validation test and inspection protocol requirements. In the event that Seller delivers items that are determined not to be authentic, Seller shall take corrective action as 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.
- (b) If this purchase order is for the (1) supply of electronic parts, (2) supply of end items, components, parts or assemblies containing electronic parts, or (3) provisioning of services where the Seller will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service then the provisions of paragraphs (a)-(e) of DFARS 252.246-7007, "Contractor Counterfeit Electronic Part Detection and Avoidance System," in effect on the date of this purchase order, including its definition of "electronic parts", are incorporated in this paragraph by reference. Where necessary to make these provisions of DFARS 252.246-7007 applicable to this purchase order "Contracting Officer" shall mean "Buyer" and "Contractor" shall mean "Seller".
- (c) 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 any transportation, 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

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this clause.

(b) Seller will deliver acceptable supplies and services in strict conformity with any delivery schedule and shipping instructions set forth in the 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 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, or Buyer's customer, 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 therefore, 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 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 unless otherwise directed by 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. BUYER FURNISHED PROPERTY** - If in connection with the performance of this purchase order any property is furnished to Seller by Buyer, Seller shall assume the risk of, and be responsible for, any loss, theft, destruction of or damage to the property while in the Seller's possession or control, except to the extent that this purchase order, with the prior approval of Buyer, provides for relief of Seller from such liability. In the absence of such approval the Seller shall return all such property in a condition as good as when received, except for reasonable wear and tear caused by the utilization of such property in accordance with the provisions of this purchase order. Seller shall institute or have in place a property control system approved by Buyer. At all times, Buyer shall have access to Seller's facilities for the purpose of reviewing its compliance with the management of 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.

**19. INTELLECTUAL PROPERTY INDEMNITY** - (a) Seller shall indemnify Buyer, and/or Buyer's customer, and their respective officers, agents and employees against liability and losses, including costs, for infringement of any U.S. 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, and/or Buyer's customer, of such supplies or services. This indemnity shall not apply unless Seller shall have been informed as soon as practicable by Buyer, and/or Buyer's customer 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) Such indemnity shall not apply if; (1) the infringement results from compliance with specific written instructions of Buyer directing a change in the supplies or services to be delivered or in the materials or equipment to be used, or directing a manner of performance of this purchase order not normally used by Seller; (2) the infringement results from an addition to, or change in, the supplies or services furnished made subsequent to delivery or performance by Seller, or; (3) the claimed infringement is settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction.

**20. INVOICING AND PAYMENTS** - When invoices are required, a separate invoice shall be issued for each shipment, and should include the relevant purchase order number. Unless otherwise specified in this purchase order, no invoice shall be issued prior to shipment of supplies or completion of services and no payment will

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be made prior to receipt of supplies or completion of services and receipt of a correct invoice. The amounts due to Seller hereunder will be paid upon the submission of such invoices provided by an authorized representative of Seller in such form and reasonable detail as may be required, supported by a statement of the claimed allowable cost for performing this purchase order. Seller shall be paid as follows upon the submission of invoices approved by Buyer.

(a) Hourly Rate

(1) The amounts are computed by multiplying the appropriate hourly rate, or rates, set forth in the purchase order by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Invoices may be submitted once each month (or at more frequent intervals, if approved by Buyer), to Buyer. Seller will substantiate invoices by evidence of actual payment and by individual daily job time cards, or such other substantiation approved by Buyer. Promptly after receipt of each substantiated invoice, Buyer shall, except as otherwise provided in this purchase order, and subject to the provisions of (e) below, make payment thereon as approved by Buyer.

(2) Unless otherwise set forth in the purchase order, five percent (5%) of the amount due under this paragraph (a) shall be withheld from each payment by Buyer but the total amount withheld shall not exceed \$50,000. Such amounts withheld shall be retained until satisfactory completion of this purchase order.

(3) Unless the parties agree and modify this purchase order otherwise, the hourly rate or rates as set forth in the purchase order shall not be varied by virtue of Seller having performed work on an overtime basis. No overtime shall be performed without Buyer's Authorized Purchasing Representative's written authorization. If the purchase order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Buyer.

(b) Materials and Subcontracts

(1) Seller shall be reimbursed for supplies and services purchased directly for the purchase order only when cash, checks, or other forms of actual payment has been made for such purchased supplies or services. Seller shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to Buyer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(2) The cost of subcontracts which are authorized pursuant to these terms shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below.

(3) Seller shall, to the extent able, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. Seller agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by Seller or any assignee which arise under the materials portion of this purchase order and for which Seller has received reimbursement, shall be paid by Seller to Buyer. Seller and each assignee, under an assignment entered into under this purchase order and in effect at the time of final payment under this purchase order, shall execute and deliver, at the time of and as a condition precedent to final payment under this purchase order, an assignment to Buyer of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to Buyer.

(c) It is estimated that the total cost to Buyer for the performance of this purchase order will not exceed the ceiling price set forth in the purchase order. If at any time during the performance of this purchase order, Seller has reason to believe that the total price to Buyer for the performance of this purchase order will be substantially greater or less than the then stated ceiling price, Seller shall so notify

Buyer, giving the revised estimate of the total price for the performance of this purchase order, together with supporting reasons and documentation. If at any time during the performance of this purchase order, Buyer has reason to believe that the work to be required in the performance of this purchase order will be substantially greater or less than the stated ceiling price, Buyer's Authorized Purchasing Representative will so advise Seller, giving the then revised estimate of the total amount of effort to be required under this purchase order.

(d) Buyer shall not be obligated to pay Seller any amount in excess of the ceiling price set forth in the purchase order, and Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the purchase order, unless and until Buyer shall have notified Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this purchase order. When and to the extent that the ceiling price set forth in the purchase order has been increased, any hours expended and material costs incurred by Seller in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.

(e) Upon receipt and approval of the invoice designated by Seller as the "final invoice" and substantiating material, and upon compliance by Seller with all provisions of this purchase order (including, without limitation, provisions relating to patents and the provisions of (f) below), Buyer shall pay the balance due and owing Seller. The final invoice, and substantiating material, shall be submitted by Seller as promptly as may be practicable following completion of the work under this purchase order, but in no event later than one (1) year (or such longer period as Buyer may, in its discretion, approve in writing) from the date of such completion.

(f) Seller and each assignee, under an assignment entered into under this purchase order and in effect at the time of final payment under this purchase order, as a condition precedent to final payment under this purchase order, releases and discharges Buyer, its officers, agents, and employees from all liabilities, obligations and claims arising out of or under this purchase order.

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. Reserved.

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

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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 these terms and conditions 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 shall include the substance of this clause, including this subparagraph (b), in all its purchase orders issued at all tiers under this purchase order.

**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 the 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) Seller agrees to make prompt and complete disclosure to Buyer of all inventions and disclosures made or conceived as a result of work performed under this purchase order. Seller agrees to keep necessary records supporting such inventions and discoveries and will furnish to Buyer upon request all such records.

(b) Any invention, discovery, proprietary information, maskwork, software, system, data, or report resulting from the work performed under this purchase order shall be the sole property of Buyer. All patents, copyrights, trade secrets, trademarks, maskworks or other intellectual property resulting from work under this purchase order shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of Seller and without any duty to account to Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this purchase order, and to provide reasonable support for Buyer's prosecution of such patent application. The parties agree that any original work of authorship created under this purchase order is a work made for hire for purposes of copyright ownership. To whatever extent Seller has any interest in any original work of authorship created under this purchase order, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.

(c) This purchase order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade

secret, maskwork, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of the 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.

(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 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. Reserved.**

**30. TERMINATION** - This purchase order and any and all rights granted and obligations assumed hereby may be terminated in whole or in part by Buyer giving written notice to Seller. Upon receipt of a notice of termination and except as otherwise mutually agreed, Seller shall:

A. Stop work under this purchase order on the effective date of the notice of termination; and

B. Submit a termination claim within sixty (60) days after the effective date of the termination notice incorporating all claims of Seller. The amount to which Seller shall be entitled upon complete termination of this purchase order shall be determined as follows:

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1. Any payments then due and owing to Seller from Buyer for work performed and accepted by Buyer prior to the effective date of termination;
2. An allowance for any reasonable cancellation charges due to material commitments made by Seller with Seller's suppliers or subcontractors;
3. At Buyer's option, an allowance for any inventory held by Seller for Buyer's purchase order, in which case Seller shall transfer title and possession of said inventory to Buyer in accordance with Buyer's instructions;
4. Any other amounts that are mutually acceptable to Buyer and Seller as being fair and reasonable.

In the event payment has been made by Buyer in excess of the amount determined as being the entitlement of Seller under the provisions of this article, Seller shall repay such excess costs immediately. Buyer may deduct as a set off any excess amounts from other open subcontracts with Seller, if any.

In the event payments made by Buyer are less than the amount determined as being the entitlement of Seller under the provisions of this article, Buyer shall pay to Seller such difference between the amount so paid and the total amount determined to be due Seller in accordance with this article within thirty (30) days of Buyer's receipt of Seller's invoice for said amount.

Notwithstanding the foregoing, the parties hereto may mutually agree to a partial termination of the purchase order provided such agreement: (1) equitably revises the price for work remaining to be performed by Seller thereafter; (2) equitably revises all such other rights, risks, obligations and/or responsibilities as may be affected by such partial termination, and; (3) is evidenced by a formal modification to this purchase order signed by both parties.

Buyer's total liability to Seller for any termination pursuant to this clause shall not exceed the purchase price of the supplies or services to which such termination applies. Further, Seller shall have no claim against Buyer for loss of anticipated profits or consequential damages suffered by reason of such termination.

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 or other descriptions referred to in this purchase order, will be free from defects in material and workmanship, will be free from all liens and encumbrances, and, to the extent that 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, as applicable, its Customer.  
  
(b) Seller 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 in any manner would interfere with Buyer's intellectual property rights as described in the Intellectual Property Rights and Protection of Information clauses of this purchase order.
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 AND IMPORT RELATED REQUIREMENTS –**

A. **Export Compliance.** 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 – 2799 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations or "ITAR") or 50 United States Code 2401-2420 (Export Administration Act of 1979, as amended), 50 United States Code 1701-1706, (International Emergency Economic Powers Act, as amended), 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) a Foreign Person as that term is defined in the Export Laws and Regulations and has disclosed to Buyer's Representative in writing the country in which it is incorporated/authorized/organized to do business, and all nationalities of any dual or third-country national employees who will require access to the data, articles or services provided hereunder. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there under.

1. **Registration.** If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program in accordance with the ITAR.
2. **Foreign Persons.** Seller shall not re-transfer any export-controlled information (e.g., technical data or software) to any other non-U.S. person or entity (including the Seller's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export Laws and Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of the Buyer. No consent granted by Buyer in response to Seller's request shall relieve Seller of its obligations to comply with the provisions of paragraph A of this clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

B. **Political Contributions, Fees and Commissions.** If this purchase order is valued in an amount of \$500,000 or more, then in performance of this purchase order, Seller shall not directly or indirectly pay, offer or agree to pay any political contributions or any fees or commissions.

For purposes of this section and pursuant to 22 CFR 130.6, political contribution means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

1. To or for the benefit of, or at the direction of, any non-U.S. candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and
2. For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

For purposes of this section and pursuant to 22 CFR 130.5, fee or commission means any loan, gift, donation or other payment of

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\$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

1. To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with the Seller; and
2. For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization.

C. Import Compliance. Both parties shall comply with all U.S. Customs laws and regulations (e.g., 19 CFR) and all other applicable U.S. government regulations pertaining to importations of goods and materials into the United States.

For International Purchase Orders (purchase orders issued to entities addressed in foreign countries): Specifically, without excluding other regulations, Seller shall comply with and adhere to the commercial invoice requirements detailed in 19 CFR 141 subpart F of the regulations, and provide additional information as requested by the Buyer. Seller shall immediately upon discovery, notify Buyer of any change to the shipment data related to product valuation, quantities shipped, country of origin, port of export and any additional information directed by the Buyer. Seller will timely provide pre-alert shipping information and documentation prior to shipment arrival to the U.S. Buyer will direct Seller where to send pre-alert shipping information and documentation. Pre-alert shipping documentation includes, but is not limited to, a commercial invoice, airway bill, bill of lading, and other required documentation as directed by U.S. regulations and Buyer.

For Domestic Purchase Orders (purchase orders issued to entities addressed in the United States): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, Customs clearance, duty, taxes, and fees for goods entering into the United States. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for goods procured through a domestic purchase order.

D. 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 or B. 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 Order.

E. Subcontracts. The substance of this clause shall be incorporated into any lower-tier subcontract or purchase order entered into by the Seller for the performance of any part of the work under this purchase order.

F. Notification. Seller agrees to provide prompt notification to Buyer in the event of changes in circumstances such as ineligibility to contract with U.S. Government, debarment, assignment of consent agreement, and initiation or existence of a U.S. Government investigation, that could affect Seller's performance under this purchase order. Seller further agrees to provide prompt notification to Buyer should any offer, agreement or payment of political contributions, fees or commissions (as defined herein and pursuant to this Order) be made in contravention of the prohibition in Section B.

35. **RESEARCH INVOLVING HUMAN SUBJECTS** - No research involving human subjects, as defined in 45 CFR Part 46, may be performed by Seller on 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. **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.
37. **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.