

# T-2

## **Purchase Order Terms and Conditions Commercial Fixed Price - Supply (2/00)**

### **1. DEFINITIONS**

“Buyer” means Northrop Grumman Corporation including its subsidiaries, sectors, and business areas as identified on the face of the Order.

“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 and manufacture of Products. Data may be recorded in a written, printed document, computer or electronic file, electromagnetic tape or disc, software, or any other tangible form of expression.

“Order” means the instrument of contracting including this Purchase Order and all referenced documents.

“Parties” means Buyer and Seller collectively.

“Prime Contract” means the contracting instrument issued to Buyer or Buyer’s higher tier customer by its customer for the acquisition of Products.

“Products” means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any related services described in the Order.

“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.

“Seller” means the party with whom Buyer is contracting.

### **2. ACCEPTANCE**

This Order is Buyer’s offer to Seller. Seller’s acceptance is expressly limited to the written terms of this Order. No additional or different term shall be binding. Buyer hereby objects to any additional or different terms contained in Seller’s acceptance. Any of the following acts by Seller shall constitute acceptance:

- A. Signing and returning a copy of this Order;
- B. Commencing performance of any effort required to complete this Order;
- C. Informing Buyer of commencement of any effort required to complete this Order; or
- D. Shipping of any Products in performance of this Order.

### **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. Typed Purchase Order.
- B. Purchase Order Terms and Conditions
- C. Statement of Work.
- D. Specification/Drawing.
- E. Supplier Data Requirements List (SDRL)/Data Item Description (DID).
- F. Other Referenced Documents.

### **4. DELIVERY, TITLE AND RISK OF LOSS**

- A. The FOB point shall be as designated in the Order. Risk of any loss and/or damage to Products occurring before receipt at the delivery point specified shall be Seller's responsibility. 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. Unauthorized overshipments and early shipments shall be returned 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) cancel 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 of the essence in the performance of this Order.

## **5. INVOICE AND FREIGHT BILL**

Seller shall send a separate invoice for each shipment and shall include the following information taken from Buyer's Purchase Order: Purchase Order number, item number, part serial number (if serialized), part number, 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. 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.

## **6. PAYMENT**

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.

## **7. SET-OFFS**

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

## **8. PACKING AND SHIPPING**

Damage resulting from improper Product packaging will be charged to Seller. Seller shall, unless otherwise stated in the Order:

- A. Prepare all Products for shipment to prevent damage or deterioration;
- B. Package in accordance with best commercial practices;
- C. Secure the lowest lawful transportation rates;

- D. Comply with carrier's classifications, tariffs, and packaging instructions; however, Seller shall notify Buyer, before shipping, of any conflict between Buyer's and carrier's packaging requirements;
- E. Pay all charges for preparation, packaging, packing, boxing or crating;
- F. Pay all cartage and shipping (except forward freight collect when free on board [FOB] origin [place of shipment]);
- G. Make one daily shipment of all Products by the same means of transportation, to the maximum extent possible;
- H. Number and mark each container with a consecutively assigned container number and with the applicable Order number;
- I. Indicate the container, Order number, item, serial (if serialized), part (from the face of this Order) and lot or batch number (if applicable) on the packing sheets and bills of lading;
- J. Place one copy of the packing sheet inside the first container and attach one copy to the outside of the container;
- K. Instruct the Shipper to include the Order number on the freight invoice; and
- L. Not declare the shipment value unless tariff rates or rating is dependent upon the released or declared value; then, declare the maximum value for the lowest rates or rating.

## **9. INSPECTION & ACCEPTANCE**

Unless otherwise specified in Supplier Quality Assurance Requirements ("SQAR") incorporated in this Order, Buyer's final inspection and acceptance shall be at destination. Failure to inspect and accept or reject Products shall not relieve Seller from responsibility for compliance with Order requirements nor impose liability on Buyer.

## **10. NON-CONFORMING GOODS.**

Buyer and Seller agree that the Products ordered pursuant to the Order are unique goods. If Seller fails to deliver or delivers defective or non-conforming Products, Buyer may:

- A. Accept all or part of the defective or non-conforming Products at an equitable price reduction;
- 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 cost;
- C. Make, or have a third party make, all repairs, modifications, or replacements (the "Corrections") necessary to enable such Product to comply in all respects with Order requirements and charge the cost incurred to Seller; or
- D. Rescind this Order.

## **11. WARRANTY**

- A. Seller warrants, to Buyer and purchasers of Buyer's Products, that all Products delivered under this Order will: (1) be free from defects in materials, workmanship, and manufacturing processes; (2) be suitable for the purposes intended whether expressed or reasonably implied; (3) conform to the requirements of this Order, including, but not limited to, the applicable descriptions, specifications, and drawings, if any, (4) be free from defects in design for any Products or any portions thereof which are manufactured, in whole or in part, in accordance with designs not furnished by Buyer; and (5) be free of all liens and encumbrances. The warranty set forth above shall remain in effect for forty-eight (48) months after delivery to Buyer's customer. Buyer may give notice to Seller of any breach of the warranties of this clause no later than six (6) months after expiration of the warranty period set forth above, and notice must be given within said time period except for latent defects, gross negligence, fraud, or such gross mistakes as amount to fraud.

- B. If any Product fails to comply in any respect to the warranty set forth above and Seller has been given notice of such noncompliance within the period of time set forth above, Buyer shall have the option, in its sole discretion, at Seller's expense, to (1) require Seller to promptly make all repairs, modifications, or replacements (the "Corrections") necessary to enable such Product to comply in all respects with said warranty; or (2) make, or have a third party make, all Corrections necessary to enable such Product to comply in all respects with said warranty.
- C. In addition to the actual cost of any Correction, Seller shall also be responsible for (1) all direct labor costs incurred in the actual removal and reinstallation of the defective Product, provided that the number of manhours used to establish such removal and reinstallation costs shall not exceed Buyer's reasonable estimate of the direct manhours required for the performance of such work; (2) all administrative costs incurred by Buyer in identifying, determining the disposition of, and processing required documentation for the nonconforming Product, provided that this cost shall be based upon Buyer's best estimate of the historical costs for such effort; (3) transportation and insurance costs for Product corrected pursuant to the provisions of this clause; and (4) all delay and disruption costs incurred by Buyer, provided that such cost shall not exceed Buyer's reasonable estimate of the cost based on labor hours at a dollar per rate which represents manufacturing expense directly attributable to lack of a conforming Product from Seller.
- D. Any Product to which a Correction has been made by Seller, Buyer, or a third party under this warranty shall be warranted by Seller for twelve (12) months after the date of such Correction or the unexpired remainder of the warranty period as specified herein, whichever period is greater. However, Seller shall not be held liable for defects or failures attributable to misuse or negligent Correction by Buyer or any third party.
- E. If Buyer requires Seller to repair, modify or replace a noncompliant Product, Seller shall complete any Corrections to such Product at its facilities within a period of ten (10) working days or less from receipt of Product, unless a longer period is approved by Buyer in writing. Seller shall process and reimburse Buyer for each claim by Buyer asserted under this warranty within ten (10) days from receipt of Buyer's claim. In the event Buyer's claim is disallowed by Seller, Seller shall provide detailed explanation in writing of the reasons for such disallowance. Seller's obligation to meet the delivery schedule established in this Order shall not be affected by any Corrections required by this clause.
- F. Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by its customers and users of customer's Product.
- G. 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.

## **12. CHANGES**

- A. Changes. 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) quantity of Product (increase or decrease), (5) delivery schedule(s); (6) place of inspection; and (7) place of acceptance.
- B. Adjustment. If the change causes an increase or decrease in the cost or time required to perform this Order, whether or not changed by the change order or Purchase Order Change Notice, an equitable adjustment shall be made in the purchase price and/or delivery schedule and the Order shall be modified in writing accordingly.
- C. Claim. Any claim shall be unconditionally waived unless asserted in writing and delivered to Buyer within 15 days of the date of the written change order.

- D. Obsolescence. 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. Claim Verification. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.
- F. Obligation to Proceed. 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.

### **13. BUYER AUTHORIZATION**

- A. Buyer's authorized purchasing representative has sole authority to make contractual commitments on behalf of Buyer, provide contractual direction, and change contractual requirements as defined in the Order.
- B. Buyer's representatives other than Buyer's authorized purchasing representative may release to Seller information applicable to this Order. If information so provided to the Seller changes the contractual requirements and/or performance of the Order, Seller shall not act on that information and it shall not be contractually effective until Seller receives written contractual direction to act from Buyer's authorized purchasing representative.

### **14. 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 reduced to writing and submitted 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. Any dispute that 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 bring suit in federal or state court.
- C. Unless otherwise agreed to in writing by the Parties, venue and jurisdiction for all legal proceedings of any kind or nature brought to enforce any provisions of this Order shall lie within the state from which the Order was issued.
- D. 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.
- E. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY EITHER SELLER AGAINST BUYER OR BUYER AGAINST SELLER ON ANY MATTER WHATSOEVER ARISING UNDER, RELATING TO, OR IN ANY WAY CONNECTED WITH THIS ORDER, THE RELATIONSHIP OF SELLER AND BUYER OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE OR REGULATION NOW OR HEREAFTER IN EFFECT.

### **15. ADEQUATE ASSURANCE OF PERFORMANCE**

- A. If at any time Buyer has reasonable grounds for insecurity whether Seller's performance will be full, timely, and continuing in accordance with the requirements of this Order, Buyer may

request, by notice to Seller, satisfactory assurances in writing that Seller is able and willing to perform all of its respective obligations under this Order.

- B. Seller shall provide with its assurances of performance any information, reports, or other materials, prepared by Seller as Buyer may reasonably request. Upon Buyer's request and as soon as practicable, Seller shall make available employees, including members of Seller's senior management, to meet with Buyer to discuss those assurances of performance.
- C. If Seller does not provide adequate written assurances within fifteen (15) days of Buyer's notice and request, Buyer may, at its option, treat this Order as breached by Seller, or as canceled.

## **16. 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.

## **17. 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) Fails to provide adequate assurances of performance in accordance with Adequate Assurance of Performance clause herein;
  - (4) Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or for reorganization, 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 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.

#### **18. 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.

#### **19. BUYER’S PROPERTY**

- A. Buyer shall retain title to all Buyer property furnished to Seller (i.e., dies, molds, jigs, tools, materials, etc.). Seller shall label, maintain and dispose of Buyer’s property, including scrap, according to Buyer’s direction and Seller shall be responsible for all loss or damage.
- B. During the entire contract period, 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 any 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, explosion, riot, civil commotion, aircraft, earthquake, flood or other acts of nature during such time as they remain in Seller’s possession.

#### **20. 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.

## **21. TAXES**

Seller's prices include applicable federal, state and local taxes.

## **22. 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 set-off or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller; and
  - 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 any assignee.

## **23. 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.

## **24. PROPRIETARY INFORMATION**

- A. 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.
- B. 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.
- C. 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 the Buyer.
- D. Neither the existence of this Order nor the disclosure of Proprietary 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 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.

## **25. 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 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.

## **26. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY**

Seller shall defend, indemnify, and hold Buyer, Buyer’s officers, agents, employees, and customers harmless against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Products delivered under this Order or, at Seller’s option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. 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 from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer.

## **27. 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.

## **28. INDEMNITY & INSURANCE**

- A. During the entire contract period and irrespective of the place of performance, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverages in the minimum limits indicated:
  - 1. Commercial General Liability - \$1,000,000 per person/\$2,000,000 per occurrence bodily injury and/or property damage (alternative: \$2,000,000 combined single limit {CSL}). Coverages shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
- B. Whenever performance requires work on Buyer’s customer, or Buyer’s installation, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the additional following insurance coverage in the minimum limits indicated:
  - 1. Automobile Liability - \$1,000,000 per person/\$2,000,000 per occurrence bodily injury and/or property damage (alternative: \$2,000,000 combined single limit {CSL}) covering all owned, hired and non-owned vehicles.

2. Workers' Compensation and Employer's Liability - The workers' compensation insurance coverage shall be as required by the laws of the state in which the work is performed regarding such insurance. The employer's liability insurance limit shall be \$1,000,000.
- C. All insurance required as a part of this Order shall be placed with insurance companies which are authorized to do business under the laws of the state or states in which the installation is located and shall be in a form reasonably acceptable to Buyer. All insurance shall contain a provision prohibiting cancellation or material revision except upon at least thirty (30) days prior written notice to Buyer.
- D. Upon request, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates. Insurance coverage, except for workers' compensation, shall provide that Buyer is named as an additional insured with waiver of subrogation for each required insurance coverage. Insurance coverages 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.
- E. 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.

## **29. 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. 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.

## **30. COMPLIANCE WITH LAWS**

- A. Seller warrants that it shall comply with all applicable federal, state and local laws, rulings, and regulations in effect on the date of this Order.
- B. Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

## **31. 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.

## **32. HAZARDOUS MATERIAL**

- A. If this Order involves delivery of any hazardous material, packaging and shipment of such material must be made in accordance with the Hazardous Materials Regulations Title 49 CFR, Occupational Safety and Health Administration Regulation, Title 29 CFR. A Materials Safety Data Sheet (MSDS) shall be provided to Buyer by Seller as a condition of this Order. Seller must submit the most current MSDS available. Unless there are changes affecting the characteristics and composition of the hazardous material previously reported, only one submission to Buyer is required. An MSDS from the manufacturer will satisfy these requirements for distributors, dealers,

jobbers and industrial suppliers who must comply with this clause, however, in no event shall the MSDS bear an issue date earlier than 24 months before the date of submission. .

- B. The warning label required on hazardous material by 29 CFR 1910.1200 shall not be obscured by other stamps or labels. When an MSDS is required, Seller shall mail it separately to the address on the face of this Order to the attention of the Safety Manager.
- C. By acceptance of this Order, Seller certifies: (1) Compliance with this clause; (2) an up to date MSDS will be submitted prior to delivery of any hazardous material; or (3) that no hazardous material will be delivered, as applicable.

### **33. ENVIRONMENTAL REQUIREMENTS**

Seller shall comply with all applicable federal, state and local laws, regulations, and ordinances relating to preservation and protection of the environment including, without limitation, those relating to “Clean Air”, “Clean Water”, and the transportation, use, handling, storage, disposal, recycling of hazardous and toxic chemicals, substances, or wastes.

### **34. ASBESTOS**

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

### **35. 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.

### **36. EXPORT AND IMPORT COMPLIANCE**

In addition to and without limiting the clause “Proprietary Information” herein, Seller shall comply with the laws and regulations of the United States relating to exports and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). In particular, Seller shall not disclose any technical data, nor deliver or export any Product manufactured by use of technical data, out of the United States, or to foreign entities within the United States, without proper written authorization from the United States Government.

### **37. RELIANCE**

Seller represents and warrants that Seller is an expert fully competent in all phases of the work involved in producing and supporting the Products purchased under this Order, and Seller agrees that Buyer is relying on such representation and warranty by Seller. Seller agrees that it will not deny any responsibility or obligation to Buyer on the ground that Buyer approved any documentation prepared by Seller, or participated in design reviews or first article approval processes or similar reviews, or that Buyer or Buyer's customer provided documentation, specifications, recommendations, or assistance in any phase of the work required to produce or support the Products. Seller acknowledges that, as a part of Seller's proposal effort, it had an opportunity to review relevant documentation. Seller further warrants that it did such a review, that it notified Buyer in writing of any missing documentation, deficiencies or concerns that Seller identified in any documents, and that the issues raised by Seller were adequately addressed in this Order at the time of acceptance.

### **38. 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.

### **39. RELEASE OF INFORMATION AND ADVERTISING**

Seller shall not, without prior written consent of Buyer, make any disclosure, news release or public announcement, denial or confirmation of same, of any part of the subject matter of this Order or in any manner advertise or publish the fact that Seller has supplied or contracted to supply to Buyer the items mentioned herein except as may be required to perform this Order. Disclosure to authorized Government sources is exempt from this restriction unless otherwise indicated herein

### **40. PRICE WARRANTY**

Seller warrants that the Product's price does not exceed the price charged by Seller to any other customer purchasing the same or similar Products in like or smaller quantities under similar conditions. Seller agrees to reimburse Buyer promptly upon the discovery of a violation of that principle in the amount of the difference between the lower price charged and that charged Buyer.

### **41. 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.

### **42. PARTIAL INVALIDITY**

If any provision of this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

### **43. COMPLETE AGREEMENT**

This Order is intended by the Parties as a 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, and agreements between the Parties, whether 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.

### **44. 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.

#### **45. EXCUSEABLE DELAY**

- A. If delivery of any Product is delayed by unforeseeable circumstances beyond the control and without the fault or negligence of Seller or of its suppliers or subcontractors (any such delay being hereinafter referred to as "Excusable Delay"), the delivery of such Product shall be extended for a period to be determined by Buyer after an assessment by Buyer of alternate work methods.
- B. Excusable Delays may include, but are not limited to, acts of God, war, riots, acts of government, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes or unusually severe weather, but shall exclude Seller's noncompliance with any rule, regulation or order promulgated by any governmental agency for or with respect to environmental protection. However, the above notwithstanding, Buyer expects Seller to continue production, recover lost time and support all schedules as established under this Order. Therefore, it is understood and agreed that (i) delays of less than two (2) days' duration shall not be considered to be Excusable Delays unless such delays shall occur within thirty (30) days preceding the scheduled delivery date of any Product and (ii) if delay in delivery of any Product is caused by the default of any of Seller's subcontractors or suppliers, such delay shall not be considered an Excusable Delay unless the supplies or services to be provided by such subcontractor or supplier are not obtainable from other sources in sufficient time to permit Seller to meet the applicable delivery schedules.
- C. If delivery of any Product is delayed by any Excusable Delay for more than three (3) months, Buyer may without any additional extension cancel all or part of this Order with respect to the delayed Products, and exercise any of its remedies in accordance with the Termination For Default clause herein.

#### **46. 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.

#### **47. CUSTOMER CONTACT**

Buyer's customer is responsible for all contact with customers regarding programs of Buyer's customer. Seller shall not make any contact with actual or potential customers on the subject of the customer's program without prior written consent of Buyer's customer; and Seller shall respond to any inquiry from actual or potential customers by requesting that the inquiry be directed to Buyer's customer. Seller shall, concurrently with such response, advise Buyer's customer of such inquiry, in writing, with a copy to Buyer.