

## **PURCHASE ORDER TERMS AND CONDITIONS**

- 1. ACCEPTANCE:** The purchase order submitted by Buyer (“Order”) referencing these terms and conditions, together with these terms and conditions and any other supplemental terms and conditions referenced on the Order, constitute the complete and final contract between Buyer and Seller (the “Contract”). The acceptance of the Order by acknowledgement, shipment of goods or performance of services shall constitute acceptance of the conditions set forth herein and the other terms of the Contract. No purported acceptance of the Order on terms and conditions which modify, supersede or otherwise alter these terms and conditions or other provisions of the Contract shall be binding upon Buyer. Any shipment of goods or performance of services by Seller shall be deemed to be only upon the terms and conditions contained herein and other provisions of the Contract, except to the extent that an authorized purchasing representative of Buyer may otherwise expressly consent in writing. Additional, different or inconsistent terms and conditions proposed by Seller in its quotation, acknowledgment or acceptance of the Order or otherwise are objected to and rejected. Buyer’s acceptance of goods from Seller shall not be deemed Buyer’s acceptance of any such additional, different or inconsistent terms and conditions.
  
- 2. DELIVERY:** Delivery must be in strict compliance with the schedule contained in the Order. All goods to be delivered hereunder shall be packaged to insure safe arrival at their destination, to secure the best transportation means and to comply with the requirements of common carriers. Delivery shall be made by Seller at such times and places and of such goods and quantities as may from time to time be specified by Buyer. If Seller fails to meet its schedule delivery dates and Buyer elects to call for expedited shipments, Seller will pay the difference between the method of shipping specified and the actual expedited rate incurred. Seller shall be responsible for any additional charges resulting from deviation from Buyer’s routing instructions. If Seller fails to make delivery promptly and regularly as required hereunder, Buyer may, in addition to other remedies available at law, terminate the Order by giving notice to Seller. Title and risk of loss shall remain with Seller until goods are delivered to the F.O.B. point specified herein. Notwithstanding such delivery, Seller shall bear risk of loss or damage to goods purchased hereunder from the time that Buyer gives notice of rejection of goods pursuant to the inspection provision of these terms and conditions. If Seller encounters or anticipates difficulty in meeting the delivery schedule, Seller shall immediately notify Buyer in writing, giving pertinent details, provided, however, that such data shall be informational only in character and shall not be construed as a waiver by Buyer of any delivery schedule or date or of any rights or remedies provided by law or the Contract. Parts fabricated in excess of or in advance of Buyer’s release are at Seller’s risk. Buyer reserves the right, without loss of discount privileges, to pay invoices covering goods shipped in advance of the schedule on the normal maturity after the date specified for delivery. Buyer also reserves the right, without loss of discount privileges, to pay invoices only after successful acceptance testing has been accomplished, when such test is performed by the Buyer and is a requirement in the Order. Buyer’s order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Shipping memos or packing lists must accompany materials. Buyer’s count or weight shall be final and

conclusive on shipments not accompanied by packing lists. Material must be in accordance with Buyer's instructions.

- 3. RIGHT OF ENTRY/INSPECTION:** Buyer, its customer and higher tier contractor may audit or inspect the products or goods referenced in the Order at all reasonable times and places, including during manufacture and before shipment. Seller shall provide all information, facilities and assistance necessary without additional charge. Such inspection shall include, without limitation, raw materials, components, work in process and completed products as well as drawings, specifications, and related data. Final inspection and acceptance shall be after delivery to the delivery point designated by Buyer. If any inspection or test is made by Buyer at Seller's facility or elsewhere, Seller shall provide reasonable facilities and assistance for the inspection personnel. Buyer may reject all goods supplied hereunder which are found to be defective. Goods so rejected may be returned to Seller at Seller's expense. At Buyer's request, Seller shall repair or replace defective goods at Seller's expense. Failure to discover defects in goods or payment for goods shall not constitute acceptance or limit any of Buyer's rights, including without limitation, those under the warranty provisions of the Contract. At Buyer's request, Seller shall maintain an inspection system acceptable to Buyer covering the goods furnished hereunder. Seller shall provide and maintain a quality control system acceptable to Buyer for the supplies covered by the Order.
- 4. OVERSHIPMENT:** Goods shall not be supplied in excess of quantities and shipping tolerances, if any, specified in the Order. Seller shall be liable for handling charges and return shipment costs for any excess quantities, and unless Seller agrees to pay for such costs, the overshipped material will be retained by Buyer at no cost. Buyer is under no obligation hereunder to notify Seller of any overshipments.
- 5. PRICES:** Unless otherwise specified, prices are F.O.B. destination and shall include all federal, state and local taxes: no charges will be allowed for packing, crating, drayage or storage. Seller warrants that prices charged for the goods are not higher than those charged to any other customer, including the Government, for goods of like grade and quality in similar or lesser quantities. Seller agrees that any price reduction for the goods after placement of the Order but prior to payment shall apply to the Order.
- 6. PAYMENT:** Seller shall be paid upon submission of properly prepared invoices in accordance with Buyer's invoicing instructions for materials and supplies delivered to and accepted by Buyer. Unless otherwise specified in the Order, payment will be due forty five (45) days after Buyer's receipt of the goods. Any adjustments in Seller's invoice due to shortages, rejection or other failure to comply with the provisions of the Order may be made by Buyer before payment. Discount periods shall commence ten (10) days after the latest of scheduled delivery, actual delivery, or receipt of invoice. No charges will be honored unless specified on the face of the Order. Invoices must be accompanied by transportation receipt, if transportation is payable as a separate item. Invoices shall be mailed in triplicate, only one (1) of which shall be identified as "Original", immediately after each shipment in accordance with the instructions on the Order. Each invoice shall contain the following certification:

“We hereby certify that these goods were produced in compliance with all applicable requirements of section 6.7 and 12 of the Fair Labor Standards Act of 1938, as amended, and all regulations and orders of the Administrator of the Wage and Hour Division issued under 14 thereof.”

Delays in receiving an invoice, errors or omissions on an invoice, or lack of supporting documentation required by the Order, will be cause for withholding payment without losing applicable discounts.

- 7. WARRANTY:** Seller warrants that all goods furnished pursuant to the Order will conform to all applicable specifications, instructions, drawings, data, samples or other descriptions furnished or adopted by the Buyer, and will be merchantable, of good material and workmanship, and free from defect, will be as described and advertised and fit for the intended purposes and will be free from all liens and encumbrances. These warranties are in addition to all other warranties expressed, implied or statutory. Seller shall indemnify, defend, and hold harmless Buyer from any breach of these warranties and this shall be without prejudice to any other rights or remedies of Buyer. Limitations on Buyer’s remedies or disclaimers of warranties in documents of Seller shall not be effective and are rejected. All warranties, together with Seller’s service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the goods and shall run to Buyer, its successors, assigns, customers at any tier, and ultimate user and joint users. The return to Seller of any defective or nonconforming goods and delivery to Buyer of any corrected or replaced goods shall be at Seller’s expense. Goods required to be corrected or replaced shall be subject to the provisions of this paragraph and the paragraph of these terms and conditions entitled “inspection” in the same manner and to the same extent a goods originally delivered under the Order.
- 8. COMPLIANCE WITH LAWS AND REGULATIONS:** Seller agrees to ascertain and comply with all federal, state and local laws, regulations, and orders applicable to the production, sale, and delivery of the goods and services covered by the Order. Upon request, Seller will furnish Buyer with certificates of compliance. Seller shall certify that the goods or services covered by its invoices are produced and/or rendered in accordance with the Fair Labor Standards Act of 1938, as amended. Unless exempted, Seller also certifies that they shall be produced in compliance with all applicable non-discrimination laws, regulations, and orders, including those relating to the provisions of Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), 38 USC Chapter 42, 4212 (Vietnam Era Veterans Readjustment Assistance Act) Section 503 of the Rehabilitation Act of 1973 (Handicapped Regulations), and the implementing regulations found at 41 CFR 60-1.1 & 2, 41 CFR 60-350, and 41 CFR 60-741, respectively, which are hereby incorporated by reference. Seller warrants that the goods or services delivered to Buyer comply with all applicable provisions of the Occupational Safety and Health Act and applicable regulations under the act and upon request, agrees to provide Buyer with all explanatory and factual information needed by it to verify such compliance and to enable Buyer to comply therewith and with any other laws and regulations applicable hereto. Seller further warrants compliance, where applicable, and without limitation, with all orders, standards, and regulations of the National Highway & Transportation Safety Administration,

Federal Aviation Administration, Environmental Protection Administration, Food and Drug Administration, Consumer Product Commission, and Occupations Safety and Health Act administration.

- 9. CHANGES:** Buyer may at any time by a written notice, and without notice to sureties or assignees, make changes to the Order and Seller agrees to accept such changes. If any such changes causes an in increase or decrease in the cost of, or the time required for the performance of any part of the work under the Order, or affects any other provisions of the Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and in such other provisions of the Order and the Contract as may be affected, and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this paragraph shall be asserted within twenty (20) days from the date of receipt of the written notice directing the change, provided, however, that Buyer, if Buyer decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under the Order. Failure to agree to any adjustment shall be a dispute within the meaning of the “Disputes” paragraph of these terms and conditions. However, nothing in this paragraph shall excuse the Seller from proceeding with the Order as changed. Any action taken by the Seller which affects any provision of the Order, including delivery and price, whether or not accomplished with the concurrence of Buyer’s employees, shall not entitle Seller to an equitable adjustment in accordance with this paragraph unless such action has been specifically directed by written notice issued by Buyer.
- 10. BUYER FURNISHED MATERIALS OR SUPPLIES:** Buyer may from time to time furnish Seller with materials or supplies which are required by Seller for the performance of the Order. In such event, an equitable reduction in the price shall be accomplished prior to delivery of such materials or supplies to Seller, or as soon thereafter as possible, but in no event later than thirty (30) days after such delivery.
- 11. RIGHTS AND RESERVATIONS:** All drawings, designs, information, tools, patterns, equipment and other goods supplied by Buyer, and proprietary rights embodied therein, are reserved, and the same shall not be used or reproduced for any purpose whatsoever except the performance of work under the Order, provided, however, that upon prior written notice to Buyer, and to the extent such use will not interfere with Seller’s performance of this or other orders from Buyer, Seller shall have the right to use goods in the manufacture of end goods for direct sale to the United States Government to the extent the Government has the right under its prime contracts with Buyer to authorize such use by Seller, provided Seller permanently identifies each such end item as having been manufactured by Seller for direct sale to the United States Government.
- 12. STOP WORK ORDER:** Buyer may at any time, by written notice to Seller, require Seller to stop all or any part of the work called for by the Order for a period of up to ninety (90) days after the notice is delivered to Seller (“Stop Work Order”). Upon receipt of the Stop Work Order, Seller shall forthwith comply with its terms and take reasonable steps to minimize the incurrence of costs allocable to the work covered by the Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Seller, or within any extension of that period of which the parties have agreed.

Buyer shall either cancel the Stop Work Order, or terminate the work covered by the Order as provided in the “Termination for Default” or the “Termination for Convenience” paragraphs of these terms and conditions, whichever may be appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order. An equitable adjustment shall be made in the delivery schedule or prices hereunder, or both, and the Order shall be modified in writing accordingly, if the Stop Work Order results in an increase in the time required for the performance of the Order or in Seller’s cost properly allocable thereto.

### **13. TERMINATION FOR DEFAULT:**

- (a) Buyer may, subject to the provisions of subparagraph (c) below, by written notice of default to Seller, terminate the whole or any part of the Order in any of the following circumstances: (i) if Seller fails to make delivery of the goods or to perform the Order within the time specified or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of the Order, or fails to make progress as to endanger performance of the Order in accordance with its terms, and does not cure such failure within a period of ten (10) days (or longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.
- (b) In the event Buyer terminates the Order in whole or in part as provided in subparagraph (a) above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for the same, provided that Seller shall continue the performance of the Order to the extent not terminated hereunder.
- (c) Except with respect to defaults of subcontractors, Seller shall not be liable for any excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. Such causes include acts of God, or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. The terms “subcontractors(s)” shall mean subcontractor(s) at any tier.
- (d) If the Order is terminated as provided in subparagraph (a) above, Buyer, in addition to any other rights provided in these terms and conditions or available under applicable law, may require Seller to transfer title and deliver to Buyer or its designee, in the manner and to the extent directed by Buyer, (i) any completed goods, and (ii) such partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereafter called “manufacturing materials”) as Seller has specifically produced or specifically acquired for the

performance of such part of the Order as has been terminated, and Seller shall, upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer or the Government has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the price set forth in the Order. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Buyer and Seller, failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the paragraph of these terms and conditions entitled "Disputes". Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials such sum as Buyer determines to be necessary to protect Buyer or the Government against loss because of outstanding liens or claims of former lien holders.

- (e) If, after notice of termination of the Order under the provisions of this paragraph, it is determined for any reason that Seller was not in default under the provisions above, or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience of Buyer.
- (f) The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under these terms and conditions.
- (g) It is understood and agreed that Seller shall reimburse Buyer for reasonable attorney fees necessary incurred by Buyer in order to enforce the provisions of the Order and Contract, or to secure costs and/or damages for the breach thereof, or in pursuing any other remedy hereunder by law or in equity.

**14. TERMINATION FOR INSOLVENCY:** In the event of the institution of any proceedings by or against Seller in bankruptcy or insolvency or under any other provisions of the Bankruptcy Act including proceedings under Chapter X and XI thereof, or the appointment of a receiver or trustee or an assignment for the benefit of creditors of Seller, Buyer may terminate the Order. Any termination under this paragraph shall be deemed to be a termination for default in accordance with the paragraph of these terms and conditions entitled "Termination for Default".

**15. TERMINATION FOR CONVENIENCE:** Buyer may at any time by written notice terminate all or any part of the Order for Buyer's convenience. If the Order is terminated, in whole or in part for Buyer's convenience, Seller shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Seller's actual performance of work under the Order to the effective date of termination, plus a reasonable profit thereon, provided that no amount shall be paid to Seller for (i) any anticipatory profits related to work under the Order not yet performed, or (ii) costs incurred due to Seller's failure to terminate work as ordered on the effective date of termination. In no event shall the total amount paid under this provision exceed the prices set forth in the Order for the work terminated. If a Government contract number is cited on the face of the Order, a termination

for Buyer's convenience shall be accomplished in accordance with DAR 8-706, as in effect on the date of the Order, which shall be controlling over any conflicting provisions hereof.

- 16. INDEMNIFICATION:** Seller shall defend, indemnify, and hold harmless Buyer, its officers, employees, agents, representatives, customers, and users of Seller's goods and services from and against all demands, claims, damages, loss, or liabilities of every kind and nature (including attorney fees and recall costs) based upon any allegations of, or resulting from, any defect or non-conformity in the goods or services purchased by Buyer, or any default or breach of the Contract by Seller, or any act or omission of Seller, its agents, employees, or representatives, or those of its subcontractors. All obligations of Seller to indemnify, hold harmless, protect and defend are in addition to warranty obligations and all other rights or remedies of Buyer and survive acceptance and use of the goods or services, payment and completion, termination, or cancellation of the Contract.
- 17. TOOLING AND DATA:** All drawings and specifications and all materials, including tools, special dies and patterns, furnished or paid for by Buyer shall be the property of Buyer, shall be subject to removal at any time without additional cost upon demand by Buyer shall be used only in filing the Order from Buyer, and shall be kept separate from other drawings, specifications and materials, and identified as the property of Buyer. The information contained in reports, drawings, documentation or other records which are furnished to Seller by Buyer relative to the Order, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for completion of the Order, in which event the subcontractor shall have the same obligation of nondisclosure. Seller assumes all risk and liability for loss or damage thereto, except for normal wear and tear. Seller shall supply to Buyer detailed statements of inventory upon request of Buyer. Upon completion, termination or cancellation of the Order, Seller shall return all drawings and specifications to Buyer, in the event Buyer requests return of any such goods, within thirty (30) days after the effective date of completion, termination or cancellation. Any such property of Buyer shall remain subject to the foregoing restrictions on use, reproduction and disclosure. Buyer may, at any time, reimburse Seller for the cost of part or all special tooling paid for by Seller and upon payment therefore shall become the owner thereof, entitled to possession at the completion of the Order, or at such earlier date as the parties may agree. Upon termination of the Order, either for cause or convenience, Buyer may, at Buyer's option, use on a nonexclusive basis, all drawings, documents or other records related to the Order whether created by Buyer or Seller without further compensation to Seller. Seller may not disclose the existence of the Order or the goods to be supplied hereunder without Buyer's written consent, except to subcontractors who shall have the same responsibility.
- 18. PATENTS AND COPYRIGHTS:** Seller agrees to defend, indemnify and hold harmless Buyer, its customers and agents against any liability, including without limitation costs, expenses, and attorneys' fees, for or by reason of any actual or alleged infringement of any patent or copyright arising out of the manufacture, use, sale, delivery or disposal of goods furnished under the Order and not attributable to Seller's compliance with Buyer's specific written instructions. Buyer shall notify Seller as soon as practicable, of any claim of infringement received by Buyer. In the event of any such claim against Buyer, Seller shall furnish to Buyer, when so notified by Buyer, all evidence and information in possession of

Seller pertaining to such claim. Seller shall report to Buyer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement relating to the performance of the Order of which Seller has knowledge. Where payment is made for experimental, developmental, or research work performed under the Order, Seller shall disclose and does hereby assign to Buyer all inventions resulting therefrom and does grant Buyer the right to use for any purpose all data specified to be delivered hereunder. However, if the Order is issued under a United States Government prime contract or subcontract, the following paragraphs apply:

- (a) Patents. The clauses of Section VII and the provisions of Section IX, Part 1, of DAR which are incorporated in the prime contract under which this P.O. is issued, are hereby incorporated herein by reference and Seller agrees to comply with said clauses and provisions as "Contractor". However, no Patent Rights clause is incorporated in this P.O. unless it involves research and development effort.
- (b) Data. The clauses of Section VII and the provisions of Section IX, Part 2. of DAR, which are incorporated in the prime contract under which this P.O. is issued, and hereby incorporated herein by reference and Seller agrees to comply with said clauses and provisions as "Contractor".
- (c) The above referenced clauses and provisions will be identified or copies will be furnished upon request.

**19. INSURANCE; WORK ON BUYER'S PREMISES:** Seller agrees at its own expense to maintain insurance in kinds and amounts deemed reasonable by Buyer and to submit adequate certificates of insurance coverage when requested by Buyer. Without limitation, Seller shall maintain public liability insurance, including product liability, completed operations, contractor's liability and protective liability, automotive liability insurance (including non-owned automotive liability), comprehensive general liability, workmen's compensation and employee's liability insurance, that will adequately protect Buyer against all demands, claims, damages, loss, liabilities or expenses (including attorney fees) for which Seller is obliged to indemnify Buyer. If Seller, either as principal or by agent or employee, enters upon the property of Buyer in order to do any work, Seller agrees to maintain the following types of insurance coverage: (1) worker's compensation insurance or qualification as a self-insurer to satisfy the laws of the state in which the work will be performed; (2) employer's liability insurance or bodily injury per accident with limits of not less than \$100,000 and bodily injury by disease with limits of not less than \$100,000 per policy; (3) commercial general liability insurance for personal injury and property damage, including contractual liability insurance, with combined limits of not less than \$1,000,000 per occurrence; and (4) automobile liability insurance for personal injury and property damage with combined limits of no less than \$1,000,000 per occurrence. Seller's worker's compensation insurer or Seller, if self-insured, agrees to waive all rights of subrogation against Buyer except for claims caused by Buyer's sole negligence. Also, Seller will name Buyer as an additional insured on its commercial general liability and automotive liability policies. Seller's insurance will be primary without right of contribution of any other insurance carried by or on behalf of Buyer.

**20. ASSIGNMENT AND SUBCONTRACTING:** Seller shall not assign the Contract or the Order or any obligations under the Contract, nor shall Seller subcontract for completed or

substantially completed goods or services purchased under the Order without the prior express written consent of Buyer. This limitation shall not apply to the purchase by Seller of standard commercial supplies or raw materials. Seller shall select subcontractors (including supplies) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Order.

- 21. NOTICES:** All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing personally, by a nationally recognized overnight delivery service or sent by United States certified or registered mail addressed to Seller or Buyer, as the case may be, at the addresses set forth on the face of this order, with postage thereon fully prepaid. The effective time of notice shall be at the time of mailing.
- 22. WAIVER:** No waiver by Buyer of any breach of the Order or the granting of an extension for performance thereunder shall be deemed to be a waiver of any other or subsequent breach.
- 23. DISPUTES:** Pending resolution of any dispute hereunder. Seller shall proceed diligently with the performance of work, including the delivery of goods in accordance with Buyer's direction. Upon resolution of the dispute, the Order shall be equitably adjusted, if necessary, to reflect such resolution.
- 24. APPLICABLE LAW:** The validity, performance and construction of the contract arising from the acceptance of the Order shall be governed by and construed in accordance with the laws of the state in which Buyer's facility issuing the Order is located, excluding its choice of law rules. Jurisdiction and venue of any suit between the parties hereto arising out of or connected with this order or the goods furnished hereunder, shall lie only in the county and state in which such facility is located.
- 25. LIMITATION ON BUYER'S LIABILITY:** Under no circumstances will Buyer be liable for consequential, incidental, or special damages of any kind or for any damages in excess of the price allocable to the portion of the good or services on which the claim is based. An action on any claim asserted by Seller against Buyer must be commenced within one year after the occurrence of the act on which the claim is based.
- 26. GOVERNMENT CONTRACTS:** If the Order is issued under a United States Government prime contract or subcontract, the clauses listed in attachments to the Order, are incorporated herein by reference and the terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth herein. The term "Contractor" shall mean Seller, the term "Contract" shall mean this contract, and the terms "Government", "Contracting Officer", and equivalent phrases shall mean Buyer, as applicable, to fulfill the intent of such clauses.