

## GENERAL TERMS AND CONDITIONS FOR PURCHASE ORDERS

DEFINITIONS: "Order" means the ordering document issued by Buyer, including these General Terms and Conditions for Purchase Orders and any referenced documents; "Seller" means the person or entity to which this Order is addressed and issued; "Buyer" means the entity which issued this Order; "Products" means the goods or services furnished by Seller pursuant to this Order, including, without limitation, materials, drawings, data, media, information and other tangible and intangible property; "Procurement Representative" means Buyer's authorized representative whose name appears on the face of this Order.

1. ACCEPTANCE. Seller shall be deemed to have accepted this Order upon the earliest of: (a) written acknowledgment by Seller, (b) commencement of performance by Seller, (c) Seller's receipt of any payment, partial or full, from Buyer under this Order or (d) five business days from receipt of Order. Buyer hereby rejects any different or additional terms in Seller's acceptance of this Order or in any Seller provided documentation (e.g. any preprinted terms on the back of Seller's invoice).

2. PACKAGING and SHIPMENT. Seller shall make deliveries of all Products as specified in this Order without any additional charges, unless otherwise provided for in this Order. Unless otherwise specified on the face of this Order, all Products are to be packed in accordance with ISTA Standards unless otherwise specified on the purchase order. All shipments of Products shall meet the shipping requirements found in Department of Transportation Regulations 49 CFR, Occupational Safety and Health Administration's Hazardous Communication Standard found in 29 CFR and the Dangerous Goods Regulation of the International Air Transport Association. Unless otherwise specified in this Order, Seller shall provide commercial bills of lading with each shipment and invoice, including the number of pieces in and weight of the shipment. Seller shall plainly mark Order numbers and line item numbers on all invoices, packages, all relevant MSDS documents, bills of lading and shipping orders. WITH EACH SHIPMENT SELLER SHALL PROVIDE A PACKING LIST CLEARLY REFERENCING THIS ORDER NUMBER, ORDER LINE ITEM, APPLICABLE PART NUMBERS, DESCRIPTION OF THE PRODUCTS, SIZES, QUANTITIES, AND SERIAL NUMBERS (IF APPLICABLE). THE PACKING LIST MUST CLEARLY DELINEATE LINE ITEMS WHEN MORE THAN ONE LINE ITEM IS INCLUDED IN THE SHIPMENT. Buyer's count and weight shall prevail relative to any shipment discrepancies. The Seller shall mark containers or packages with any necessary lifting, loading or other handling instructions. Shipments from foreign countries containing wood packaging materials (WPM) must conform to the requirements of the requirements of Federal Register 7 CFR Part 319. Further information is available at [www.cbp.gov](http://www.cbp.gov) (US Customs and Border Protection).

3. TITLE and RISK OF LOSS. Title to Products shall pass to Buyer only upon Buyer's final acceptance of the Products. Risk of loss or damage shall remain with the Seller until (a) delivery to a common carrier if transportation is FOB Origin (as defined by 2010 INCOTERMS) ; or (b) delivery to Buyer at destination if transportation is FOB Destination (as defined by 2010 INCOTERMS), except that risk of loss or damage to Products that do not conform with the requirements of this Order shall remain with the Seller until cured and/or until Buyer's final acceptance. The FOB point shall be FOB Origin, unless otherwise specified in this Order.

#### 4. INSPECTION.

(a) All Products, including raw materials and components, and Seller's and its subcontractors' manufacturing facilities shall be subject to inspection and test by the Buyer, and the Government if this Order is issued under a U.S. Government prime contract, to the extent practicable at all times and places. The exercise of the right of inspection and test, however, shall in no way relieve Seller of its obligation to furnish all Products in strict accordance with this Order. If inspection and test are made on the premises of Seller or any subcontractor of Seller, Seller or such subcontractor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspection and test required. All inspection tests shall be performed in such manner as not to cause delay.

(b) All Products shall be subject to final inspection and acceptance by Buyer after delivery, notwithstanding prior payment. It is expressly agreed that payment does not constitute final acceptance. Buyer, at its option, may either reject any Products not in conformity with the requirements and terms of this Order or rework the same at Seller's expense. In the event sampling techniques are utilized by Buyer to ascertain Product acceptability, entire lots may be returned when acceptable quality levels indicate rejection. Buyer may return rejected Products at Seller's risk and expense at the full invoice price plus transportation charges, unless otherwise noted on the purchase order. No replacement of rejected Products shall be made unless specified by Buyer. All Products delivered under this Order shall strictly comply with the technical requirements defined in this Order, absent Buyer's prior written consent. Final acceptance shall not be conclusive with respect to latent defects, fraud or such gross mistakes as amount to fraud.

(c) Seller will take any and all necessary steps to prevent the introduction of counterfeit parts into the supply chain. If and when parts are acquired, they will be purchased directly from the original manufacturer, or from a distributor, reseller or aftermarket supplier who is franchised or authorized by the original manufacturer.

(d) All custom products produced specifically for the Buyer will be inspected by the Seller prior to shipment to the Buyer. All Material covered by this Order may be inspected and tested by the Buyer or its designee at the Seller's premises. If the Buyer so elects to inspect or test successful completion of the Material, such inspection and testing shall be a prerequisite to the Buyer's acceptance of the

Material. If deemed necessary by the Buyer, the Seller shall provide without charge, all reasonable facilities and assistance for such inspection and test.

Any inspection records relating to Material covered by this Order shall be available to the Buyer during the performance of this Order and for such longer periods as specified by the Buyer.

5. DELIVERY. Deliveries shall be strictly in accordance with Buyer's delivery schedule.. If Seller fails to meet such schedule, Buyer, without limiting its other remedies, may direct expedited routing and the difference between the cost of expedited routing and the cost of the original routing shall be the responsibility of the Seller. Seller shall not make product commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule, and, unless otherwise specified herein, no deliveries shall be made more than 5 business days in advance of Buyer's delivery schedule without prior approval from the Buyer. At Buyer's sole discretion, early shipments or excess quantities may be returned at Seller's risk and expense at the full invoice price plus transportation charges. WHEN THE SELLER HAS REASON TO BELIEVE THAT DELIVERIES WILL NOT BE MADE AS SCHEDULED, WRITTEN NOTICE SETTING FORTH THE CAUSE AND EXPECTED DURATION OF THE ANTICIPATED DELAY MUST BE GIVEN IMMEDIATELY TO THE BUYER.

When Seller anticipates making any of the following changes to custom products built specifically for the Buyer, the Seller shall provide written notification of the anticipated change to Buyer at least ten (10) days prior to making the change:

- Change in Seller's suppliers, which have been previously approved by Buyer.
- Change in Seller's quality or process certification (NADCAP, ISO/AS, Government, etc.).
- Change in machinery or inspection methods/techniques, which have been previously approved by Buyer.
- Change in Seller's plans or processes, including any control or frozen plans, which have been previously approved by Buyer.
- Change of geographical location for manufacture of the Products.

At least five (5) days prior to the occurrence of any of the following, Seller shall provide written notification of such event to Buyer:

- Change in company ownership.

- Change in senior or site management, including Quality management.
- Major reduction/change in workforce.
- Acquisitions that may impact current operation or key personnel.

6. INVOICES. An itemized invoice must be sent promptly to Buyer's Accounting Department for Products delivered and accepted as herein provided. The invoiced items must be consistent with the line items listed in the purchase order. Delays in receiving invoices and also errors and omissions in same shall be considered just cause for withholding payment without losing any discount privilege. Payment terms are net thirty (30) days unless otherwise provided on the face of this Order. Except as otherwise provided in this Order, no payment for extras shall be made.

7. WARRANTY. Seller warrants to Buyer and its customers that all Products covered by this Order shall conform to the specifications, drawings, samples, symbols or other description specified by Buyer and shall be new, merchantable, and free from defects in material and workmanship and that all Products covered by this Order, which are in accordance with Seller's design, drawings or specifications, shall be fit and suitable for the purpose specified. Seller warrants that the Products shall continue to be free from defects in material and workmanship for a period of twelve (12) months from the date of final acceptance, unless the vendor's standard warranty is for a longer period or unless otherwise stated on the face of the Order. These warranties are in addition to all other warranties specified herein or implied by law and shall survive acceptance and payment. All warranties shall run to Buyer, its successors, assigns, customers, and the users of the Products. In addition to any other remedies available to Buyer, Buyer may return any nonconforming Products to Seller for correction or replacement, with all transportation charges for return and redelivery to be borne by Seller. If the Seller fails to accept return of nonconforming Products or fails within ten days to correct or replace same, Buyer, without limiting its other rights, may, at Seller's expense, correct or replace the nonconforming Products. Products which have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction is identified, and such repaired or replacement Products shall be subject to the provisions of this clause to the same extent as the original Products. All warranties shall then run from the delivery date of the repaired or replaced Products.

#### 8. SPECIAL TOOLS.

(a) Unless otherwise provided herein, special tools, equipment, dies, jigs, fixtures and patterns (hereinafter collectively referred to as "Special Tooling"), used in the manufacture of Products shall be

furnished by and at the expense of Seller, shall be kept in good condition, and, when necessary, shall be replaced by Seller without expense to Buyer.

(b) Seller shall include the substance of this clause in all purchase orders and subcontracts issued by it hereunder.

9. BUYER'S PROPERTY IN SELLER'S POSSESSION. All tools, special dies, molds, patterns, jigs and any other property furnished to the Seller by the Buyer or specifically paid for by the Buyer for use in the performance of this Order shall be and remain the property of the Buyer and shall be used only in filling orders for the Buyer. Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto however caused. Seller shall clearly mark; maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Order. The Seller shall perform an annual inventory of the Buyers property. Seller shall immediately notify Buyer's Procurement Representative, in writing, if Buyer's property is lost, damaged, or destroyed. Without limiting the foregoing, Seller agrees to procure property insurance satisfactory to Buyer, insuring to the full insurable value thereof all of Buyer's property in Seller's possession, against loss of or damage resulting from fire or theft (including extended coverage, malicious mischief and vandalism) or Seller's negligence. Prior to commencing work hereunder, Seller shall provide Buyer with a certificate of insurance evidencing the property insurance coverage as set forth above. Such certificate shall contain the policy number, effective date, expiration date and a statement noting Buyer as an additional insured. Seller's applicable insurance policies shall be primary to all policies of the Buyer. Buyer shall not be liable for any loss, damage or expense resulting, directly or indirectly, from any delay in delivery or non-delivery of Buyer's furnished property or from any Buyer's furnished property that is determined to be defective. Buyer's liability for any claims in any way related to Buyer's furnished property is expressly limited to the replacement of defective property returned to Buyer by Seller within thirty (30) days of Seller's receipt of such defective property. Upon completion or termination of this Order, Seller shall notify Buyer in writing of any Buyer furnished property that remains in Seller's possession. Buyer shall then instruct Seller as to the return or disposition of such Buyer furnished property. If Buyer requests that its furnished property be returned, Seller shall deliver such property to Buyer in good condition, subject to ordinary wear and tear and normal manufacturing losses.

10. TAXES. Seller agrees that, unless otherwise indicated in this Order, the prices herein include all other applicable federal, state and local taxes. Seller agrees to accept sales and use tax exemption certificates when supplied by Buyer if acceptable to the taxing authorities. In case it shall be determined that any tax included in the prices herein was not required to be paid by Seller, Seller agrees to notify Buyer, to make prompt application for the refund thereof, to take all proper steps to procure the same, and, when received, promptly pay the same to Buyer.

## 11. CHANGES

(a) CHANGES INSIDE THE SELLER'S COMMITTED (AGREED UPON) LEAD TIME. Buyer may at any time by a written order inside the Seller's committed (agreed upon) lead time, and, without notice to sureties, if any, make changes within the general scope of this Order, in any one or more of the following: (a) drawings, designs or specifications, where the Products to be furnished are to be specifically manufactured for the Buyer in accordance therewith; (b) method of shipment or packing; (c) place or time of delivery; (d) property to be furnished by Buyer, and cancel part or all of the Order. If any such change causes an increase or decrease in the cost and/or the time required for performance of this Order, whether or not changed by Buyer's written order, an equitable adjustment may be sought in the price or delivery schedule or both, subject to Buyer's evaluation and negotiation. The negotiated settlement shall be documented in an appropriate written modification to this Order. Any claim by the Seller for adjustment under this clause must be asserted, in writing, within twenty (20) days from the date of notification of the change. Where the cost of Product made obsolete or excess as a result of a change is included in Seller's claim for adjustment, the Buyer shall have the right to prescribe the manner of disposition of such property. NOTHING IN THIS CLAUSE SHALL EXCUSE THE SELLER FROM PROCEEDING WITH THIS ORDER AS CHANGED.

(b) CHANGES OUTSIDE THE SELLER'S COMMITTED (AGREED UPON) LEAD TIME. Buyer may at any time outside the Seller's committed (agreed upon) lead time, and, without notice to sureties, if any, make changes within the general scope of this Order without cost, in any one or more of the following: (a) drawings, designs or specifications, where the Products to be furnished are to be specifically manufactured for the Buyer in accordance therewith; (b) method of shipment or packing; (c) place or time of delivery; (d) property to be furnished by Buyer, and cancel part or all of the purchase order.

12. ADVERTISING, ANNOUNCEMENTS AND NEWS RELEASES. Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish or issue any news release or make any public announcements or denial or confirmation of same concerning the fact that Seller has furnished or contracted to furnish the Buyer the Products herein mentioned. Seller shall include the substance of this clause in all purchase orders and subcontracts issued by it hereunder.

13. INTELLECTUAL PROPERTY. Seller agrees: (a) to defend, hold harmless and indemnify Buyer, its successors, agents and customers, against claims of direct or contributory infringement or inducement to infringe any proprietary right (including, without limitation, any patent, trademark, copyright, industrial design right or misuse or misappropriation of trade secret) and against any resulting damages or expenses, including attorneys' and other professional fees, settlements and judgments, arising in any way in relation to Products procured or provided by Seller (including, without limitation, their manufacture, purchase, use and/or sale), including such claims where Seller has provided only part of the Products, and Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specification, except to the extent such infringement is actually embodied in

designs created by Buyer that are required by this Order. Seller shall, at its own expense, either procure for Buyer the right to continue to sell and use the item or replace or modify the item so that it becomes non-infringing; (b) to waive any claim against Buyer, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against Seller for infringement of any proprietary right (including, without limitation, any patent, trademark, copyright, industrial design right or misuse or misappropriation of trade secret); (c) that Buyer and its subcontractors and direct or indirect customers have the worldwide, irrevocable right to repair, reconstruct or rebuild, and to have repaired, reconstructed or rebuilt, Products delivered under this Order without payment of any royalty or other compensation to Seller; (d) that manufactured parts based on Buyer's designs, drawings or specifications may not be used for Seller's own use or sold to third parties without Buyer's express written consent; (e) to assign to Buyer each invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of this Order; (f) to promptly disclose in an acceptable form to Buyer all such inventions, discoveries or improvements and to cause its employees to sign any papers necessary to enable Buyer to obtain title to and to file applications for patents throughout the world; and (g) to the extent that this Order is issued for the creation of copyrightable works, that the works shall be considered "works made for hire," and, to the extent that the works do not qualify as such, to assign to Buyer upon delivery thereof all right, title and interest in all copyrights therein (including, without limitation, any source code).

14. DRAWINGS. All drawings, specifications and data furnished by Buyer to Seller hereunder shall remain the property of Buyer and shall not be disclosed by Seller, cannot be shared whether or not marked confidential, and shall be used by Seller only as and to the extent required for the performance of this Order, unless otherwise approved by Buyer in writing. Upon completion of work by Seller under this Order and upon Buyer's request, Seller shall promptly return to Buyer all drawings, specifications and other data furnished by Buyer in connection herewith, together with all copies or reprints in Seller's possession or control, and Seller shall thereafter make no further use, either directly or indirectly, of any such drawings, specifications, data or any information derived therefrom, without Buyer's prior written consent.

15. COMPLIANCE WITH APPLICABLE LAWS. Seller agrees that, in the performance hereof, it shall comply with all applicable laws, statutes, FCPA requirements; rules, regulations or orders, and same shall be deemed incorporated herein by reference.

16. DEFAULT. Buyer may, by written notice of default to Seller, terminate the whole or any part of this Order if: (a) the Seller fails to make delivery of the Products or to perform the work or services within the time specified in the Order, or (b) the Seller fails to perform any other provision of this Order or breaches any of the terms hereof, or so fails to make progress as to endanger performance of this Order

in accordance with its terms, and does not cure such failure within ten (10) days after receipt of notice from the Buyer specifying such failure. If Buyer terminates this Order in whole or in part, in addition to any other remedies of Buyer at law or equity or under this Order, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, Products similar to those terminated, and Seller shall pay Buyer upon demand all excess re-procurement costs (including administrative costs) that Buyer may incur for such re-procurement. Seller shall continue performance of the non-terminated portion of this Order as directed by Buyer.

17. BUYER'S REMEDIES. All rights and remedies of Buyer set out in this Order are cumulative and are in addition to any remedies provided at law or equity.

18. TERMINATION FOR CONVENIENCE.

(a) Outside the committed lead time on the Sellers quote and noted on the Order, the Buyer may terminate, without cause, the whole or any part of the work required under this Order by delivering to the Seller a written notice of termination specifying the work terminated and the effective date thereof.

(b) Within the committed lead time stated on the Sellers quote and noted on the Order, the Buyer may terminate, without cause, the whole or any part of the work required under this Order by delivering to the Seller a written notice of termination specifying the work terminated and the effective date thereof. Upon receipt of said notice of termination, Seller shall, as directed, cease work and deliver to Buyer all completed and partially completed Products and work in process, as well as any other deliverables described below. Any claim by Seller resulting from such termination shall be submitted no later than sixty (60) days after delivery of said notice of termination. Upon receipt and review of Seller's termination claim proposal, Buyer shall pay Seller the following, which in no event shall exceed the total price of the work terminated:

(i) The price provided in this Order for all Products which have been completed prior to termination and which are accepted by Buyer; and

(ii) The Seller's actual expenditures on the uncompleted portion of this Order, including cancellation charges paid by the Seller on account of commitments made under this Order, provided that such expenditures were commercially reasonable. Upon Buyer's request, Seller shall make reasonably available to Buyer, any books, records or documents supporting Seller's termination claim proposal.



Upon Buyer's payment to Seller, title to all deliverables shall vest in Buyer. Deliverables include, but are not limited to: Products, work-in-progress, Special Tooling, plans, drawings, specifications, or other information acquired under this Order. Buyer's right of termination is in addition to and not in derogation of Buyer's rights under Clause 16, Default, hereof. Notwithstanding the issuance by Buyer of a notice of termination hereunder, any rights of Buyer based on prior breach of performance by Seller shall survive. Upon receipt of a notice of termination, Seller shall continue with performance of any work not terminated under this Order. Seller shall also protect and preserve all property related to this Order that is in the possession of the Seller and in which the Buyer has or may acquire an interest.

19. WAIVER. The failure of Buyer to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Order or to exercise any right hereunder, including any option herein provided, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, and the obligation of Seller with respect to such future performance shall continue in full force and effect.

20. ASSIGNMENT. Seller shall not assign any of its rights or interest in this Order or all or substantially all of its performance of this Order, without the Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this Order. No assignment, delegation or subcontracting by Seller, with or without Buyer's written consent, shall relieve Seller of any of its obligations under this Order or prejudice any of Buyer's rights against Seller. Notwithstanding anything herein to the contrary, Buyer may assign this Order to an affiliate of or successor in interest to Buyer, at any time, after providing Seller with written notice of such assignment.

21. SET-OFF. Seller agrees that Buyer shall have the right to set-off against any amounts, which may become payable by Buyer to Seller under this Order or otherwise, any amounts which Seller may owe to Buyer, whether arising under this Order or otherwise.

22. PRICE WARRANTY. Seller warrants that the prices charged under this Order do not exceed those charged by Seller to any other customer, including preferred customers and the U.S. Government, for purchase of the same or substantially similar Products or services in like or similar quantities.

23. HOLD HARMLESS. Seller agrees to indemnify and save Buyer and its customer(s) and their respective officers, directors, employees, and agents harmless from and against (i) any and all claims (including, without limitation, claims under Workers' Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death, or property loss or

damage attributed to, or caused by, Seller's performance under this Order or the Products supplied by Seller pursuant to this Order, including, without limitation, latent defects in such Products, except to the extent that such injury, death, loss or damage is caused solely and directly by the willful misconduct or gross negligence of Buyer, and (ii) any and all claims (including resulting costs, expenses and liability) by the employees of Seller or any of its subcontractors arising from or related to this Order.

Seller shall maintain, at its own expense, (i) Comprehensive General Liability insurance in an amount of at least \$2 million combined single limit for bodily injury and property damage and a \$2 million annual aggregate, (ii) Comprehensive Automobile Liability insurance in an amount of at least \$2 million combined single limit for bodily injury and property damage and a \$2 million annual aggregate, (iii) Worker's Compensation insurance in accordance with such laws as may be applicable to the work to be performed hereunder, and (iv) Employer's Liability insurance in an amount of at least \$2 million combined single limit for bodily injury and property damage and a \$2 million annual aggregate. All such insurance policies shall expressly waive any right of subrogation against Buyer and its employees, officers, directors and agents. The required insurance policies shall be endorsed to require the insurance company to provide Buyer with at least thirty (30) days prior written notice of the effective date of cancellation or material change of any insurance policy. Prior to commencing work hereunder, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage as set forth above. Such certificate shall contain the policy number, effective date, expiration date and a statement noting Buyer as an additional insured.

24. **GOVERNING LAW.** This Order and any subsequent changes thereto shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, not including the 1980 United Nations Convention on Contracts for the international Sale of Goods. Any litigation under this Order shall be brought in a court of competent jurisdiction in the Commonwealth of Massachusetts. If this Order is issued under a Government prime contract, in addition to the governing law of the Commonwealth of Massachusetts, this Order shall be governed by the federal law of contracts, as interpreted by the Armed Service Board of Contract Appeals, the U.S. Court of Federal Claims, and other Federal courts. If a decision on a question of fact is issued by the Contracting Officer under the Prime Contract "Disputes" clause and the decision relates to this Order, said decision, if binding upon Buyer under the prime contract, shall also be binding upon Buyer and Seller with respect to this Order.

25. **SAFEGUARDING PRODUCTS IN PROCESS.** In all Orders where progress payments or milestone payments are made by the Buyer, Seller must properly safeguard against loss, damage and/or theft of all Products, work-in-process, Special Tooling, plans, drawings and specifications.

26. APPROVALS. Wherever this Order provides for submittal of designs, components, or other items for approval of Buyer, such approvals shall not be construed as Buyer's agreement as to the adequacy of said design, component, or item, nor as an agreement or acknowledgment that the design, component, or item shall meet the requirements of this Order. Such approvals are solely for the purpose of insuring Buyer's knowledge of Seller's plans and progress and shall indicate only that Seller's general approach towards meeting requirements under this Order is satisfactory. Such approvals shall in no way relieve the Seller of its responsibility for any error or deficiency which may exist in the submitted design, component, or other item, as Seller shall be responsible for meeting all the requirements of this Order.

27. STOP WORK ORDER. The Buyer reserves the right to stop work under this Order without incurring any additional liability.

28. ADMINISTRATION. Notwithstanding any other provisions of this Order or any document referenced herein, the Procurement Representative has the sole authority to make contractual commitments on behalf of the Buyer, to provide contractual direction, and to change contractual requirements as defined in this Order. Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Products hereunder. However, no such action or exchange shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment, whether in price or delivery schedule, unless approved and issued, in writing, by the Procurement Representative. Where Buyer approval is required under the terms of this Order, it shall be construed to mean the approval of the Procurement Representative.

29. MODIFICATION OF ORDER. This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. No course of dealing or usage of the trade shall be applicable unless expressly incorporated in this Order. The terms and conditions contained in this Order may not be added to, modified, superseded or otherwise altered except by a written modification signed by Buyer's Procurement Representative and delivered by Buyer to Seller.

30. INSOLVENCY. If Seller ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Buyer may terminate this Order without liability, except for payment for deliveries of Products, which have been previously accepted or which are completed as of

the date of termination and are subsequently delivered and accepted in accordance with the terms of this Order.

31. FORCE MAJEURE. Neither party shall be liable for delays in delivery caused by circumstances beyond its reasonable control, including strikes, lockouts, riots, epidemics, war, fire, explosion, acts of God, or acts of terrorism. In no event shall shipping delays, Product shortages, or lack of finances or cash flow shortages be considered as a cause beyond the control of a party. The party affected by the Force Majeure shall give prompt written notice thereof and, upon cessation of the Force Majeure, take all reasonable steps to resume compliance with its obligations. Notwithstanding the above, if such delays extend Seller's delivery or performance date by more than ninety (90) days, Buyer may terminate such part of this Order remaining to be performed without any further obligation or liability to Seller, except for payment for Products already delivered and accepted.

32. ENVIRONMENTAL AND SAFETY POLICIES. All work shall be performed by Seller in full compliance with all applicable federal, state and local government environmental, health, and safety laws and regulations, and all applicable ISO 14001 policies enacted by Buyer's facility receiving the Products. All work performed on Buyer's premises shall be performed in conformity with all plant environmental and safety requirements specified by Buyer. The Seller will dispose of all hazardous material resulting from the work being performed on the Buyer's site. All of Seller's personnel performing work under this Order shall be fully trained and otherwise qualified and competent to perform work assigned to them that has actual or potential environmental impacts. Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense, including lost profit, attorney's fees and court costs, that relates to environmental damages, property damage and/or personnel injury, including injury to remediation personnel, and all related liabilities and associated costs relating to or arising from the Seller's performance under this Order.

33. EXPORT/IMPORT COMPLIANCE. The following restrictions shall apply to all designs, drawings, and other technical documents and information (hereinafter referred to as "Technical Data") and assistance (hereinafter referred to as "Technical Assistance") furnished or disclosed to Seller by Buyer and to any Products manufactured by Seller, its subsidiaries, affiliates, contractors and subcontractors, by use of such Technical Data and/or Technical Assistance. In connection with the disclosure, delivery, or export of Technical Data or Technical Assistance by Buyer to Seller, Seller shall comply, and shall cause its subsidiaries, affiliates, contractors and subcontractors, at all tiers, to comply with any export restrictions imposed by any governmental agency of the United States of America, including, without limitation, the provisions of the Export Administration Act of 1979 (50 USC 2401-2420) and the Export Administration Regulations (15 CFR 768-799) promulgated thereunder; the Arms Export Control Act of 1976 (22 USC 2751-2779), the International Traffic in Arms Regulation (22 CFR 120-128 and 130) promulgated thereunder. The Parties acknowledge that these statutes and regulations impose restrictions on import,

export, and transfer to third countries of certain categories of Technical Data, Technical Assistance and Products, and that authorization from the U.S. Department of State and/or U.S. Department of Commerce may be required before such Technical Data, Technical Assistance and Products can be disclosed, transferred or exported to non-U.S. persons or companies, and that such export authorizations may impose further restrictions on the use of such Technical Data, Technical Assistance and Products. Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense, including lost profit, attorney's fees and court costs, for any failure or alleged failure of Seller to comply with any applicable laws, statutes, rules, regulations or orders, including, without limitation, the export/import laws of the United States.

In addition the Seller shall obtain Buyer's permission, in writing, before any Technical Data or Buyer Proprietary Information is provided to any non-US person, including, without limitation, any non-US subsidiary or affiliate of the Seller. Seller shall provide Buyer with a detailed list of all potential non-US contractors and subcontractors, identify the ultimate parent company of each such non-US contractor or subcontractor, and provide full legal names and addresses, e-mail addresses, telephone numbers, and contacts for each such entity to Buyer prior to providing any Technical Data, Technical Assistance or Products to any such entity in connection with this Order. Seller shall return all Technical Data to Buyer after completion or termination of this Order unless otherwise directed by Buyer.

34. RIGHT OF ACCESS. Subject to all applicable Government security regulations, acceptance of this Order shall grant to authorized representatives of Buyer and its customer (with the prior concurrence of Buyer's Procurement Representative) right of access to all facilities involved in performing work under this Order and to all applicable records in order to review progress, discuss problems/failures and witness testing pertaining to the requirements of this Order. Seller shall provide adequate information on performance of this Order in response to reasonable requests by Buyer and/or its customer.

35. RECORDS RETENTION. For non-government funded Orders, Seller shall retain all applicable records related to the work hereunder, including its subcontractor records, for five (5) years after final payment by Buyer. For government funded Orders, Seller should refer to Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulations for guidance on records retention.

36. PROTECTION OF PROPRIETARY INFORMATION. In the event that any obligations related to proprietary information set forth on the face of this Order or within a duly signed non-disclosure agreement between Buyer and Seller are inconsistent with the provisions set forth herein, the obligations set forth on the face of this Order or within such non-disclosure agreement shall govern the parties' obligations. Any information provided by the Buyer, regardless of marking, to Seller (hereinafter

referred to as “Buyer Proprietary Information”) shall remain the property of Buyer. Seller agrees to comply with all proprietary information markings and restrictive legends applied by Buyer to such Buyer Proprietary Information. Seller shall hold all Buyer Proprietary Information in confidence until three (3) years after the completion or termination of this Order.

Seller agrees to use Buyer Proprietary Information only for the purpose of performing under this Order and agrees not to disclose such information to third parties without the prior written consent of Buyer. The Seller shall disclose Buyer Proprietary Information only to its employees having a “need to know” and shall ensure that each such employee is aware of this clause and has agreed to abide by its provisions.

Seller shall maintain information protection processes and systems sufficient to adequately protect Buyer’s Proprietary Information from unauthorized access, disclosure, modification, or destruction. Seller agrees that it will protect Buyer Proprietary Information using the same degree of care it uses to protect its own proprietary information, but in no event less than a reasonable degree of care. Contractor shall not copy or reproduce any Buyer Proprietary Information without the prior written consent of Buyer.

Seller agrees that, in the event of a breach or threatened breach of its obligations under this clause, Buyer may be irreparably harmed such that monetary damages will not adequately compensate for its injuries. In the event of any such breach or threatened breach, Buyer shall be entitled, in addition to any rights or remedies it may have at law or in equity, to temporary and permanent injunctive relief, without posting bond or other security, issued by any court of competent jurisdiction enjoining and restraining Seller from continuing such breach and the payment by Seller of all costs associated with any related litigation, including attorneys’ fees. The Seller shall, upon the Buyer’s request or upon completion of this Order, whichever occurs first, promptly return all drawings and specifications or other Buyer Proprietary Information to the Buyer.

Unless the parties otherwise agree in writing, Buyer shall be entitled to use any Seller information provided under this Order without limitation or restriction, regardless of any Seller markings or designations to the contrary.

37. BUSINESS CONDUCT AND ETHICS. Buyer is committed to building strong business relationships with its suppliers based on lawful, honest, ethical, and impartial business practices. Buyer’s expectation is that Seller will also conduct its business in a lawful, honest, ethical, and impartial manner. Buyer’s further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards. If

Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically in connection with this Order, Seller shall report such behavior to Buyer's legal department.

38. RELATIONSHIP OF THE PARTIES. This Order shall not constitute, create, or give effect to or otherwise imply a joint venture or partnership of any kind. Each party to this Order is an independent contractor. Neither party shall be deemed to be an employee, agent, partner or legal representative of the other for any purpose, and neither shall have any right, power or authority to create any obligation on behalf of or bind the other in any way.

39. NO RESTRICTIONS. To the best of the Seller's knowledge and belief, no restrictions exist which have impaired or would impair the full performance of this Order or would impair the fulfillment of any obligations hereunder.

40. LIENS. The Seller shall immediately discharge or cause to be discharged any liens, other than liens in favor of the Buyer, which at any time exist or arise in connection with the Products furnished under this Order or any work-in-process related thereto. If any such lien is not immediately discharged, the Buyer may discharge or cause to be discharged such lien at the expense of the Seller. Seller shall include the substance of this clause in all purchase orders and subcontracts issued by it hereunder.

41. PARTS OBSOLESCENCE. Buyer may desire to place additional orders for any Products purchased hereunder. Accordingly, Seller shall provide Buyer with a Last-Time-Buy Notice at least twelve (12) months prior to any action to discontinue any Products purchased hereunder. Should a part become obsolete the Seller shall provide reasonable assistance to Buyer to identify alternate parts free of charges.

43. SURVIVAL. The following Order terms shall survive the completion or termination of this Order:

- Warranty, Clause 7
- Taxes, Clause 10
- Advertising, Announcements, and News Releases, Clause 12
- Intellectual Property, Clause 13
- Drawings, Clause 14

- Hold Harmless, Clause 23
- Governing Law, Clause 24
- Environmental and Safety Policies, Clause 32
- Export/Import Compliance, Clause 33
- Records Retention, Clause 35
- Protection of Proprietary Information, Clause 36
- Liens, Clause 40
- Parts Obsolescence, Clause 41

44. SEVERABILITY. In the event that the application of any provision hereof to any particular facts or circumstances shall be held to be invalid or unenforceable under the governing law hereof, then: (a) such provision shall be reformed without further action by the parties to the extent strictly necessary to render such provision valid and enforceable when applied to such particular facts or circumstances; and (b) the validity and enforceability of such provision as applied to any other particular facts or circumstances, and the validity and enforceability of all of the other provisions hereof, shall in no way be affected or impaired thereby.

## *Supplement A*

### *U.S. Government Contracts*

#### **SUPPLEMENTAL TERMS AND CONDITIONS - ORDERS UNDER U.S. GOVERNMENT CONTRACTS.**

When the Products are for use in connection with a U.S. Government prime contract or subcontract, in addition to the above General Terms and Conditions, the following Supplemental Terms and Conditions shall apply as required by the terms of the prime contract or by operation of law or regulation. Buyer is flowing down to Seller certain provisions and clauses from the Federal Acquisition Regulations (FAR) or Department of Defense FAR Supplement (DFARS), (collectively, "FAR Clauses"). These FAR Clauses are hereby incorporated by reference, as applicable, and in the manner set forth below, as modified by any parenthetical information. FAR Clauses inapplicable to the performance of this Order under Buyer's



Government contract are self-deleting. If the substance of a FAR Clause is different than the substance of the clause actually incorporated in Buyer's Government contract, then the substance of the clause actually incorporated in Buyer's Government contract shall apply instead. The parties hereby agree to amend these Supplemental Terms and Conditions to include any additional or revised FAR Clauses incorporated in Buyer's Government contract that are applicable to the performance of this Order. Seller shall flow down to its lower-tier subcontractors all applicable FAR Clauses and any other requirements of this Order and applicable law so as to enable and ensure that Buyer and Seller comply with all applicable requirements of Buyer's Government contract. In interpreting and applying FAR Clauses flowed down to Seller, and as context requires, the terms "Contractor" and "Offeror" shall mean Seller, the term "Contract" shall mean this Order, and the term "Government", "United States", "Contracting Officer", "Administrative Contracting Officer" and equivalent phrases shall mean Buyer and/or Buyer's Procurement Representative. In addition, the term "Commercial Item" means a commercial item as defined in FAR 2.101. However, as an exception to the foregoing, the terms "Government" and "Contracting Officer" do not change in the following circumstances:

(a) in the phrases "Government Property", "Government-Furnished Property" and "Government-Owned Property";

(b) in the patent rights clauses incorporated herein, if any;

(c) when a right, act, authorization or obligation can be granted or performed only by the Government or a Contracting Officer or his/her duly-authorized representative;

(d) when title to property is to be transferred directly to the Government; and

(e) when access to proprietary financial information or other proprietary data is required, except as otherwise provided in this Order.

These Supplemental Terms and Conditions are in addition to and not in derogation of the General Terms and Conditions and any "other" terms and conditions of this Order. These Supplemental Terms and Conditions shall be construed and interpreted as consistent with the General Terms and Conditions whenever possible. In the event of a conflict between the General Terms and Conditions and the applicable clauses contained in these Supplemental Terms and Conditions, the applicable clauses in these Supplemental Terms and Conditions shall control to the extent necessary for Buyer to comply with Buyer's Government Contract.

#### **FAR (48 CFR Chapter 1) Clauses Incorporated by Reference**

52.202-1 Definitions

52.203-3 Gratuities

52.203-5 Covenant Against Contingent Fees

- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
- 52.204-2 Security Requirements (applicable if this Order requires access to classified information)
- 52.204-9 Personal Identity Verification of Contractors (applicable if the Seller will have routine physical access to a federally-controlled facility or routine access to a federally-controlled information system)
- 52.208-8 Required Sources for Helium and Helium Usage Data (applicable if this Order involves a major helium requirement)
- 52.219-8 Utilization of Small Business Concerns
- 52.222-1 Notice to the Government of Labor Disputes
- 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (applicable if this Order may require or involve the employment of laborers and mechanics)
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (applicable if Seller anticipates subcontracts of \$10 million or more)
- 52.222-41 Service Contract Act of 1965
- 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements
- 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements
- 52.222-50 Combating Trafficking in Persons
- 52.222-54 Employment Eligibility Verification (applicable if this Order (1) is for commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item) or construction; (2) has a value of more than \$3,000; and (3) includes work performed in the United States)
- 52.223-7 Notice of radioactive materials (applicable if the Order is for radioactive materials)
- 52.225-1 Buy American Act – Supplies (applicable if the Products contain other than domestic components)

- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States (applicable if Buyer personnel will perform outside of the United States)
- 52.227-11 Patent Rights – Ownership by the Contractor (applicable if this Order includes, at any tier, experimental, developmental or research work, and Seller is a small business or domestic nonprofit organization)
- 52.227-14 Rights in Data – General (applicable if data will be produced, furnished or acquired under this Order)
- 52.227-16 Additional Data Requirements
- 52.244-6 Subcontracts for Commercial Items
- 52.245-1 Government Property (applicable if Government property is acquired or furnished for subcontract performance)
- 52.247-63 Preference for U.S. –Flag Air Carriers (applicable if the Order may involve international air transportation)
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels
- 52.249-2 Termination for Convenience of the Government (Fixed-Price) (in paragraph (c) change “120 days” to “45 days”; in paragraph (d) “15 days” is changed to “30 days”, and “45 days” is changed to “60 days”; in paragraph (e) change “1 year” to “60 days”; paragraph (j) is deleted; in paragraph (l) change “90 days” to “45 days”)

ALL ORDERS OVER \$3,000

- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving

ALL ORDERS OVER \$10,000

- 52.222-26 Equal Opportunity (paragraphs (c)(1) through (11) only)
- 52.222-36 Affirmative Action for Workers with Disabilities
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act

ALL ORDERS OVER \$30,000

- 52.209-6 Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (applicable unless Buyer’s Government contract is for commercial items or this Order is for commercially available off-the-shelf items)

ALL ORDERS OVER \$100,000

52.222-35 Equal Opportunity for Veterans

52.222-37 Employment Reports on Veterans

ALL ORDERS OVER \$150,000 AND/OR THE SIMPLIFIED ACQUISITION THRESHOLD

52.203-6 Restrictions on Subcontractor Sales to the Government

52.203-7 Anti-Kickback Procedures

52.203-12 Limitation on Payments to Influence Certain Federal Transactions

52.215-2 Audits and Records-Negotiation

52.222-17 Nondisplacement of Qualified Workers

52.227-1 Authorization and Consent

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement

52.228-5 Insurance – Work on a Government Installation (applicable if this Order requires work on a Government installation)

ALL ORDERS OVER \$650,000

52.219-9 Small Business Subcontracting Plan (applicable unless the Seller is a small business)

ALL ORDERS OVER \$5,000,000

52.203-13 Contractor Code of Business Ethics and Conduct (applicable if the period of performance is more than 120 days)

52.203-14 Display of Hotline Poster(s) (applies unless this Order is for the acquisition of a commercial item or is performed entirely outside the United States)

ALL DPAS RATED ORDERS

52.211-15 Defense Priority and Allocation Requirements (applicable if a priority rating is noted in this Order)

**DFARS (48 CFR Chapter 2) Clauses Incorporated by Reference**

252.204-7000 Disclosure of Information

252.204-7008 Requirements for Contracts Involving Export-Controlled Items

252.225-7008 Restriction on Acquisition of Specialty Metals

- 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals
  - 252.225-7016 Restriction on acquisition of ball and roller bearings
  - 252.225-7025 Restriction on acquisition of forgings
  - 252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States
  - 252.227-7013 Rights in Technical Data – Non-commercial Items
  - 252.227-7014 Rights in Non-commercial Computer Software and Non-commercial Computer Software Documentation (Alt. 1)
  - 252.227-7015 Technical Data – Commercial Items (applies in lieu of DFARS 252.227-7013 for commercial items)
  - 252.227-7016 Rights in Bid or Proposal Information (applies when DFARS 252.227-7013 is used)
  - 252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions
  - 252.227-7018 Rights in Non-commercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program
  - 252.227-7019 Validation of Asserted Restrictions – Computer Software (applies when DFARS 252.227-7014 is used)
  - 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (applies when DFARS 252.227-7013 or DFARS 252.227-7014 are used)
  - 252.227-7026 Deferred Delivery of Technical Data or Computer Software
  - 252.227-7027 Deferred Ordering of Technical Data or Computer Software
  - 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government
  - 252.227-7030 Technical Data - Withholding of Payment (applies when DFARS 252.227-7013 is used)
  - 252.227-7037 Validation of Restrictive Markings on Technical Data (applies when DFARS 252.227-7013, DFARS 252-227-7014 or DFARS 252.227-7015 are used)
  - 252.246-7003 Notification of Potential Safety Issues
  - 252.247-7023 Transportation of supplies by sea
- ALL ORDERS OVER \$150,000

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies

ALL ORDERS OVER \$650,000

252.225-7006 Quarterly reporting of actual contract performance outside the United States

ALL ORDERS OVER \$1,000,000

252.222-7006 Restrictions on the use of Mandatory Arbitration Agreements

All ORDERS OVER \$5,000,000

252.203-7004 Display of fraud hotline poster(s) (applicable unless the Order is for the acquisition of a commercial item or is performed entirely outside the United States)