

# T-1

## PURCHASE ORDER TERMS AND CONDITIONS

### GOVERNMENT 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. DATA means all financial/business information, designs, dimensions, specifications, drawings, patterns, know how, or other information concerning methods, manufacturing processes, equipment, gauges and tools used in the design and manufacture of Products. Data may be recorded in a written or printed document, computer or electronically stored, software, or any other tangible form of expression.
- D. DFARS means the Defense Federal Acquisition Regulation Supplement
- E. FAR means the Federal Acquisition Regulation
- F. ORDER means the instrument of contracting including the Purchase Order and all referenced documents.
- G. PARTIES means Buyer and Seller collectively.
- H. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by the U.S. Government for the acquisition of Products.
- I. PRODUCT means those goods, supplies, reports, computer software, data, materials, articles,

items, parts, components or assemblies, and any related services described in the Order.

- J. PROPRIETARY INFORMATION means all Data 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, and includes any information marked with a restrictive legend as prescribed in DFARS 252.227-7013 or 252.227-7014 or in FAR 52.227-14.
- K. SELLER means the party with whom Buyer is contracting.

#### 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. FAR/DFARS Clauses
- E. Statement of Work.
- F. Specification/Drawing
- G. Supplier Data Requirements List (SDRL)/ Data Item Description (DID).
- H. Other Referenced Documents.

**4. DELIVERY, TITLE.**

- A. The FOB point shall be as designated in the Order. Title shall pass to Buyer upon acceptance (except as otherwise specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.
- B. 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.
- C. 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.
- D. 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.
- E. 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 separate invoice for each shipment and shall include the following information taken from Buyer's Order: (a) Order number; (b) item number; (c) part serial number (if serialized); (d) part number; (e) unit of measure; and (f) unit price. Seller's invoice shall also include: (g) Seller's phone number and address; (h) invoice number; (i) date prepared; (j) item quantity; (k) extended item price; and (l) total invoice value. If Seller's "remit to" address is different than the address indicated on the 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 (i.e., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice.

**6. PAYMENT.**

Payment due dates, including discount periods, will be calculated from the date of Buyer's receipt of acceptable 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. Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this Order.

**7. PACKING AND SHIPPING.**

Seller shall be responsible for ensuring the proper packaging and shipping of Product hereunder in accordance with Buyer's Purchase Order Terms and Conditions and Northrop Grumman Carrier Routing Instructions which is incorporated herein and available on the NGC On-line Automated Supplier Information System (OASIS) [https://oasis.northgrum.com/logicon/docs/SUPPLIER\\_ROUTING\\_INSTRUCTIONS.pdf](https://oasis.northgrum.com/logicon/docs/SUPPLIER_ROUTING_INSTRUCTIONS.pdf). Damage resulting from improper Product packaging will be charged to Seller.

**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 reprocur 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.**

- A. Any dispute that may arise under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties up to the Senior Executive of the Materiel or Procurement organization placing the Order, and Seller's equivalent executive level.
- 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.**

Buyer may at any time terminate all or any part of this Order in accordance with the contract clause entitled "Termination for Convenience of the Government (Fixed-Price)" set forth at 52.249-2 of the FAR, which clause is hereby incorporated herein and made a part hereof by this reference, except that the term "contract" therein shall mean this Order, the term "Contracting Officer" therein shall mean "Buyer", the term "Government" therein shall mean "Buyer" except that in subparagraph (b) (8) and at the first occurrence thereof in paragraph (h) it shall mean "Buyer or the Government" and in paragraph (n) it shall mean "Buyer and the Government", the term "Contractor" therein shall mean "Seller", paragraphs (d) and (j) thereof are deleted, the period "120 days" in paragraph (c) is changed to "60 days", the period "1 year" in paragraph (e) is changed to "3 months" and the period "90 days" in paragraph (l) is changed to "45 days"; provided, however, that if this Order is a first-tier subcontract under a U.S. Government prime contract, the period "1 year" in paragraph (e) is changed to "180 days."

#### **15. TERMINATION FOR DEFAULT.**

- A. The FAR 52.249-8 "Default (Fixed Price Supply and Service)" clause is by this reference incorporated herein and made a part hereof except that the term "contract" therein shall mean this Order,

the term "Contractor" therein shall mean "Seller", the term "Contracting Officer" therein shall mean "Buyer", the term "Government" in all paragraphs thereof except paragraph (c) shall mean "Buyer" and all reference therein to "Disputes" shall mean the Disputes clause of this Order. Buyer may terminate this Order in whole, or in part, for Seller's default in accordance with this clause. In addition, Buyer may terminate this Order in whole, or in part, in the event one of the following occurs, is threatened, or is imminent with respect to Seller: insolvency; bankruptcy; suspension of business; sale of a substantial part of Seller's assets; filing for dissolution; liquidation proceedings; appointment of a trustee or receiver for Seller's property or business; or assignment.

- B. As set forth in FAR 52.249-8 the Parties agree that in the event a determination is made whether by the Parties or a court that the default termination was inappropriate, the Parties' rights and obligations shall be solely governed by the Termination for Convenience clause contained herein and Seller shall be entitled to a recovery no greater than that permitted in said Termination for Convenience clause.

**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 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, windstorm, 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. GOVERNMENT PROPERTY.**

Seller shall maintain and administer a program for the maintenance, repair, protection and preservation of Government Property in accordance with FAR Subpart 45.5. Upon Buyer's request, Seller shall submit inventory schedules in acceptable form covering all Government Property pertaining to this Order. Nothing herein will be deemed to contravene the rights of the Government under FAR 52.245-2, paragraph (b).

**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. NOTIFICATION OF STATUS CHANGES.**

By accepting this Order, Seller certifies that all representations and certifications applicable to this Order will remain valid. If Seller's status under any of the applicable representations and certifications has changed, Seller must complete and submit to Buyer new Representations and Certifications prior to taking any action indicating acceptance as stated on the face of the Order.

**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. No subcontract placed under this Order shall provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.404-4(c) of the Federal Acquisition Regulation (FAR).
- C. 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. PROPRIETARY INFORMATION.**

- A. If a separate Proprietary Information Agreement exists between the Parties, which relates to the subject matter of this Order, then Proprietary Information furnished by one Party to the other Party shall be protected pursuant to such Proprietary Information Agreement.
- B. If no separate Proprietary Information Agreement exists between the Parties, Seller agrees to keep confidential and not to disclose to any other person any Proprietary Information received from Buyer in connection with this Order. Seller further agrees to use Proprietary Information only for purposes necessary for performing this Order, without first obtaining Buyer's written authorization.
- C. Seller may disclose Proprietary Information to its subcontractors 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 Proprietary Information.
- D. All documents and other tangible media (excluding Products) containing or conveying Proprietary Information and transferred in connection with this Order, together with any copies thereof, are and remain the property of Buyer.
- E. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information 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 Buyer or Buyer's customer, except as specifically set forth herein.
- F. Seller's obligations with respect to Proprietary 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.
- G. Unless otherwise provided herein, or authorized by Buyer in writing, Seller shall use Proprietary Information and/or data only in the performance of this Order subject to the Government's rights under the Government Property clause.

**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.**

- A. Seller shall comply with all applicable Federal, State and local laws, statutes, rulings, ordinances, orders, and regulations in effect on the date of this Order.
- B. Seller certifies that the Products called for by this Order have been or will be produced in full compliance with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938 (29 U.S. Code

201-219), as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof.

## **29. CHOICE OF LAW.**

Both Parties agree that, irrespective of the place of performance of this Order, this Order will be construed and interpreted according to the law of the state from which this Order is issued, as identified in the Order, excepting that state's laws on conflict of law.

## **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. COMPLIANCE WITH AND APPLICABILITY OF THE OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) ACT OF 1988 (41 USC 423).**

Seller represents that during the conduct of the procurement of which this Order forms a part, it has complied with and will continue to comply with the requirements of FAR 52.203-10 and Section 27 of the OFPP Act as implemented in FAR. Seller further agrees that it shall indemnify and hold harmless Buyer from and against any loss, cost or damage incurred by Buyer under Buyer's contract with its customers as a result of or in connection with Seller's violation of the OFPP Act.

**36. INDEMNITY FOR DEFECTIVE COST OR PRICING DATA.**

Seller hereby indemnifies and agrees to hold Buyer harmless from any and all price or cost reductions made pursuant to the FAR 52.215-10 "Price Reduction for Defective Cost or Pricing Data" clause or the FAR 52.215-11 "Price Reduction for Defective Cost or Pricing Data - Modifications" clause, or any other provisions of the prime contract or higher-tier subcontract under which this Order is issued, and from and against any and all cost disallowances or non-recognitions of costs under such prime contract or subcontract, if such price or cost reduction, cost disallowance or non-recognition of costs arises or results directly or indirectly because:

- A. Seller, or any Seller subcontractor at any tier or prospective subcontractor hereunder, furnished cost or pricing data that were not complete, accurate and current as certified in Seller's Certificate of Current Cost or Pricing Data; or
- B. Seller, or any Seller subcontractor or prospective subcontractor at any tier hereunder, furnished data of any description that were not accurate.

Accordingly, without limitation of the foregoing, the price of this Order shall be reduced and the Order shall be modified in writing as necessary to reflect the full amount of any and all such price or cost reductions and any and all such cost disallowances or non-recognitions of costs. The rights and remedies of Buyer under or pursuant to this indemnity shall be cumulative and additional to any other or further rights and remedies provided under this Order or at law or in equity.

**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 provi-

sion 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. - 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, implemen-

tation 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.

**94. - 198. RESERVED.**

**199. FAR/DFARS PROVISIONS/CLAUSES.**

- A. The FAR and DFARS clauses cited in paragraph C. below are incorporated herein by reference at the effective version found in Buyer's Prime Contract, or higher-tier subcontract under which this Order is a subcontract. The listed FAR and DFARS clauses are incorporated herein as if set forth in full text unless made inapplicable by its corresponding note, if any. Whenever said clauses include a requirement for the resolution of disputes between the parties in accordance with the "Disputes" clause herein, the dispute shall be disposed of in accordance with the clause entitled "Disputes" in these Terms and Conditions
- B. Where necessary to derive proper meaning in a subcontract situation from these clauses, "Contractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative (2) when title to property is to be transferred directly to the Government, and (3) in FAR 52.227-1, 52.227-2, 52.246-23 and DFARS 252.227-7013 and 252.227-7014.
- C. FAR and DFARS clauses:

Clause	FAR Reference
Gratuities	52.203-3
NOTE: As used in this clause, "Government" means "Buyer" (except "Government" means "Buyer or Government" in the phrase "to any officer or employee of the Government"), "hearing" means opportunity to be heard, and "in any competent court", means "pursuant to the Disputes clause contained herein."	
Restrictions on Subcontractor Sales to the Government	52.203-6
NOTE: Applicable to any Order greater than \$100,000.	
Anti-Kickback Procedures	52.203-7
NOTE: The substance of this clause, except subparagraph (c)(1), is applicable to any Order and all lower-tier subcontracts which exceed \$100,000. Seller shall immediately notify Buyer of any alleged violations involving any of Buyer's or Seller's employees.	



Clause	FAR Reference
Limitation on Payments to Influence Certain Federal Transactions NOTE: Applicable to any Order greater than \$100,000.	52.203-12
Subcontractor Code of Business Ethics and Conduct NOTE: Applicable to any order greater than \$5,000,000 and the period of performance is more than 120 days except when performance is entirely outside the United States. The United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.	52.203-13
Display of Hotline Poster(s) NOTE: Applicable to any order greater than \$5,000,000 except when performance is entirely outside the United States. The United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.	52.203-14
Security Requirements NOTE: Delete paragraph (c.) NOTE: Applicable if the Order involves access to classified information.	52.204-2
Material Requirements	52.211-5
Defense Priority and Allocation Requirements	52.211-15
Audit and Records – Negotiation NOTE: Applicable to any Order greater than \$100,000.	52.215-2
Price Reduction for Defective Cost or Pricing Data NOTE: Applicable to any Order when cost or pricing data are required.	52.215-10
Price Reduction for Defective Cost or Pricing Data - Modifications NOTE: Applicable if FAR 52.215-10 is not applicable to this Order.	52.215-11
Subcontractor Cost or Pricing Data NOTE: Applicable to any Order when cost or pricing data are required.	52.215-12
Subcontractor Cost or Pricing Data - Modifications NOTE: Applicable if FAR 52.215-12 is not applicable to this Order.	52.215-13
Integrity of Unit Prices NOTE: Delete paragraph (b) NOTE: Applicable to any Order greater than \$100,000.	52.215-14
Pension Adjustments and Asset Reversions NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	52.215-15

Clause	FAR Reference
Facilities Capital Cost of Money NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and the Seller proposed Facilities Capital Cost of Money in its offer.	52.215-16
Waiver of Facilities Capital Cost of Money NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and the Seller did not propose Facilities Capital Cost of Money in its offer.	52.215-17
Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	52.215-18
Notification of Ownership Changes NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2.	52.215-19
Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications	52.215-21
Incentive Price Revision – Firm Target NOTE: Applicable to any FPIF Order or line item.	52.216-16
Incentive Price Revision – Successive Targets NOTE: Applicable to any FPIS Order or line item.	52.216-17
Utilization of Small Business Concerns	52.219-8
Small Business Subcontracting Plan NOTE: Applicable to any Order greater than \$500,000.	52.219-9
Notice to the Government of Labor Disputes	52.222-1
Contract Work Hours and Safety Standards Act – Overtime Compensation NOTE: Applicable to all subcontracts at any tier	52.222-4
Walsh-Healey Public Contracts Act NOTE: Applicable to any Order greater than \$10,000.	52.222-20
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans NOTE: Applicable to any Order of \$25,000 or more.	52.222-35
Affirmative Action for Workers With Disabilities	52.222-36

Clause	FAR Reference
NOTE: Applicable to any Order greater than \$10,000.	
Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-37
NOTE: Applicable to any Order of \$25,000 or more.	
Hazardous Material Identification and Material Safety Data	52.223-3
Notice of Radioactive Materials	52.223-7
Ozone-Depleting Substances	52.223-11
Toxic Chemical Release Reporting	52.223-14
Privacy Act	52.224-2
Buy American Act – Supplies	52.225-1
Duty-Free Entry	52.225-8
Restrictions on Certain Foreign Purchases	52.225-13
Utilization of Indian Organizations and Indian-Owned Economic Enterprises	52.226-1
Authorization and Consent	52.227-1
NOTE: Applicable only if contained in the controlling prime contract.	
Notice and Assistance Regarding Patent and Copyright Infringement	52.227-2
NOTE: Applicable to subcontracts of \$100,000 or more except when both complete performance and delivery are outside the United States, its possessions and Puerto Rico, unless supplies are ultimately to be shipped into one of those areas.	
Refund of Royalties	52.227-9
Filing of Patent Applications – Classified Subject Matter	52.227-10
Patent Rights – Retention by the Contractor (Short Form)	52.227-11
NOTE: Applicable to Small Business firms or nonprofit organizations.	
Patent Rights – Retention by the Contractor (Long Form)	52.227-12
NOTE: Applicable to other than Small Business firms or nonprofit organizations.	
Insurance – Work on a Government Installation	52.228-5
NOTE: Applicable on any Order that requires work on a Government installation.	
Interest	52.232-17

Clause	FAR Reference
Industrial Resources Developed Under Defense Production Act Title III	52.234-1
Accident Prevention	52.236-13
Bankruptcy	52.242-13
Stop-Work Order	52.242-15
NOTE: The 90 day period in the first and fourth sentences of paragraph (a) is changed to 120 days.	
Competition In Subcontracting	52.244-5
Subcontracts for Commercial Items	52.244-6
Government Property (Fixed-Price Contracts)	52.245-2
NOTE: Applicable to any Order if Government property is furnished to Seller.	
NOTE: In the phrases "Government Property", "Government-furnished property", and in references to title to property, "Government" shall not mean "Buyer". The second time "Government" appears in paragraph (b)(ii) "Government" stays "Government". The following is added as paragraph (m): "Contractor shall provide Buyer immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system."	
Special Tooling	52.245-17
NOTE: Applicable to any Order that involves special tooling.	
NOTE: In paragraph (j) change "180 days" to "240 days" and "90 days" to "150 days".	
Special Test Equipment	52.245-18
NOTE: Applicable to any Order which involves the acquisition or fabrication of Special Test Equipment.	
NOTE: The phrase "30 days" in paragraphs (b) and (c) shall be changed to "45 days."	
Inspection of Supplies – Fixed-Price	52.246-2
Inspection of Services - Fixed-Price	52.246-4
Preference for U.S. Flag Air Carriers	52.247-63
NOTE: Applicable to any Order and lower-tier subcontracts that involve international air transportation.	
Preference for Privately Owned U.S.-Flag Commercial Vessels	52.247-64
Value Engineering	52.248-1
NOTE: Applicable to all Orders of \$100,000 or more except as specified in FAR 48.201(a).	
NOTE: Substitute "Buyer" for "Contracting Officer" and "Government" throughout, except where used in the term "Government costs" and in paragraph (m) where "Government" shall mean "Government and/or Buyer".	

Clause	DFARS Reference
Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies NOTE: Applicable to any Order of \$100,000 or more.	252.203-7001
Intent to Furnish Precious Metals as Government-Furnished Material NOTE: Applicable to any Order and all lower-tier subcontracts unless it is known that the item being purchased contains no precious metals.	252.208-7000
Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.	252.209-7004
Acquisition Streamlining NOTE: Applicable to any Order of \$1,000,000 or more.	252.211-7000
Pricing Adjustments NOTE: Applicable when it is contemplated that Cost or Pricing Data will be required.	252.215-7000
Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) NOTE: Applicable to any Order anticipated to be valued at \$500,000 or more.	252.219-7003
Hazard Warning Labels NOTE: Applicable to any Order which requires delivery of hazardous materials.	252.223-7001
Safety Precautions for Ammunition and Explosives NOTE: Applicable to any Order involving articles furnished containing ammunition or explosives.	252.223-7002
Change in Place of Performance - Ammunition and Explosives NOTE: Applicable if DFARS 252.223-7002 applies to the Order.	252.223-7003
Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives NOTE: Applicable to any Order and all lower-tier subcontracts involving arms, ammunition and explosives.	252.223-7007
Buy American Act and Balance of Payments Program	252.225-7001
Qualifying Country Sources As Subcontractors	252.225-7002
Preference for Certain Domestic Commodities NOTE: Applicable to any Order greater than \$100,000.	252.225-7012
Duty – Free Entry	252.225-7013
Preference for Domestic Specialty Metals Alternate I	252.225-7014

Clause	DFARS Reference
Restriction on Acquisition of Hand or Measuring Tools NOTE: Applicable to any Order greater than \$100,000.	252.225-7015

Clause	DFARS Reference
Restriction on Acquisition of Ball and Roller Bearings NOTE: Applicable to any Order and all lower-tier subcontracts if Product supplied contains ball or roller bearings.	252.225-7016
Trade Agreements	252.225-7021
Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber	252.225-7022
Restriction on Acquisition of Forgings	252.225-7025
Exclusionary Policies and Practices of Foreign Governments	252.225-7028
Restriction on Acquisition of Carbon, Alloy, and Carbon Steel Plate	252.225-7030
Waiver of United Kingdom Levies	252.225-7033
Buy American Act – Free Trade Agreements – Balance of Payments Program	252.225-7036
Contractor Personnel Supporting a Force Deployed Outside the United States	252.225-7040
Antiterrorism/Force Protection for Defense Contractors Outside the United States	252.225-7043
Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	252.226-7001
Rights in Technical Data – Noncommercial Items	252.227-7013
Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	252.227-7014
Technical Data—Commercial Items	252.227-7015
Rights in Bid or Proposal Information	252.227-7016
Validation of Asserted Restriction – Computer Software	252.227-7019
Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	252.227-7025
Deferred Delivery of Technical Data or Computer Software	252.227-7026
Deferred Ordering of Technical Data or Computer Software	252.227-7027

Technical Data – Withholding of Payment	252.227-7030
Validation of Restrictive Markings on Technical Data	252.227-7037
Patents – Reporting of Subject Inventions	252.227-7039

<b>Clause</b>	<b>DFARS Reference</b>
Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	252.228-7005
Supplemental Cost Principles	252.231-7000
Frequency Authorization and Alternate I	252.235-7003
Protection Against Compromising Emanations	252.239-7000
Telecommunication Security Equipment, Devices, Techniques and Services	252.239-7016
Pricing of Contract Modifications	252.243-7001
Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	252.244-7000
Reports of Government Property NOTE: Applicable if Government Property is provided or acquired under this Order. Seller shall submit its required reports to Buyer. In paragraph (a)(3), change October 31 to October 10.	252.245-7001
Warranty of Data	252.246-7001
Transportation of Supplies by Sea NOTE: Applicable in any Order and all lower-tier subcontracts for ocean transportation of supplies. Paragraphs (f) and (g) shall not apply if this Order or any lower-tier subcontract is at or below \$100,000.  NOTE: Paragraph (c), first sentence has been modified as to read “The Seller and its subcontractors may request that the Buyer obtain Government authorization for shipment...” “45” is changed to “60” days in paragraph (d) and “30” to “20” in paragraph (e). In paragraph (e), delete “and the division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.” In paragraph (g) “for the purposes of the Prompt Payment clause of this contract” is deleted.	252.247-7023
Notification of Transportation of Supplies by Sea	252.247-7024
Notification of Anticipated Contract Termination or Reduction NOTE: Applicable to all Orders of \$500,000 or more when Seller is first-tier subcontractor or \$100,000 or more when Seller is lower-tier subcontractor.	252.249-7002