

# T- 10

## INTERNATIONAL PURCHASE ORDER

### TERMS AND CONDITIONS

#### COMMERCIAL FIXED-PRICE – SUPPLY

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#### 1. DEFINITIONS.

- A. BUYER means the entity name listed on the Purchase Order/Subcontract.
- B. BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer's cognizant procurement organization to administer and/or execute the Order.
- C. INCOTERMS means the set of international rules for the interpretation of terms used in foreign trade contracts as prepared and published by the International Chamber of Commerce, Paris, France. When a term covered by such Incoterms is specified in this Order, such term shall be governed by the Incoterms 2000. In case of a conflict between the provisions of the Incoterms and the provisions of this Order, the provisions of this Order shall govern.

- D. ORDER means the instrument of contracting including this Purchase Order and all referenced documents, including any subsequent changes or modifications.
- E. PARTIES means Buyer and Seller collectively.
- F. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by its customer for the acquisition of Products.
- G. PRODUCTS means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any related services described in the Order.
- H. PROPRIETARY INFORMATION means all Technical Data and all financial or business information that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the data as Proprietary to the party disclosing the information.
- I. SELLER means the party with whom Buyer is contracting.

- J. **TECHNICAL DATA** means all designs, dimensions, specifications, drawings, patterns, know how, or other information concerning, methods, manufacturing processes, equipment, gauges and tools used in the design, manufacture, assembly, operation, repair, testing, maintenance, or modification of Products. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation. Technical Data may be recorded in a written, or printed document, computer or electronic file, electromagnetic tape or disc, software, or any other tangible form of expression. Technical Data also includes unclassified and classified information that is required for defense articles, in accordance with International Traffic in Arms Regulations (ITAR) 22 CFR § 120.10. Also includes technical information in support of defense services, any information covered by an invention secrecy order and software directly related to defense articles as defined in (ITAR) § 121.8(f).
- K. **PROPRIETARY INFORMATION EXCHANGE AGREEMENT** means an Agreement executed by the Parties which outlines the terms for the exchange of company proprietary and confidential data and information between the Parties.

**2. ACCEPTANCE.**

This Order is Buyer's offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and signed by Buyer's authorized purchasing representative. Seller's acknowledgement, acceptance of payment, or commencement of performance, shall conclusively evidence acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in Seller's acceptance.

**3. ORDER OF PRECEDENCE.**

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

- A. Change Order Document
- B. Purchase Order Document
- C. Purchase Order Terms and Conditions
- D. Statement of Work
- E. Specification/Drawing
- F. Supplier Quality Assurance Requirements (SQAR)
- G. Other Referenced Documents

**4. DELIVERY.**

- A. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Buyer reserves the right to return overshipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of overshipments and early shipments.
- B. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time

and most expeditious transportation. Any additional cost caused by these requirements shall be borne by Seller.

- 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 Order, or (2) fill such Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer. This condition shall not limit Buyer's rights under the default clause contained herein.
- D. All Parties expressly agree that time is and shall remain a material element of this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

**5. INVOICE AND FREIGHT BILL.**

Seller shall send a commercial invoice for each shipment. The invoice, written in English, shall include the following information taken from Buyer's Purchase Order: Purchase Order number, item number, part serial number (if serialized), part number, part description, country of origin, unit of measure, and unit price. Seller's invoice shall also include: Seller's phone number and address, invoice number, date prepared, item quantity, extended item price, and total invoice value. Seller will also include other information on the invoice as directed by Buyer, which may include, but not be limited to, reference to export licenses or Assist Value data. If Seller's "remit to" address is different than the address indicated on the Purchase Order, clearly identify the "remit to" address on the invoice. No invoice shall be issued prior to shipment of Products. For each shipment made at Buyer's expense (e.g., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice. Seller shall submit invoices and required copies to the addresses as instructed by Buyer.

**6. PAYMENT.**

Payment shall be in U.S. Dollars unless otherwise noted in the Purchase Order. . If other than U.S. Dollars, the date of export determines the currency exchange rate. Payment due dates, including discount periods, will be calculated from the date of acceptance of Products or correct invoice, whichever is later. Unless freight and other charges are itemized, any discount will be taken on the full amount invoiced. Buyer has the right, without loss of discount privileges, to pay invoices covering Products shipped in advance of schedule on the normal maturity after the date specified for delivery. Payment shall not constitute acceptance of Products. Buyer's payment to Seller shall be drawn on a U.S. commercial bank in U.S. Dollars and made by Buyer's check in favor of Seller air mailed to such address as Seller shall designate in writing. Nothing in this clause shall preclude Buyer and Seller from agreeing to have payment made by electronic funds transfer or other such means.

Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this Order.

**7. PACKING AND SHIPPING.**

- A. Prior to exportation, one copy of the required commercial invoice and packing list shall be enclosed in a waterproof envelope or wrapper, clearly marked "Customs Invoice," and securely attached to the outside of the No. 1 shipping container in each shipment. For shipment to the U.S., Seller's invoice will be used as the customs invoice if it meets U.S. Customs Service requirements, but it must be marked "Invoice for Customs Purposes Only". At the time of shipment of the Products ordered herein, Seller shall forward via FAX, or other electronic means, copies of commercial invoices and bills of lading covering each shipment marked to the attention of the Buyer's applicable traffic office.
- B. All goods shall be prepared (cleaned, preserved, etc.) and packed per best commercial practice for export shipment in a manner to comply with carrier regulations and prevent damage or deterioration during handling, shipment and indoor storage for up to ninety (90) days at destination. If requested, Seller shall submit two copies of its proposed packaging procedure and packing design to Buyer for review not less than sixty (60) days prior to first shipment, and shall prepare and package in accordance with said procedure and design.
- C. Each unit container (individual part box or other innermost package), each intermediate container, and each shipping container (shipping box, crate or other outermost package) in each shipment shall be marked with its country of origin clearly in English.
- D. Number and mark each container with a consecutively assigned number and applicable Order number. The No. 1 shipping container in each shipment shall contain one copy in English of the packing list.
- E. The packing list shall include the following information: container number, Order number, item, serial number (as applicable), part number and any applicable test reports.
- F. Unless otherwise specified on the face of this Order, the price stated includes the cost of preparing and packing for shipment, boxing, crating, container marking, furnishing packing lists and test reports.
- G. Shipping documents shall include bar coding or other specialized marking as required by Buyer.

**8. INSPECTION AND ACCEPTANCE.**

Unless otherwise specified Buyer's final inspection and acceptance shall be at destination. Failure to inspect and accept or reject Products shall not relieve the Seller from responsibility for compliance with Order requirements nor impose liability on Buyer.

**9. NONCONFORMING GOODS.**

If Seller fails to deliver or delivers defective or nonconforming Products, Buyer may:

- A. Accept all or part of the defective or non-conforming Products at an equitable price reduction; or
- B. Reject all or any part of a delivery of defective or non-conforming Products, and demand delivery of conforming Products. All rejected Products shall be shipped to Seller at Seller's expense; or
- C. Make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Product to comply in all respects with Order requirements and charge the expense incurred to Seller; or
- D. Terminate this Order for default in whole or in part.

**10. WARRANTY.**

- A. Seller warrants that all Products delivered under this Order will: be free from defects in materials, workmanship, and manufacturing processes; conform to all requirements of this Order; and be free of all liens and encumbrances. To the extent Products are not manufactured pursuant to detailed design and specifications furnished by Buyer, Seller warrants that the Product shall be free from design and specifications defects.
- B. If any Product fails to comply in any respect to the warranty set forth above, Seller, at Buyer's option, shall promptly repair or replace the Product. Transportation of replacement Product and return of nonconforming Product shall be at Seller's expense. If repair or replacement of Product is not timely, Buyer may elect to return, repair, replace, or repurchase the nonconforming Product at Seller's expense. All warranties shall run to Buyer and its customers.
- C. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.
- D. Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by its successors and customers.
- E. The rights of Buyer set forth in this clause shall be in addition to, and not in lieu of, any other right Buyer may have under this Order, or in law or equity.

**11. CHANGES.**

- A. Buyer's authorized representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order in (1) drawings, designs, specifications, planning, and/or other technical documents; (2) method of shipment, packaging, or packing; (3) place of delivery; (4) reasonable adjustments in quantities or delivery schedules or both; (5) place of inspection; and (6) place of acceptance.
- B. If the change causes an increase or decrease in the cost or time required to perform this Order, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Order in writing accordingly.

- C. Any claim for adjustment shall be unconditionally waived unless: (i) asserted in writing and delivered to Buyer within 15 days of the date of the written change order; and (ii) a fully supported proposal is delivered to Buyer's authorized representative within 45 days after Seller's receipt of such direction.
- D. If Seller claims the cost of any Property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
- E. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.
- F. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause hereof. However, Seller shall not be excused from proceeding with the Order as changed.

## **12. BUYER AUTHORIZATION.**

- A. The Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of the Buyer, to provide contractual direction, and to change contractual requirements as defined in the 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 Product hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment.

## **13. DISPUTES; GOVERNING LAW.**

- A. This Order and any dispute arising under or in connection with it shall be governed by and interpreted in accordance with the substantive laws of the State from which the Order is placed, United States of America (USA), except for that State's laws on conflicts of law. The Parties agree the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Order.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon, in writing, either Party may only bring suit in federal or state court in the state from which this Order is issued.
- C. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, Seller shall proceed diligently, as directed by Buyer, with performance of the Order.
- D. To the maximum extent permitted by law, the parties waive any right to a jury trial.

## **14. TERMINATION FOR CONVENIENCE.**

- A. Buyer may terminate performance of work under this Order in whole or, from time to time, in part

if Buyer determines that a termination is in its interest. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.

- B. After receipt of a Notice of Termination, and except as directed by Buyer, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause.
  1. Stop work as specified in the notice.
  2. Place no further subcontracts or purchase orders (referred to as "Subcontracts" herein) for materials, services, or facilities, except as necessary to complete the continued portion of this Order.
  3. Terminate all Subcontracts to the extent they relate to the work terminated.
  4. Assign to Buyer, as directed by Buyer, all right, title, and interest of Seller under the Subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of Subcontracts; the approval or ratification will be final for purposes of this clause.
  6. As directed by Buyer, transfer title and deliver to Buyer:
    - (a) The fabricated or unfabricated Products, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (b) The completed or partially completed plans, drawings, information, and other property that, if the Order had been completed, would be required to be furnished to Buyer.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Order that is in the possession of Seller and in which Buyer has or may acquire an interest.
  9. Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (6) above; provided, however, that Seller:
    - (a) is not required to extend credit to any purchaser; and
    - (b) may acquire the property under the conditions prescribed by, and at prices approved by Buyer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.

- C. Seller shall submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Buyer upon written request of Seller within this 60 day period.
- D. After termination, Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. Seller shall submit the proposal promptly, but no later than three (3) months from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this three (3) month period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after three (3) months or any extension. If Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- E. Subject to paragraph D. above, Seller and Buyer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E. or paragraph F. below, exclusive of costs shown in subparagraph F.(3) below, may not exceed the total Order price as reduced by:
  - 1. The amount of payments previously made; and
  - 2. The Order price of work not terminated. The Order shall be amended, and Seller paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If Seller and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed on under paragraph E. above:
  - 1. The Order price for completed supplies or services accepted by Buyer (or sold or acquired under subparagraph B.(9) above) not previously paid for, adjusted by any saving of freight and other charges.
  - 2. The total of:
    - a. The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph F.(1) above;
    - b. The cost of settling and paying termination settlement proposals under terminated Subcontracts that are properly chargeable to the terminated portion of the Order if not included in subparagraph F.(2)(a) above; and
  - c. A sum, as a profit on subparagraph F.(2)(a) above, determined by Buyer to be fair and reasonable; however, if it appears that Seller would have sustained a loss on the entire Order had it been completed, Buyer shall allow no profit under this subparagraph F.(2)(c) and shall reduce the settlement to reflect the indicated rate of loss.
- 3. The reasonable costs of settlement of the work terminated, including:
  - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - b. The termination and settlement of Subcontracts (excluding the amounts of such settlements); and
  - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. Except for normal spoilage, and except to the extent that Buyer expressly assumed the risk of loss, Buyer shall exclude from the amounts payable to Seller under paragraph F. above, the fair value, as determined by Buyer, of property that is destroyed, lost, stolen, or damaged, so as to become undeliverable to Buyer or a buyer.
- H. The cost principles and procedures of Part 31 of the U.S. Federal Acquisition Regulations, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this clause.
- I. In arriving at the amount due Seller under this clause, there shall be deducted:
  - 1. All unliquidated advance or other payments to Seller under the terminated portion of this Order;
  - 2. Any claim which Buyer has against Seller under this Order; and
  - 3. The agreed price for, or the proceeds from sale of, materials, supplies, or other things acquired by Seller or sold under the provisions of this clause and not recovered by or credited to Buyer.
- J. If the termination is partial, Seller may file a proposal with Buyer for an equitable adjustment of the price(s) of the continued portion of this Order. Buyer shall make any equitable adjustment agreed upon. Any proposal by Seller for an equitable adjustment under this clause shall be requested within 45 days from the effective date of termination unless extended in writing by Buyer.
- K. (1) Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Seller for the terminated portion of this Order, if Buyer believes the total of these payments will not exceed the amount to which Seller will be entitled.

- (2) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the U.S. Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.
- L. Unless otherwise provided in this Order, Seller shall maintain all records and documents relating to the terminated portion of this Order for three (3) years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Order. Seller shall make these records and documents available to Buyer, at Seller's office, at all reasonable times, without any direct charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
- 15. TERMINATION FOR DEFAULT.**
- A. Subject to paragraphs C and D below, Buyer may terminate this Order in whole or in part, by written notice of default to Seller if Seller:
1. Fails to deliver the supplies or to perform the services within the time specified in this Order or any extension;
  2. Fails to make progress so as to endanger performance of this Order or to perform any of the other provisions of this Order and does not cure that failure within a period of 10 days after receipt of the notice from Buyer specifying Seller's failure to perform; or
  3. Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business; or assignment.
- B. If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, supplies or services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those supplies or services. However, Seller shall continue the work not terminated. In addition, Buyer may rework or repair any Product in accordance with the Non-Conforming Goods clause herein, at Seller's cost.
- C. If the failure to perform is caused by an excusable delay, as described in the Excusable Delay clause herein, Seller shall not be liable for any excess costs of re-procurement.
- D. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Seller to meet the required deliver schedule.
- E. If this Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve Property in its possession in which Buyer has an interest.
- F. Buyer shall pay the Order price for completed supplies delivered or services performed and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property.
- G. Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this Order, all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- H. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by Law or under this Order.
- 16. BUYER'S PROPERTY.**
- A. Seller shall be responsible for all Buyer-furnished property (e.g. dies, molds, jigs, tools, materials, etc.) in accordance with Buyer's Purchase Order Terms and Conditions which is incorporated herein.
- B. During the term of the Order, Seller shall, at its sole cost and expense, maintain a policy or policies of insurance covering the loss or destruction of or damage to all Buyer materials, tools, and equipment, special or otherwise, in which Buyer has an interest, in the amount of the full replacement value thereof providing protection against all perils normally covered in an "all-risk" policy, including but not limited to, fire, wind-storm, hurricane, tornado, sandstorm, explosion, riot, civil commotion, aircraft, earthquake, flood, or other acts of nature during such time as they remain in Seller's possession.
- 17. RESERVED.**
- 18. DISPOSAL OF PRODUCTS.**

Seller shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use. Upon completion or termination of this Order, Seller shall, at Seller's expense, dispose of all Products, including partially completed Products, as required or directed by Buyer.

**19. RESERVED.**

**20. TAXES.**

The price of this Order includes all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Use or sales taxes for which Buyer has furnished a valid exemption certificate or other evidence of exemption shall not be included.

**21. ASSIGNMENT.**

A. Seller shall not assign any of its rights under this Order without Buyer's prior, written consent, except as specifically stated in this clause. Seller may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:

1. The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and setoff or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller;
2. Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.

B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.

C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document or any of Buyer's Proprietary information (including this Order) until and unless authorized to do so by Buyer's authorized representative.

**22. SUBCONTRACTING.**

A. Seller shall not subcontract without the prior written authorization of Buyer for the design or procurement of the whole or any major component of any Product ordered hereunder, and Seller shall require a like agreement from immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.

B. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

**23. RESERVED.**

**24. SELLER'S DATA.**

Excluding Data marked with an appropriate legend and protected in accordance with a separate Proprietary Information Agreement, any Data, which Seller discloses to Buyer while performing this Order, that Seller has not marked with a limited rights legend in accordance with the applicable rights in technical data and computer software clauses/provisions called out herein shall not be considered proprietary to Seller or in any way restrict Buyer's use of such Data.

**25. INFRINGEMENT INDEMNIFICATION.**

A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will defend, indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under this Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.

B. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.

C. If the use or sale of the Product is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer and extend this indemnification thereto.

D. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order, which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with Products not delivered by Seller if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.

E. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

**26. INSURANCE.**

A. During the entire Order period Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation against Buyer. Seller shall also maintain, at their sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.

B. Whenever performance requires work on a Government installation, Buyer's premises, or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its

subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:

(1) General Liability – Combined Single Limit \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.

(2) Automobile Liability – Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.

- C. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- D. General Liability and Automobile Liability insurance coverage shall provide that Buyer is named as an additional insured and if requested by Buyer, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates.
- E. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- F. Buyer and Seller agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negligence of the agents, subcontractors or employees of the indemnified parties.

## **27. LABOR DISPUTES.**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer including all relevant information including, but not limited to, nature of dispute, labor organizations involved, estimated impact on Seller's performance of Buyer's order and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

## **28. COMPLIANCE WITH LAWS.**

Seller warrants that it shall comply with all applicable Federal, State and local laws, rulings, and regulations of the United States of America, and all laws and regulations of Seller's country, during the performance of this Order.

## **29. RESERVED.**

## **30. ASBESTOS.**

Seller shall not provide any Product that contains asbestos and shall submit certification to Buyer on demand that the Products contain no asbestos.

## **31. OFFSET COMMITMENT.**

This clause shall only apply to Orders in excess of \$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. Notwithstanding that this Order is or is not made in direct support of a foreign sale, Seller agrees that it is obligated to support Buyer's Offset commitments as a condition of this Order.
- C. The offset credits arising out of or resulting from, directly or indirectly, this Order are for the exclusive use of Buyer and may be used by Buyer and any of its affiliates and subsidiaries to fulfill all past, present and future Offset obligations. In addition, Seller agrees to identify and retain for Buyer's use any rights to offset credits generated by its suppliers and subcontractors arising out of or resulting from this Order.
- D. Seller shall provide a copy of each Order or Subcontract placed with a foreign source under this Order in support of Buyer's rights to offset credit.
- E. Seller shall execute all necessary documents to evidence Buyer's right to use or assign any offset credits.
- F. Buyer reserves the right to assign offset credits generated through Seller's efforts under this Order to third parties.
- G. Seller shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this Order.

## **32. EXPORT AND IMPORT COMPLIANCE.**

- A. Export Compliance. Seller is advised that its performance of this 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 Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US 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 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 Contractor/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. 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.
- 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 Order.
- D. 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 Order.
- 33. RELIANCE.**  
Seller represents and warrants that Seller is an expert fully competent in all phases of the work involved in producing and supporting all Products and performing all services purchased under this Order.
- 34. RELEASE OF INFORMATION AND ADVERTISING.**  
Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use the Buyer's name or identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.
- 35. - 36. RESERVED.**
- 37. HEADINGS.**  
The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.
- 38. PARTIAL INVALIDITY.**  
If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.
- 39. NONWAIVER.**

A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

**40. COMPLETE AGREEMENT.**

This Order is the Parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between the Parties, whether such understandings, proposal, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order.

**41. RESPONSIBILITY FOR CLAIMS/INDEMNITY.**

Seller shall, at its own expense, defend, indemnify and hold harmless Buyer from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of Seller, its subcontractors, agents, or employees in the performance of this Order. If Seller fails to defend, hold harmless, and indemnify Buyer as provided in this clause, then Seller shall pay for any damages, attorney's fees, and any other fees, costs, and expenses that may be incurred by Buyer in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.

**42. RIGHTS IN COPYRIGHTS.**

The Parties expressly agree that all original works of authorship fixed in any tangible form, including software improvements, enhancements, derivative works and mask works, whether specially ordered or commissioned, made by Seller personnel alone or jointly with others in connection with this Order ("Works") shall become and remain the property of Buyer. These Works shall be considered "a work made for hire" and Seller shall assign and hereby assigns all its right, title, and interest in the Works to Buyer. Seller agrees to require its personnel or others hereinafter associated with or used by Seller in the performance of this Order to execute all necessary documents to transfer and assign all right, title and interest in said Works to Buyer.

**43. PATENTS AND INVENTIONS.**

Seller agrees to assign and hereby does assign to Buyer the entire and exclusive right, title, and interest to all designs, models, photographs, drawings, ideas, inventions (whether or not patentable), and improvements whatsoever, conceived, discovered, or developed by Seller, Seller's employees or Seller's subcontractors, specifically related to or in connection with performance of this Order. Seller agrees to promptly disclose to Buyer all such ideas, inventions, and improvements, and, on demand and at Buyer's expense, assist and require and bind Seller's employees to assist, in preparation, execution, and delivery of any disclosures, patent applications or other papers required by Buyer to obtain and enforce patents in the

United States and foreign countries, and to execute and deliver to Buyer any assignment or other document which Buyer deems necessary to perfect Buyer's right, title and interest in and to said ideas, inventions, and improvements. Seller shall insert the substance of this clause, in favor of Buyer, in subcontracts at any tier under this Order.

**44. INDEPENDENT CONTRACTOR.**

Seller is and shall be deemed to be an independent contractor at all times during its performance of the work specified in the Order. Under no circumstance shall Seller be deemed an agent for Buyer.

**45. STOP WORK.**

- A. Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this Order for a period of up to ninety (90) days after the stop work order is delivered to Seller, and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order (SWO) issued pursuant to this clause. Upon receipt of an SWO, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within the period of the work stoppage specified by the SWO, and any amendments to it, Buyer shall either (1) cancel the SWO, or (2) terminate the work covered by such SWO as provided in "Termination For Convenience", of this Order.
- B. If an SWO issued under this clause is canceled, or the period of the Order or any extension thereof expires, Seller shall resume work. An equitable adjustment shall be made in the delivery schedule or Order price, or both, and the Order shall be modified in writing accordingly, if (1) the stop work results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Purchase Order, and (2) Seller submits its proposal for such adjustment within forty-five (45) days after the end of the period of work stoppage. Failure of the Parties to agree to any adjustment to be made under this clause shall not excuse Seller from proceeding with the performance of the Order.
- C. If an SWO is not canceled and the work covered by such SWO is terminated for the convenience of Buyer, the reasonable costs resulting from the SWO shall be allowed in arriving at the termination settlement.

**46. - 66. RESERVED.**

**67. SUCCESSORS OF PARTIES.**

This Order is binding on the parties and their respective legal representatives, trustees, successors and assigns.

**68. TECHNICAL, BUSINESS, AND PROPRIETARY INFORMATION.**

- A. Seller agrees to keep confidential and not to disclose to any other person any Technical, Business or Proprietary Information received from Buyer in connection with this Order. Seller

further agrees to use any Buyer Provided Information related to this order and received from Buyer only for purposes necessary for performing this Order, without first obtaining Buyer's written authorization.

- B. Seller may disclose Buyer Provided Information to its subcontractors, in accordance with the "Export and Import Compliance" clause herein and the Proprietary Information Exchange Agreement as required for the performance of this Order, provided that each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to such Buyer Provided Information.
- C. All documents and other tangible media (excluding Products) containing or conveying Buyer Provided Information and transferred in connection with this Order, together with any copies thereof, are and remain the property of the Buyer.
- D. Neither the existence of this Order nor the disclosure of Buyer Provided Information or any other information hereunder shall be construed as granting expressly by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by the Buyer or Buyer's customer, except as specifically set forth herein.
- E. Seller's obligations with respect to Buyer Provided Information disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.
- F. If the performance of this Order requires the exchange of Proprietary Information between the Parties, a separate Proprietary Information Exchange Agreement may be executed by the Parties. All Proprietary Information exchanged between the Parties shall be governed by the terms of the separate Proprietary Information Exchange Agreement.

**69. TECHNICAL DATA RESTRICTIONS.**

- A. In addition to and without limiting the clause "TECHNICAL, BUSINESS AND PROPRIETARY INFORMATION" herein, the following restrictions shall apply to all designs, drawings, and other technical documents and information furnished or disclosed to Seller by Buyer (herein called "Technical Data") and to any Products manufactured by use of Technical Data. Seller shall comply with any restrictions imposed, in connection with the disclosure, delivery or export of Technical Data by Buyer to Seller, by any governmental agency of the United States of America under the laws and regulations of the United States relating to exports and foreign transactions, including, but not limited to the Export Administration Act or the International Traffic in Arms Regulations (ITAR).
- B. In addition and without limitation, the following offshore procurement procedures shall apply:

1. Seller shall not deliver the Products to any party other than Buyer or to an agency of the U.S. Government;
2. The use of the Technical Data is limited to the manufacture of the Products described in the Order;
3. The disclosure of the Technical Data may not be made to any other person except duly qualified subcontractors within the Seller's country;
4. No rights in Technical Data shall be acquired by any foreign person, including Seller;
5. Seller, including subcontractors, must destroy or return to Buyer all of the Technical Data exported pursuant to the Order upon fulfillment of the terms of the Order; and
6. All of Seller's subcontracts must contain all the provisions stated in this Technical, Business and Proprietary Information clause, including this paragraph.

**70. CONTROL OF TECHNICAL DATA AND NON-DISCLOSURE AGREEMENTS.**

- A. For the purposes of this clause, Technical Data is defined in ITAR 22 CFR 120-130, including paragraph 120.6, 120.9, and 120.10 and includes, but it not limited to: a) drawings, b) specifications, c) process specifications, d) process information, e) know-how information, f) technical assistance, g) detailed process information, or h) manufacturing know-how.
- B. Seller shall comply with all provision of 22 CFR 120-130, and shall not disclose any technical data for any purpose not contemplated under the terms of this Order.
- C. Prior to any disclosure of technical data, Seller shall execute Non-Disclosure Agreements (NDA) with its subcontractors, or potential subcontractors, whenever sub-licensing activity (if specifically authorized in writing by Buyer) involves the disclosure of technical data between Seller and non United States subcontractors, or with any subcontractor, U.S. or Foreign, located outside of the U.S. The Non-Disclosure Agreements shall incorporate all the provisions of ITAR 22 CFR 120-130, and specifically address the provisions of paragraphs 22 CFR 124.8 and 124.9.
- D. Copies of signed Non-Disclosure Agreements (which may consist of Acceptance copies of sub-tier Purchase Orders or separate agreements either of which contain the contents of this clause) must be maintained on file for a period of five (5) years after Purchase Order completion. Seller, upon execution of each NDA obtained pursuant to this clause, shall provide a copy to Buyer.
- E. The complete content of this clause must be included in all agreements or orders issued to all affected subcontractors at any tier.

**71. FAILURE TO OBTAIN GOVERNMENT APPROVALS.**

- A. If Buyer or Seller is unable to obtain any required governmental approvals or licenses relating to import or export of Products, materials, or technical data relating to this Order, Buyer may terminate the Order, in whole or in part, without recourse against, penalty to, or liability of Buyer except as stated in the "Termination for Convenience" clause. In such event, Buyer shall also have, to the extent permitted by applicable provisions of any national, state, provincial or local law, the option, but not the obligation, to take delivery of the applicable portion of Products at such place in Seller's country as Buyer shall designate, with an appropriate adjustment in price.
- B. If performance under this Order extends beyond the period of validity of the export license(s), a new license(s) application must be submitted by the Buyer. In the event Buyer is unable to obtain a new license to cover the exported technical data, Buyer may terminate this Order in whole or in part, without recourse against, penalty to or liability of Buyer except as stated in the "Termination for Convenience" clause.

**72. PRICES.**

The prices stated in this Order are firm fixed prices and are stated in United States Dollars and are not subject to exchange rate adjustments.

**73. APPLICABLE LANGUAGE.**

This Order is made in the English language and all correspondence between the parties of a technical and non-technical nature shall in the English language and shall employ the units of measure customarily used by Buyer in the United States of America, unless otherwise specified. All notices and other binding communications may, unless otherwise specified, be sent by facsimile, electronic mail, air mail, or other customary means.

**74. FOREIGN CORRUPT PRACTICES ACT.**

Seller shall comply with the Foreign Corrupt Practices Act, 15 U.S.C. 78 et. seq.

**75. - 92. RESERVED.**

**93. CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM.**

Buyer has joined with the U.S. Bureau of Customs and Border Protection in the Customs Trade Partnership Against Terrorism (C-TPAT) program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of the United States to Buyer, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. Seller shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. In addition, Seller agrees to take such reasonable measures as may be required by Buyer to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband,

weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of

law or regulations in Seller's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Contact the authorized Purchasing Representative for assistance in identifying transportation companies that are validated under the C-TPAT program.