

**GENERAL TERMS AND CONDITIONS OF PURCHASE FOR FIXED-PRICE ITEMS  
AND/OR SERVICES PURCHASE ORDER**

**1. ACCEPTANCE OF ORDER** – Seller shall accept this Order by signing the acceptance copy and returning it promptly to Buyer or by providing to Buyer any of the products or performing any of the services specified herein. By Seller's acceptance of this Order, Seller agrees to the terms, conditions, and specifications of this Order. Buyer hereby objects to and rejects any terms, conditions, or specifications contained in Seller's acceptance of this Order (or any other form or paper submitted by Seller) which differ from or add to the terms, conditions, and specifications of the Order. Seller agrees that the terms, conditions, and specifications of the Order shall prevail over any inconsistent provisions in any form or other paper submitted by Seller.

**2. ENTIRE AGREEMENT** – This Order constitutes the entire agreement between the parties, and supersedes all, whether written or oral, communications, representations, negotiations, or agreements pertaining to the subject matter hereof. Seller represents that in entering the Order, Seller does not rely on any previous direct or implied representation, inducement, or understanding of any kind. Seller further agrees that any estimates or forecasts provided by Buyer do not constitute a commitment.

**3. WAIVER** – Buyer's failure to enforce any provision of the Order or to protest any breach or default of the Order by Seller shall not be construed as evidence of (or evidence to interpret) the rights or obligations of the parties, or as a waiver of any Seller obligation or Buyer right provided under the Order or by law. No right or remedy of Buyer shall be deemed waived or released unless such waiver or release is in writing and signed by an authorized representative of Buyer.

**4. DELIVERY**

4.1 Transportation: Transportation shall be in accordance with the Delivery Terms specified on the front page of the Purchase Order. The instructions will be either F.O.B. Destination, Freight Prepaid or F.O. B. Origin Freight Collect. Buyer shall not be liable for insurance or premium transportation charges unless Buyer consents to such charges in writing. All items must be packaged in accord with the instructions specified by Buyer and shipped by route and carrier designated by Buyer. If Buyer does not specify the manner of packing, route, or carrier, Seller will suitably pack and ship all items in accord with customs and practices prevailing in the industry, following wherever applicable the precedents of previous shipments to this Buyer and, unless otherwise specified, in the most economical mode available. Seller shall mark on all packages handling and loading instructions, shipping information, order number, item and account number, shipping date, and names and addresses of Seller and Buyer. Seller shall be liable to Buyer for all damages incurred directly or indirectly by Buyer or Buyer's Customer as a result of Seller's failure to comply with the conditions set forth in this subparagraph.

4.2 Risk of Loss:

4.2.1 F.O. B. Destination, Freight Prepaid - Seller shall bear the risk of any loss or damage to the items until they are delivered in conformity to the "Ship To" address on the front page of this Purchase Order. Upon such delivery, Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence or fault. Notwithstanding the foregoing, Seller shall remain responsible for risk of loss of any nonconforming or rejected Work, unless such loss, destruction, or damage results from gross negligence or fault of Buyer.

4.2.2 F.O. B. Origin Freight Collect - Seller shall bear the risk of any loss or damage to the items until they are delivered in conformity to the freight provider. Upon such delivery, Seller's responsibility for loss or damage for items in transit shall cease, except for loss or damage resulting from Seller's negligence or fault.

4.3 Title: Except as otherwise expressly stated in this Order, title to all items furnished under this Order shall pass to Buyer upon final acceptance, regardless of when or where Buyer takes physical possession of the items.

4.4 Delays: Seller understands that Buyer depends upon prompt delivery and/or performance by Seller at the time specified in the schedules furnished by Buyer in order to comply with Buyer's contractual obligations to third parties. Because time is of the essence, if delivery or performance of the Work is not made in the quantities and at

the time and manner specified, Buyer shall have the right without liability, and in addition to its other rights and remedies under this Order and the law, to take any of the following actions: (1) direct expedited delivery of items for which Seller shall bear all premium transportation charges and risk of loss; (2) direct acceleration of Work for which Seller shall bear all premium labor costs and other acceleration costs; (3) delay payment for a period of time equal to the lateness of such delivery or performance; and/or (4) terminate this Order by written notice effective when received by Seller as to the Work not yet delivered, and purchase substitute Work elsewhere and charge Seller with any loss incurred. Seller shall, in the event of a delay or threat of delay, due to any cause, in the production, delivery, or performance of Work hereunder, immediately notify Buyer in writing of the delay. Seller's notice shall include all relevant information with respect to such delay or threatened delay. Seller shall be liable for any damages resulting from failure to make delivery or performance within the time called for by this Order or by any written instructions of Buyer, except where such delay in delivery or performance was due to causes beyond the reasonable control of Seller and Seller notifies Buyer as required by this paragraph. Seller agrees to add the substance of this subparagraph to each subcontract or purchase order issued by Seller hereunder.

4.5 Advanced Shipments: If, without written authorization from Buyer, Seller ships items so as to arrive more than five (5) days in advance of schedule, Buyer may return the items to Seller and Seller shall be liable for transportation charges and risk of loss for the return of the items as well as for the shipment of the items. Seller shall not invoice Buyer for payment prior to the scheduled delivery date. Invoices covering items shipped in advance of the delivery schedule will not be paid until normal maturity after the specified date of delivery.

4.6 Quantity: Seller shall comply with the delivery/performance schedules but shall not make material or production commitments in advance of such time as Seller reasonably believes is necessary to meet the schedules without Buyer's prior written consent. Except as otherwise expressly provided in the Order Buyer need not accept any variation in quantity of Work provided by Seller. Buyer may return excess quantities to Seller at Seller's sole expense and risk, or retain such excess quantities at no increase in price.

## **5. INSPECTION AND FINAL ACCEPTANCE**

5.1 Buyer and Buyer's Customer may at any time inspect the facilities of Seller or Seller's subcontractors which will or may be used in the performance of this Order. Buyer and Buyer's Customer also may inspect and test, at any time or place, before, during, or after manufacture or completion, the Work (or any part thereof) delivered or performed by Seller or Seller's subcontractors. The inspection may, in the discretion of Buyer or Buyer's Customer, include physical, visual, or mechanical review as well as a review of any documentation necessary to substantiate compliance with requirements (including, but not limited to, quality requirements and acceptance requirements) set forth in this Order. If inspection and test are made on Seller's premises (or the premises of Seller's subcontractors), Seller shall furnish, or cause to be furnished, at no additional cost to Buyer, all reasonable facilities, tools, and assistance necessary for such inspection and the safety and convenience of the inspectors. Inspections and test by Buyer or Buyer's Customer shall be performed in such a manner as not to delay the Work unduly. Buyer may charge to Seller any additional cost of inspection and test when Work (or any part thereof) is not ready at the time Buyer or Buyer's Customer requests inspection and test under this paragraph. In the case of rejection, neither Buyer nor Buyer's Customer shall be liable for any reduction in value of samples used in connection with such inspection or test. No inspection or review or approval by Buyer or Buyer's Customer shall relieve Seller of any of its obligations under this Order, or constitute a waiver of any defects or nonconformities.

5.2 The final acceptance by Buyer of any Work under this Order shall not limit or affect any warranty or right of indemnity granted by Seller herein. Except as otherwise agreed in writing, all delivery or performance under this Order shall be subject to final inspection and acceptance by Buyer. The parties expressly agree that any prior inspection or payment by Buyer or Buyer's Customer will not constitute final acceptance. Buyer's final acceptance of the Work shall take place only after complete delivery in accord with the schedule specified herein and after final inspection by Buyer. Buyer's final acceptance shall be contingent upon agreement by Buyer that the Work conforms to the applicable contract requirements. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured, acceptance induced by false or negligent assurances of Seller or as otherwise provided in this Order or applicable law.

5.3 Seller shall provide and maintain an inspection and quality control system acceptable to Buyer covering the items/services provided hereunder. Seller shall keep complete records of all inspection work and make such records available to Buyer and Buyer's Customer upon request.

5.4 Work delivered or performed by Seller and rejected, in whole or in part, by Buyer may, at Buyer's option, be returned to Seller or held for disposition at Seller's sole risk and expense. If Seller fails promptly to remove such Work and to proceed promptly to replace or correct the Work, Buyer, without Seller's consent, may replace or correct such Work at the sole expense of Seller, including, without limitation, any excess cost. Seller shall not again tender rejected or corrected Work unless Seller discloses the former tender and rejection or requirement of correction.

**6. FACILITIES, TOOLS, ETC.** - Unless otherwise specified herein, Seller shall supply all necessary services, facilities, materials, and equipment (including, but not limited to, tools, test apparatus, etc.). If, in connection with this Order, Buyer or Buyer's Customer furnishes any facilities, materials, equipment, drawings, or other property to Seller, Seller accepts the property "as is, where is." Seller shall maintain such property in good condition and keep the property adequately insured. Seller shall use such property only in performance of work under this Order unless Buyer consents otherwise, in writing. Seller shall assume the risk of, and bear responsibility for, any loss, destruction of, or damage to the property while in Seller's possession or control, unless otherwise agreed in writing by Buyer. Seller shall return all such property in a condition as good as when received except for reasonable wear and tear upon completion of use of such property or at such earlier time as Buyer may request. Seller shall indemnify and hold harmless Buyer and Buyer's Customer from all claims which may be asserted against said property, including, without limitation, claims arising under the Worker's Compensation or occupational injury laws and from all claims for injury to persons or property arising out of or related to Seller's use of such property in performance of this Order.

## **7. TERMINATION**

### 7.1 Termination for Cause

7.1.1 Buyer may terminate all or any part of this Agreement by written notice to Seller if: (i) Seller fails to provide the Product or Support Services within the time specified by this Agreement or any written extension authorized by Buyer; (ii) Seller fails to perform any other provision of this Agreement or fails to make progress, so as to endanger performance of this Agreement, and, in either of these two circumstances, does not cure the failure to Buyer's satisfaction within ten (10) days after receipt of notice from Buyer specifying the failure; or (iii) in the event Seller declares bankruptcy, suspension its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue work not terminated. If Buyer terminates all or any part of this Agreement, Buyer may acquire, under terms and conditions and in a manner Buyer considers appropriate, Products or Support Services similar to those terminated and the Seller shall be liable the Buyer for any excess costs for those Products or Support Services. If the Agreement is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer any completed Products or partially completed Products and materials, part, tool, dies, jigs, fixtures, plans, drawings, information and Agreement rights that the Seller has specifically produced or acquired for this Agreement. Seller shall protect and preserve property in its possession in which Buyer has an interest.

7.1.2 Buyer shall pay for completed Products and/or Support Services delivered and accepted in accordance with the prices set forth in the Agreement. Buyer and Seller shall agree on the amount of payment for in process Services or materials, title to which has been transferred and delivered to Buyer. Failure to agree shall be a dispute and shall be settled under Article 18.0. Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Agreement price. The rights and remedies provided Buyer in this clause are in addition to any other right or remedies provided by law or in equity.

### 7.2 Termination for Convenience

Buyer may terminate for any reason all or any part of this Agreement by written notice to Seller. In the event of such termination, Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers to cease work. Buyer shall have no liability for such termination except for liability for Product and Support Services actually rendered or expenses actually incurred prior to the effective date of such termination for which payment has not been made. The Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided. Failure to agree shall be deemed a dispute and shall be settled under Article 19.0

("Dispute Resolution"). Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Agreement price. Seller shall continue work not terminated.

### 7.3 Effect of Termination

Upon any termination of this Agreement in accordance with this Article 7.0:

7.3.1 Seller shall fulfill Buyer's existing orders for Products communicated to Seller where a valid Buyer purchase order has been issued to and accepted by Seller prior to Seller's receipt of Buyer's written notice of termination, unless otherwise directed by Buyer in said notice. Buyer shall have no obligation to Seller for any Products manufactured for Buyer or existing Products allocated for shipment to Buyer after Seller's receipt of the written notice of termination;

7.3.2 In the event of termination, Buyer's sole financial obligation to Seller shall be to pay for any Products delivered to Buyer consistent with the terms of this Agreement, in which case payment shall be made within forty-five (45) calendar days from Buyer's receipt of a valid invoice from Seller. Buyer shall have no obligation to Seller for payment of any costs, fees or expenses relating to its exercise of its termination rights hereunder, including but not limited to termination, restocking, demobilization, or any other manufacturing, logistics or administrative fees of any kind;

7.3.3 Each Party shall promptly deliver to the other Party (or destroy, if so requested by the other Party) all copies of all Proprietary Information (in any form or media) then in that Party's possession, except for such copies as reasonably are required to enable Buyer to exercise its license rights and make distribution of Products as provided herein;

7.3.4 All warranties and license rights for any Products delivered to Buyer hereunder shall survive termination or expiration, consistent with the terms of this Agreement.

7.3.5 The rights and obligations to protect Proprietary Information disclosed prior to expiration or termination in accordance with the time period set forth in Section 11.1.1 of this Agreement shall not be affected by the expiration or termination of this Agreement. Upon expiration or termination of this Agreement, each Party shall cease all use of Proprietary Information received hereunder.

7.3.6 Within thirty (30) calendar days following termination or expiration of this Agreement, Seller shall submit to Buyer an itemized invoice of any fees or expenses theretofore incurred under this Agreement. Buyer upon payment of accrued amounts so invoiced and accepted shall thereafter have no further liability or obligation to Seller for any further fees, expenses or other payments.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 Except as to any items or components thereof which the specifications contained herein specifically provide need not be new, Seller represents and warrants to Buyer and Buyer's Customer that the items and components provided are new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety. Seller also represents and warrants to Buyer and Buyer's Customer that all Work furnished under the Order will comply with the requirements of this Order; be free from defects in design (except to the extent of Buyer's design), material, manufacture, and workmanship; will be free from liens and encumbrance; and, to the extent Seller knows such purpose, will be fit and sufficient for the purpose for which the Work was intended. If the items furnished contain any manufacturer's warranties, Seller hereby assigns such warranties to Buyer and Buyer's Customer. Seller also represents and warrants to Buyer and Buyer's Customer that all labor provided hereunder shall be performed by qualified personnel, with diligence, and shall conform with the terms, specifications, and description of Work specified by Buyer. Seller further represents and warrants to Buyer and Buyer's Customer that the Work provided under this Order will not infringe upon the rights of any third party. These representations and warranties extend to the future performance of the Work and shall continue for a period of eighteen (18) months (or such longer period of time as Seller may warrant similar Work to its most favored customer) following final acceptance by Buyer.

8.2 Buyer shall not be deemed to waive any defects or nonconformity by reason or approval of samples or receipt of, or payment for Work. If Buyer finds through inspection and testing or through use and service that any Work

performed or delivered by Seller is other than as warranted above, Buyer may, at its sole option and in addition to any other remedies available to Buyer by this Order or by law, (i) return the Work at Seller's sole risk and expense for credit or for replacement or correction; (ii) direct Seller to correct the Work in place; or (iii) retain the Work and receive an equitable reduction in price from Seller which shall include the cost of any repairs performed by Buyer or any third party to make such Work acceptable and any diminution in value. Seller shall promptly deliver repaired or replacement Work in accord with paragraph 4 hereto. Seller shall warrant repaired or replacement Work as set forth in this paragraph.

8.3 Seller warrants that any items supplied under the Order, including, without limitation, subassemblies and spare parts, shall be available to Buyer during the operation life of the items or five (5) years after the date of final acceptance of the last shipment under the Order, whichever is later.

8.4 Seller warrants that the prices, terms of payment, warranties and services extended under this Order are no less favorable to Buyer than those extended to any other Seller customer as in effect on the date of this Order for substantially similar items/services and quantities. Buyer shall have the right to examine all Seller records and other evidence sufficient to reflect that Seller's representations and warranties are correct and true.

8.5 Seller certifies that each end product, except those listed below in this provision, is manufactured in the United States. *(List each end product manufactured Outside the United States. If none, say NONE.)*

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- 2.

## **9. INTELLECTUAL PROPERTY RIGHTS, LICENSES, AND INDEMNIFICATION**

9.1 Seller agrees that Buyer shall become entitled to, as Buyer's property, all improvements, inventions, and discoveries, whether or not patentable, conceived of or made by Seller or Seller's agents, whether alone or with others, that relate to Seller's performance under this Order, whether or not such improvements, inventions, or discoveries are conceived of or made during regular working hours. Seller shall promptly disclose to Buyer in written detail any such improvements, inventions, and discoveries and shall take all steps required to promptly vest title to such improvement, inventions, and discoveries to Buyer. This subparagraph (a) shall not apply to Orders for the purchase of "Commercial Items" as defined in FAR 2.101.

9.2 Seller hereby grants Buyer and Buyer's Customer the right, without payment of additional compensation, to use, duplicate, operate, process, disclose and sublicense, all data, writings, reports, or other information and items produced and delivered by Seller to Buyer in connection with this Order. To the extent any such data, writings, reports, or other information and writings (1) are not considered "Commercial Items" as defined by FAR 2.101, (2) were first created by Seller or its agents under this Order and (3) comprise works susceptible to protection under the copyright laws, Seller agrees that such information or works shall be deemed "works for hire" hereunder. Seller agrees to cooperate with Buyer and to take all steps and execute any documents necessary to effectuate such grant. In the event any such work is determined not to be a "work for hire" under the copyright laws, this provision shall operate as an irrevocable license assigned by Seller to Buyer of the copyright in the work, including, without limitation, all right, title, and interest therein, in perpetuity.

9.3 Seller shall indemnify, defend, and hold harmless, Buyer and Buyer's Customer and their respective officers, directors, agents, and employees against liability and losses including without limitation, defense costs and attorneys' fees, for any allegation of or suit or action for infringement of any United States or foreign patent, copyright, trademark, or other intellectual property right arising out of the manufacture or delivery or performance of Work under this Order or out of the use or disposal of such Work by or for the account of Buyer. Seller shall at its own expense either procure for Buyer and/or Buyer's Customer the right to continue using the alleged infringing Work, replace it with non-infringing Work, or modify it so that it becomes non-infringing. The foregoing indemnity shall not apply unless Buyer or Buyer's Customer informs Seller of the suit or action or other proceeding alleging infringement and gives Seller the opportunity as is afforded by applicable laws, rules, or regulations, to participate in the defense thereof. Notwithstanding the foregoing, Seller shall not be required to indemnify or hold harmless Buyer from infringement claims based on items solely of Buyer's design.

**10. ASSIGNMENT AND SUBCONTRACTING** – (a) Seller shall not assign the Order or any right or interest in the Order, or delegate any obligation under the Order, without a prior written authorization by Buyer. Buyer will not unreasonably withhold authorization for an assignment of any payment due or to become due to Seller. All claims by Seller for payment due or to become due from Buyer shall be subject to set-off as provided by paragraph 21, whether such setoff arose before or after an assignment by the Seller.

(b) For purposes of this Order, any Work performed or items(s) delivered by Seller's agents or subcontractors at any tier, shall be deemed Work performed by Seller.

## **11. CHANGES**

11.1 Buyer may at any time by written notice make changes within the general scope of the Order including, but not limited to, changes in the (1) statement of work (including, without limitation, the description or quantity of Work to be provided by Seller); (2) the drawings, designs, specifications, or other technical documents; (3) time (e.g., the hours of the day, days of the weeks, etc.) of performance, delivery, inspection, or acceptance; (4) place of performance, delivery, inspection, or acceptance; (5) method of delivery, packaging, or packing; and (6) terms and conditions of purchase of this Order. No conduct by Buyer other than a signed written change order will constitute a change to the Order.

11.2 If any change made in compliance with subparagraph (a) affects the cost or schedules of this Order, Buyer may make an equitable adjustment in price or schedule or both. Any claim by Seller for an equitable adjustment of price or schedule must be in writing and submitted within ten (10) days from the date of Buyer's written notification of the change or such further time as Buyer may allow in writing. Seller's failure to adhere to the time deadlines in asserting its equitable adjustment claim shall serve as a waiver of the claim.

## **12. CONTROL OF BUYER INFORMATION, DATA, DESIGN, ARTICLES, SCRAP, ETC.**

12.1 **Publication:** Seller shall not, without first obtaining Buyer's written permission, in any manner advertise or publish the fact that it has furnished or has contracted to furnish Buyer with the Work herein ordered, nor disclose any of the details connected with this Order to any third party.

12.2 **Buyer Information:** As used herein, "Buyer Information" shall mean trade secret, confidential, or proprietary information disclosed by Buyer to Seller in connection with this Order, which either is identified to Seller as trade secret, confidential, or proprietary information or which is information that a reasonable person would understand to be trade secret, confidential, or proprietary information, including, but not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer's products and services, as well as any duplicates or copies thereof. Buyer Information shall not include any information previously known to Seller without obligation of confidence, or which is in the public domain. Seller shall use Buyer Information only as necessary for Seller's performance under this Order. Seller shall duplicate the Buyer Information only as authorized in writing by Buyer. Seller shall hold the Buyer Information confidential and shall not disclose Buyer Information to any third party, without Buyer's written permission. Seller shall return to Buyer, or destroy and certify as destroyed, all Buyer Information upon completion of Seller's performance hereunder, Buyer's written request, or termination of the Order, whichever is earliest.

12.3 **Licenses:** This Order does not confer or grant, in any manner, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of this Order. Any intellectual property license or other authorization extended by express grant from Buyer to Seller as a result of this Order is limited by the necessities of Seller's performance hereunder. Any such license shall terminate upon completion of Seller's performance hereunder or termination of the Order, whichever is earlier.

12.4 **Surplus Items and Reproduction Rights:** To the extent Seller produces items covered by this Order in accord with drawings or specifications that are proprietary to Buyer or Buyer's Customer, Seller shall not manufacture or retain any more such items than is required to be delivered under this Order. If any surplus of items exists, Seller will not, without Buyer's written permission, use or sells any such surplus, or reproduce the item for itself or a third party. Upon completion of Seller's performance or termination of this Order, whichever is earlier, Seller, at its sole

expense and risk shall deliver any surplus items, or parts thereof, to Buyer at the designated destination, or destroy the excess items or parts thereof and certify the destruction to Buyer.

12.5 Scrap: Scrap resulting from the manufacturing process of any materials or other items furnished to Seller by Buyer shall remain the property of Buyer, subject to Buyer's direction, and shall not be disposed of without Buyer's written consent. If Buyer directs, Seller, at its sole expense and risk, shall deliver any scrap to Buyer at the designated destination or destroy the scrap and certify the destruction to Buyer.

**13. NOTICE** – Any notices required or permitted to be given hereunder shall be in writing and shall be deemed to be duly given when received if sent by mail to each party's address as stated on this Order, or when delivered by hand or by facsimile transmission if the transmittal report indicates that the facsimile was sent successfully.

#### **14. COMPLIANCE WITH LAWS**

**14.1 United States Law** – Seller, at its sole expense, shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations which may be applicable to the Work and Seller's performance under this Order, including, without limitation, all laws, regulations, and rules related to the safety and conditions of each job site, including but not limited to those promulgated or prescribed pursuant to the Occupational Safety and Health Act of 1970, and any amendment thereto. Seller agrees to comply with any applicable provisions of the Rehabilitation Act of 1973, the Veteran's Readjustment Act of 1974, and Executive Order 11246, and implementing regulations of the U.S. Department of Labor, which embody governmental policy on equal employment opportunity. To the extent applicable: **This contractor and subcontractor shall abide by the requirements of 41 CFR 60–300.5(a) and 60–741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.** Seller also agrees that in connection with activities under this Agreement it shall not make or promise to make any improper payments, or provide or offer to provide anything of value, directly or indirectly, to government officials or other parties in violation of the Foreign Corrupt Practices Act or other applicable anti-bribery laws.

#### **14.2. Compliance with Export Control Laws and Regulations**

14.2.1 (a) Seller, at its sole expense, shall comply with all applicable U.S. export control laws and regulations in the performance of this Order, including, but not limited to, the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 to 130, the Export Administration Regulations (EAR) 15 CFR Parts 730 through 799, and with all other laws, regulations, or executive orders of the United States related to the import, export, or delivery of goods or services contemplated by this Order such as customs laws and regulations, immigration laws and regulations, etc.

14.2.2 Seller, at its sole expense, agrees to determine and comply with all export license requirements, to obtain any export license or other official authorization, and to carry out any customs or immigration formalities or similar requirements for the export of any goods or services covered by this Order. Seller also hereby expressly agrees to bear sole responsibility for obtaining export licenses, if required, before utilizing foreign persons (as defined in 22 CFR § 120.16) in the performance of this Order, including instances where the work is to be performed on-site at any Government installation, where the foreign person will have access to export-controlled technical data, equipment or software. Seller also agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exemptions/exceptions.

14.2.3 Seller shall insert the substance of this clause in any lower-tier subcontracts it enters into in connection with this Order.

**14.3. Compliance with International Laws** – If Seller is located outside the United States or any Work ordered hereunder will be produced or performed outside the United States, the following provisions also shall apply:

14.3.1 Compliance with Foreign Laws and Regulations: In addition to complying with all applicable federal, state, and local laws, regulations, and rules as set forth in paragraphs 14 and 34 of this Order, Seller, at its sole

expense, shall comply with all applicable foreign laws, regulations, and rules or agreements governing or applicable to Seller's Work under this Order.

14.3.2 Hazardous Activities, Waiver, and Insurance: Seller acknowledges that the international nature of the Work required under this Order may subject Seller and its employees and lower-tier subcontractors to increased personal safety and property risks and other risks, hazards, and potential liabilities. Seller knowingly and voluntarily accepts sole responsibility, financially, and otherwise, for all risks, hazards, and liabilities associated with any international performance under this Order. Seller also hereby releases and waives all claims of any sort that it may have in the future against Buyer or its successors, assigns, affiliates, parents, subsidiaries, or agents arising from or related to risks, hazards, or liabilities associated with any international performance under this Order. In addition to its other indemnification obligations under this Order, Seller agrees that it shall indemnify and hold harmless Buyer from and against any and all liability, damages, costs, and expenses (including defense costs and attorneys' fees) arising from or related to any suit, action, claim, or proceeding filed against Buyer by one or more of Seller's employees or lower-tier subcontractors related to any risk, hazard, or liability addressed in this subparagraph. Seller also agrees that, in addition to the foregoing indemnification agreement and any insurance required elsewhere in this Order, Seller, at its sole expense, shall, during the term of this Order, provide and maintain at reasonably adequate levels, workmen's compensation, comprehensive general liability, bodily injury, and any other insurance necessary to fully and adequately cover all reasonably foreseeable risks, hazards, and potential liabilities of any kind related to Seller's performance of this Order wherever performed. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. If specifically requested by Buyer, Seller and Seller's subcontractors shall furnish, prior to the start of Work, certificates or adequate proof of the foregoing insurance, including, without limitation, endorsements and policies. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interest of Buyer or Buyer's Customer shall not be effective until thirty (30) days after the insurer or Seller gives written notice to Buyer, whichever period is longer. Insurance companies providing coverage under this Order must be rated by A. M. Best with at least an A-rating. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Order.

14.3.3 Taxes and Fees: Seller shall have sole responsibility for, and pay without reimbursement from Buyer, all foreign sales, value added, employment, transportation, business, income and any other taxes, duties, levies, tariffs, fees, and assessments of any sort applicable or related to any Work delivered under this Order unless this Order specifically states otherwise.

14.3.4 Effect on Other Provisions: Nothing in this paragraph shall relieve Seller from complying with any other paragraph of this Order.

14.3.5 Use in Lower-Tiered Subcontracts: Seller shall include the substance of this paragraph in any lower-tier subcontracts it enters in connection with this Order.

**15. INDEMNIFICATION BY SELLER** – Seller will defend, indemnify and hold harmless Buyer, Buyer's affiliates, and their officers, agents, employees, successors and assigns, and customers, against any claims, loss, damage or expense, including, without limitation, payment of expenses of defending claims and attorneys' fees, except to the extent caused by the negligence of Buyer, its employees, or other independent contractors. This duty to defend, indemnify and hold harmless extends to any suit, claim, judgment, or demand that may arise out of or in connection with the performance or nonperformance of this Order by Seller or its agents, breach of warranty by Seller or its agents, any defective Work performed or delivered by Seller or its agents, any patent infringement or misappropriation of trade secrets by Seller or its agents, any failure of Seller or its agents to pay royalties, any assertion under workers' compensation or similar acts by persons furnished by Seller or its agents, or any other breach of Seller's obligations hereunder, whether such suit, claim, judgment, or demand is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and extends not only to "third party claims" but also to any direct loss suffered by Buyer. Buyer will inform Seller of any claim, demand, judgment, or suit asserted or instituted against it to which this provision may apply. "Agents" as used herein includes, but is not limited to, Seller's employees, subcontractors, and suppliers.

**16. INSURANCE** – Unless otherwise specified by Buyer in writing, Seller shall maintain and cause Seller's subcontractors to maintain during the term of this Order (a) workers' compensation insurance as prescribed by the



law of the state or nation in which the Work is performed; (b) employer's liability insurance with limits of at least \$500,000 for each occurrence; (c) automobile liability insurance if the use of motor vehicles is required hereunder, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; and (d) Commercial General Liability ("CGL") insurance, ISO 1988 or later occurrence form of insurance, including, without limitation, Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence. All CGL and automobile liability insurance shall designate Buyer, its affiliates, and its directors, officers, and employees (all referred to as "Buyer") as additional insured. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. If specifically requested by Buyer, Seller and Seller's subcontractors shall furnish, prior to the start of Work, certificates or adequate proof of the foregoing insurance, including, without limitation, endorsements and policies. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interest of Buyer or Buyer's Customer shall not be effective (1) for such period as the laws of the State in which this Order is to be performed prescribe or (2) until thirty (30) days after the insurer or Seller gives written notice to Buyer, whichever period is longer. Any other coverage available to Buyer shall apply on an excess basis. Seller agrees that Seller, Seller's insurer(s) and anyone claiming by, through, under or in Seller's behalf shall have no claim, right of action or right of subrogation against Buyer and Buyer's Customer based on any loss or liability insured against under the foregoing insurance. Insurance companies providing coverage under this Order must be rated by A. M. Best with at least an A-rating. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Order.

**17. GRATUITIES AND CONTINGENT FEES PROHIBITED** Seller warrants and agrees that it will comply with Buyer's policy providing that Buyer's employees and agents accept no gratuities or gifts from its vendors. Seller also warrants and agrees that it will comply with the Anti-Kickback provisions of 41 U.S.C. §§ 51 to 58. In addition to its other remedies provided by law or this Order, Buyer shall have the right to deduct from the Order price the full amount of any gift or contingent fee made by Seller in breach of these warranties and may terminate this Order for default for breach of these warranties by Seller. Seller also agrees to indemnify and hold harmless Buyer for any claims, loss, damage or expense (including, without limitation, attorneys' fees), resulting from a breach of these warranties by Seller.

## **18. DISPUTES**

18.1 "Dispute" as used herein shall mean (i) any and all claims or disputes that in any way arise out of or relate to this Order, the negotiation or execution thereof, its performance, or the breach or enforcement thereof; (ii) any claims or disputes that in any way concern the conduct of any party in connection with this Order or the relationship or duties of the parties contemplated under this Order; or (iii) claims or disputes concerning the validity or scope of the terms and conditions of this Order (including, but not limited to, this paragraph). Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties, including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, misuse or theft of trade secrets or other confidential information, unfair competition, unfair trade practices, or other tort law claims.

18.2 Arbitration: Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, the parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any Dispute which the parties cannot resolve by good faith negotiations within thirty (30) days or such longer period as the parties may mutually agree to shall be submitted and finally resolved by binding arbitration under the commercial arbitration rules of the American Arbitration Association ("AAA") then in effect. The arbitration shall be conducted by single arbitrator (mutually agreed to by the parties in accord with the AAA's commercial arbitration rules) at a location designated by Buyer, unless both parties consent in writing to a different location. Seller and Buyer will pay their own attorneys' fees and expert fees and other costs related to prosecuting or defending any Dispute, but shall share equally the costs and fees associated with the arbitration hearing and the arbitrator. The Arbitrator's power will include the power to award monetary damages, declaratory judgments, specific performance and injunctive and other equitable relief. The Arbitrator shall not have the power to modify or amend the provisions of this Order (except in accord with paragraph 23) and shall not award any damages in excess of damages that could lawfully be awarded by a court of competent jurisdiction or that are inconsistent with paragraph 20 of this Order. Any award by the Arbitrator may be

entered as a judgment in any court of competent jurisdiction. The Arbitrator shall apply the law specified in paragraph 22.

18.3 The parties acknowledge and agree that the disputes procedures set forth in this paragraph are a fair and reasonable means of resolving any and all disputes that may arise between them and that neither party has fraudulently or unfairly induced or coerced the other to agree to the procedures. In the event any party makes such a claim, e.g., a claim for rescission or a claim challenging the validity of the disputes procedures, the parties agree that such a claim nonetheless shall be resolved by arbitration as set forth in subparagraph (b). **THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE, BUT THEY KNOWINGLY CHOSE TO WAIVE ALL RIGHTS TO A JUDGE OR JURY TRIAL AND, INSTEAD, HAVE ANY AND ALL DISPUTES DECIDED BY ARBITRATION.**

18.4 In the event that any unrelated third party is joined in any Dispute between the parties, the disputes procedures set forth in this paragraph nevertheless shall apply to compel the resolution of any Dispute between the parties hereto.

18.5 Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Order unless otherwise directed by Buyer in writing.

18.6 Buyer's rights under the terms and conditions of this Order are cumulative and in addition to any other rights available at law or equity.

**19. LIMITATION OF LIABILITY** – IN ADDITION TO ANY OTHER LIMITATIONS ON BUYER'S LIABILITY SET FORTH HEREIN, IN NO EVENT SHALL BUYER, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE BY REASON OF BUYER'S BREACH OR TERMINATION OF THIS ORDER OR FOR ANY BUYER ACTS OR OMISSIONS IN CONNECTION WITH THIS ORDER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, WORK INTERRUPTION, OR ANY CLAIMS OR DEMANDS AGAINST SELLER BY ANY OTHER ENTITY, WHETHER SUCH REMEDY IS SOUGHT IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL BUYER'S LIABILITY FOR DAMAGES IN ANY CIRCUMSTANCES SET FORTH IN THIS CLAUSE EXCEED THE PRICE PAYABLE FOR THE WORK TO BE PERFORMED BY SELLER UNDER THE ORDER. THIS ORDER SHALL NEITHER CREATE FOR NOR GIVE TO ANY THIRD PARTY ANY CLAIM OR RIGHT OF ACTION AGAINST SELLER OR BUYER WHICH WOULD NOT OTHERWISE ARISE WITHOUT THIS ORDER.

**20. SET-OFF AND WITHHOLDING** – (a) Set-off: Buyer may offset against any amounts due under Seller's invoices: (i) any damages resulting from Seller's default under or breach of this Order; (ii) any amount owed to Buyer from Seller, whether or not, arising from this Order; (iii) any adjustment for non-conforming delivery or performance and any costs occasioned thereby. Buyer's rights to set-off remain even if Seller assigns it right to payment to a third party.

(b) Withholding: In addition to all other remedies provided by the law and stated in this Order, Buyer may withhold payment of an invoice if Seller has not complied with any of its obligations under this Order and Buyer shall not be required to make the payment until Seller completely satisfies the obligation(s) in issue. Seller is not entitled to interest on any withheld payments.

**21. CHOICE OF LAW** – Buyer and Seller agree that the law of the State of New York, excluding its choice of law rules and the Convention for the International Sale of Goods, if otherwise applicable, shall govern any and all Disputes addressed in paragraph 18. Buyer and Seller also agree that the provisions of the New York Uniform Commercial Code shall apply to this Order and all Disputes, regardless of whether the subject matter of this Order relates to the provision of services, the lease of rental equipment or material, or the license of software.

**22. SEVERABILITY** – In the event any provision or clause of the Order conflicts with governing law or if any arbitration panel or court of competent jurisdiction holds invalid any provision or clause of the Order, such provision or clause shall be deemed to be modified to reflect as nearly as possible the parties' intent. The remainder of the Order shall remain in full force and effect.

**23. SURVIVAL** – The provisions of the Order, which by their very nature would continue beyond the termination, cancellation, or expiration of the Order, including, without limitation, paragraphs 8, 9, 12, 14, 15, 18, 19, 20, and 21, shall continue as valid and enforceable rights and obligations of the parties and survive termination, cancellation, or expiration of the Order.

**24. ORDER OF PRECEDENCE** – The rights and obligations of the parties shall be subject to and governed by the Order. In the event of an inconsistency between the provisions of the Order, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order from the highest to lowest degree of precedence: (1) Typed Provisions in the Schedule of this Order; (2) Special Provisions or Terms and Conditions, if any; (3) General Terms and Conditions of Purchase; (4) Government Contract Provisions, if any; (5) Specifications, drawings, statement of work, or other attachments or documents incorporated by reference.

**25. PRICE** – The prices set forth in this Order cover all Work delivered or performed by Seller to satisfy the requirements of this Order. Buyer will not be liable for extra charges of any kind unless specifically agreed to in writing by Buyer.

**26. TAXES** – The prices in this order include, and Seller shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Order, except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

## **27. PAYMENT**

27.1 Invoicing: Seller shall deliver an invoice to Buyer on a monthly basis (unless otherwise directed by Buyer) for Work performed during the prior month. Each invoice shall be submitted to Buyer's designated Contract Administrator/Purchasing Administrator and Buyer's Project Manager. Except as otherwise provided in this Order, each such invoice shall contain: (i) the Order number; (ii) the original Order price and any change thereto accompanied by copies of authorized Change Orders; (iii) sufficient detail to identify the Work provided and the fee therefore, and (iv) supporting documentation for the amount invoiced; (v) a waiver of liens in accordance with subparagraph 28 below; and (vi) any other documents Buyer may reasonable require. Buyer shall not be responsible for and Seller shall not invoice Buyer for interest or carrying charges.

27.2 Certificate of Compliance: A signed certificate of compliance, signed by an authorized representative of Seller's Quality Department, must be submitted with each invoice certifying that the Work delivered is of the quality specified and conforms in all respects with the Order requirements.

27.3 Payment: Payment of each properly submitted invoice shall be made by Buyer within thirty (30) days following receipt of each invoice, subject to the following: (i) Buyer may withhold an appropriate portion of the payment until any disputed items are resolved and/or defects in the Work are corrected; (ii) Buyer may retain ten percent (10%) of the total amount invoiced by Seller (such retainage will be paid upon full and final completion of all Work and acceptance of such Work by Buyer); (iii) if Seller fails to make payments to its lower-tier subcontractors or suppliers in the performance of the Work, Buyer shall have the right (but not the obligation) to retain, out of payments due or to become due to Seller, reasonable amounts to satisfy any claims, bonds, or liens against Buyer or Buyer's property, to issue joint checks payable to Seller and any potential bond or lien claimant, or to pay such lower-tier subcontractors and suppliers to protect Buyer from any and all loss, damage, and expenses (including, without limitation, attorney's fees) arising out of or related to a claim or lien by a lower tier subcontractor or supplier; (iv) Buyer may exercise its rights set forth in paragraph 21 to setoff any amounts due Buyer from Seller against amounts payable under this Order or any agreements between Buyer and Seller. Payment by Buyer shall be deemed to have been made for the purpose of meeting the thirty (30) day requirement on the date Buyer deposited the payment in the mail or made the electronic funds payment. Seller acknowledges that progress payments to Seller shall not constitute final acceptance by Buyer of the Work or any portion of the Work. Unless Seller receives Buyer's consent in writing, Buyer shall not be responsible for payment of any invoices submitted by Seller to Buyer in excess of thirty (30) days after the final delivery of the Work. As a condition precedent to receiving any payments, including, without limitation, the payment of any retainage, under this Order, Seller shall furnish a full and unconditional release ("Release") stating that all of Seller's subcontractors or suppliers have been

paid in full by Seller and that no liens or rights in rem of any kind lie upon or have attached against the Work or any part thereof, either for or on account of any Work done upon, or about such Work, or any materials, articles or equipment furnished therefore or in connection therewith, or any other cause or thing, or any claims or demands of any kind. The Release shall further state that Seller has no knowledge of or basis for making any request for equitable adjustment, claim or demand of any kind against Buyer concerning or in connection with the Work for which said invoice is issued and that Buyer is released from any and all further liability for payments in connection therewith, except for unsettled claims which have been presented to Buyer in writing prior to the tender of final payment by Buyer and have been identified in the Release. Copies of release of liens/claims signed by Seller's lower-tier subcontractors and suppliers, acknowledging receipt of full payment of all obligations incurred by such subcontractors and suppliers on behalf of Seller hereunder also may be required to be provided at Buyer's discretion. Final payment shall not release Seller from any warranty and indemnification provisions contained in this Order.

27.4 Records: Seller shall maintain, for a period of two (2) years following the expiration or termination of this Order, accurate records of all matters that relate to its performance of the Work, including, without limitation, all records and backup associated with invoices that have been submitted to Buyer, and shall make such records available to Buyer and its representatives for audit and inspection.

**28. INDEPENDENT CONTRACTOR** – Nothing in this Order shall be deemed to represent that Seller, or any of Seller's employees or agents, are the agents, representatives, or employees of Buyer. Seller assumes full and sole responsibility for the payment of all compensation, expenses, benefits (including, but not limited to, workers' compensation and medical benefits) of its employees and for all state and United States income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings or taxes. Seller and its agents are independent contractors for all purposes and at all times.

**29. SUSPENSION/STOP WORK** – Buyer may at any time by written order to Seller require the Seller to stop all, or any part of the Work called for by this Order for a period of up to 100 days. After receipt of Buyer's notice, Seller shall stop Work in accord with the terms thereof, taking all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of Work stoppage. Within said 100-day period, or a longer period if agreed to by the parties in writing, Buyer shall either terminate the Order under paragraph 7 or cancel the stop work order by written direction to Seller to continue the Work. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Order price or time for performance, Seller shall comply with the provisions (including, without limitation, the time deadlines and liability limitations) set forth in paragraphs 11 and 20.

**30. WORK PERFORMED ON BUYER PREMISES OR ON PREMISES OF BUYER'S CUSTOMER(S) OR ACCESS TO BUYER'S INFORMATION SYSTEMS**

30.1 If this Agreement involves work by Seller on the premises of Buyer or Buyer's Customer(s), Seller shall comply with and take all precautions required by any safety and security regulations and Buyer internal policies or procedures to prevent the occurrence of any injury to person or property during the performance and progress of such Work. Seller shall promptly notify Buyer of any such injury or damage. In addition to any other indemnification obligations in this Agreement, Seller hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever to all persons, whether employees of Seller, or otherwise, and to all property, caused by, resulting from, or arising out of Seller's negligence or that of its agents or employees when performing work on the premises of Buyer or Buyer's Customer(s).

30.2 Seller shall at all times enforce strict discipline and good conduct among its employees, and shall not employ in connection with the services covered by this Agreement any unqualified or unfit person or anyone not skilled in the work assigned to him or her. Seller also agrees that any employee, subcontractor, or agent provided under this Agreement to Buyer will abide by and perform in accordance with the employment policies of Buyer, which address mandatory internal dispute resolution of all covered claims, sexual and other unlawful harassment, drug and alcohol abuse, and equal employment opportunity. Seller shall indemnify and hold Buyer harmless against any liability arising from a violation of such policies by Seller's employee, subcontractor, or agent. In addition to any other remedies available to Buyer, Buyer may, without notice and an opportunity to cure, expel from its

property/worksite, or the property or worksite of Buyer's Customer(s), any employee, subcontractor or agent of Seller found violating any Buyer policy.

30.3 Seller must receive written permission from Buyer or Buyer's Customer(s) before storing any materials upon the premises or constructing any temporary workshop or other apparatus on the premises. Seller agrees to keep the premises free from accumulations of waste material or rubbish caused by its employees, subcontractors, or agents during performance, and at the completion of performance, Seller shall remove from the premises all rubbish, implements, and surplus materials and leave the premises broom clean, unless otherwise instructed by Buyer or Buyer's Customer(s). Seller shall properly store all loose tools and materials.

30.4 Prior to Buyer issuing any "No-Escort" badges to Seller's employees performing work in the operating areas of Buyer's premises or facilities for a period of 45 days or more within a 365 day period, or having any access to Buyer computer information systems for any period of time, Seller, shall, at its own expense, obtain a Background Investigation (BI) on the Seller's employee in accordance with standards established by Buyer's Security Organization.

**31. FORCE MAJEURE** – Buyer shall not be liable for delay or failure of performance occasioned by causes beyond its control, including, but not limited to, acts of God or the public enemy, actions or decrees of governmental entities, civil unrest, riots, acts of terrorism, organized labor strikes, declared or undeclared war, fire, floods, unusually severe weather, earthquakes, or volcanoes ("Force Majeure Event"). If Buyer is affected by a Force Majeure Event, Buyer shall give written notice to Seller, which shall cause, without penalty to Buyer, all obligations under this Order to be immediately suspended for a period of sixty (60) days. If the period of suspension caused by the Force Majeure Event exceeds that first sixty-day period, Buyer either may terminate the Order for convenience in accord with subparagraph 7(b) or suspend the Order for an additional period under paragraph 30. Any termination settlement or equitable adjustment sought by Seller following the termination for convenience or suspension may not include any costs incurred during the first sixty-day suspension.

**32. SUBSTITUTION** – Seller agrees not to substitute materials or other components of Work without written consent by Buyer.

**33. OFFSETS FOR FOREIGN SUBCONTRACTS OR PURCHASE ORDERS PLACED BY BUYER** – If Seller is located outside the United States or any Work ordered hereunder will be produced or performed outside the United States, the following clause also shall apply to permit utilization of any offset credits generated by Buyer, its divisions, subsidiaries and affiliates:

"Offset credits generated by this Order are for the exclusive use of Buyer, and/or any of its divisions, affiliates, subsidiaries, or expressly authorized subcontractors to fulfill all past, present, or future offset obligations. Buyer has, and retains, the right to assign these offset credits to third parties. Seller acknowledges this fact and agrees to assist and support Buyer and its divisions, affiliates, subsidiaries, expressly authorized subcontractors, and assignees in obtaining offset credits in an amount equal to the value of this Order."

**34. OFFSETS FOR FOREIGN SUBCONTRACTS PLACED BY BUYER'S SUBCONTRACTORS** – In the event Seller places a subcontract or purchase order with a lower tier subcontractor or supplier, and either the subcontractor or supplier is located outside the United States, or any of the supplies will be produced, or services performed, outside the United States, Seller also shall provide a copy of the subcontract or purchase order to Buyer and include the following clause therein:

"Offset credits generated by this subcontract or purchase is for the exclusive use of General Dynamics and/or any of its divisions, affiliates, subsidiaries, or expressly authorized subcontractors to fulfill all past, present, or future offset obligations. General Dynamics has, and retains, the right to assign these offset credits to third parties. Seller acknowledges this fact and agrees to assist and support General Dynamics and its divisions, affiliates, subsidiaries, expressly authorized subcontractors, and assignees in obtaining offset credits in an amount equal to the value of this subcontract or purchase order."

**35. DEFINITIONS** –

- (a) "Order" as used herein includes the Fixed-Price Purchase Order, the Schedule, these General Terms and Conditions, any Special Terms and Conditions, any Government Contract Provisions, any plans, any specifications, and other documents incorporated by reference or attached hereto.
- (b) "Work" means the subject of this Order, and therefore may include, without limitation, goods (e.g., materials, equipment, products, hardware, software, or information) or services (whether or not ancillary to the sale of goods) or both furnished by Seller to Buyer in performance of and pursuant to this Order.
- (c) "Items" as used herein includes goods (e.g., materials, equipment, products, hardware, software, or information) and any part thereof.
- (d) "Prime contract" means the contract existing between Buyer and Buyer's Customer.
- (e) "F.O.B. Destination, Freight Prepaid" means title and risk of loss pass to Buyer at Destination Point; Seller bears and prepays freight charges; and Seller must file claims for loss, damage, or overcharges (if any) for items in transit.
- (f) "Days" means calendar days unless otherwise expressly noted.
- (g) "Government" means the United States Government.

**36. CERTIFICATION OF AUTHENTICITY AND TRACEABILITY.** - Seller certifies to Buyer that all material furnished under this purchase order is genuine, new and unused. Seller certifies that all material is traceable to the point of manufacture and that complete material pedigree is known and can be furnished to Buyer upon request. Seller will have a documented procedure that defines the method for controlling records that are created by and /or retained by Seller. The Seller shall notify Buyer thirty (30) calendar days prior to the destruction or disposal of records associated with this order.

### **37. COUNTERFEIT PARTS PREVENTION**

#### **37.1 DEFINITIONS:**

37.1.1 Authentic shall mean (A) genuine; (B) purchased from the Original Equipment Manufacturer ("OEM"), Original Component Manufacturer ("OCM") or through the OEM's/OCM's authorized dealers; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

37.1.2 Authorized Dealer — A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM's/OCM's products.

37.1.3 Counterfeit Part — A part that is an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized part of the legally authorized source. This definition includes used parts represented as new parts.

37.1.4 Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM) — An organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.

37.1.5 Non-Franchised Source — Any source that is not authorized by the OEM or OCM to sell its product lines. Non-franchised sources may also be referred to as brokers or independent distributors.

37.1.6 Suspect Counterfeit Part — A part that Buyer becomes aware, or has reason to suspect, meets the definition of "counterfeit part", as defined above. For purposes of this document, the terms "counterfeit part" and "suspect counterfeit part" will be used interchangeably. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, the entire lot of parts will be considered to be suspect counterfeit.

#### **37.2 TERMS AND CONDITIONS:**

37.2.1 Seller represents and warrants that only new and authentic materials (including embedded software and firmware) are used in products required to be delivered to Buyer and that the Work delivered contains no Counterfeit Parts. No material, part, or component other than a new and authentic part is to be used unless approved

in advance in writing by Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs"), Original Component Manufacturers ("OCMs") or through the OEM's/OCM's authorized dealers. Seller represents and warrants to Buyer] that all parts/components delivered under this contract are traceable back to the OEM/OCM. SELLER must maintain and make available to Buyer at Buyer's request, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Buyer. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. Buyer's approval of Seller request(s) does not relieve Seller's responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.

37.2.2 Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and Buyer's approval before parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's authorized dealers. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request.

37.2.3 Seller must maintain a counterfeit detection process that complies with SAE standard AS5553, Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition.

37.2.4 If it is determined that counterfeit parts or suspect counterfeit parts were delivered to Buyer by Seller, the suspect counterfeit parts will not be returned to the supplier. Buyer reserves the right to quarantine any and all suspect counterfeit parts it receives and to notify the Government Industry Data Exchange Program (GIDEP) and other relevant government agencies. Seller shall promptly reimburse Buyer for the full cost of the suspect counterfeit parts and Seller assumes responsibility and liability for all costs associated with the delivery of suspect counterfeit parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the suspect counterfeit parts. The remedies in this section shall apply regardless of whether the warranty period or guarantee period has ended, and are in addition to any remedies available at law or in equity.

37.2.5 If the procurement of materials under this contract is pursuant to, or in support of, a contract, subcontract, or task order for delivery of goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with this contract may be punishable, as a Federal felony, by up to five years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a Federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.

37.2.6 Seller shall flow the requirements of this section ("COUNTERFEIT" PARTS PREVENTION") to its subcontractors and suppliers at any tier for the performance of this Contract.

## **38. CONFLICT MINERALS**

38.1 Seller represents that, regardless of whether Seller is publicly traded or not, Seller does not procure Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. (the "Rule").

38.2 Seller represents and warrants that all products that will be delivered to General Dynamics by Seller under this Order are Democratic Republic of the Congo (DRC) Conflict Free, as defined by and consistent with the Rule.

38.3 Seller agrees that, if required by the Rule, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to General Dynamics pursuant to this Order originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to General Dynamics pursuant to this Order, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict

Mineral. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.

38.4 Seller agrees that it shall require its own subcontractors and suppliers (at any tier in the supply chain for a product delivered to General Dynamics under this Order) to furnish information to Seller necessary to support Seller's obligations under this Section 38.

38.5 Seller will maintain records reviewable by General Dynamics to support its certifications above.

38.6 Seller acknowledges that General Dynamics may utilize and disclose Conflict Minerals information provided by Seller in order to satisfy its disclosure obligations under the Rule.

38.7 If General Dynamics determines that any certification made by Seller under this Section 38 is inaccurate or incomplete in any respect, then General Dynamics may terminate this Order pursuant to the provision per paragraph 7(a) "TERMINATION FOR CAUSE" above.

**39. SELLER NOTICE OF DISCREPANCIES** Seller shall immediately notify Buyer in writing when discrepancies in Seller's process, materials, or approved inspection/quality control system are discovered or suspected which may materially affect the Goods delivered or to be delivered under this Contract.

**40. DISCONTINUANCE OF MANUFACTURE** Should Seller decide to discontinue manufacture of the supplies purchased by Buyer under this contract, Seller: (1) shall provide written notice to Buyer of the intended supply discontinuance; and (2) shall provide Buyer a minimum of twelve (12) months from the written notification date to allow Buyer to place final "lifetime buy" purchase orders for the supplies at a unit price to be negotiated, but in no event higher than the unit price provided in this contract. In the event one or more "lifetime buy" purchase orders are made during such twelve (12) month period, Seller shall deliver the purchased supplies to Buyer no later than six (6) months after the end of the "lifetime buy" period. Seller's obligations under this clause shall extend for two (2) years beyond the effective date of this Contract, irrespective of whether the contract is completed/terminated within the two (2) year period.

#### **41. PROHIBITION ON CONTRACTING WITH THE ENEMY**

41.1 Seller shall exercise due diligence to ensure that none of the funds received under this contract are provided directly or indirectly to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities.

41.2 Seller shall exercise due diligence to ensure that none of its subcontracts are associated with a person or entities listed in NDAA FY2012 Section 841/FY2014 Section 831 Identified Entities list posted at <http://www.acq.osd.mil/dpap/pacc/cc/policy.html>.

41.3 Buyer has the authority to (1) Terminate this contract for default, in whole or in part, if the Seller failed to exercise due diligence as required by paragraph 41.1 and 41.2 of this clause; or (2) Void this contract, in whole or in part, if the Seller or its customer, the U.S. Government determines in writing that any funds received under this contract have been provided directly or indirectly to a person or entity who is actively opposing or Coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities.

#### **42. COMMERCIAL ITEMS -**

(a) For Commercial Items acquired under the Federal Acquisition Regulation (FAR), the following FAR52.212-5(e)(1) and DFARS provisions are incorporated herein by reference:

*SELLER SHALL INCLUDE IN EACH LOWER-TIER SUBCONTRACT THE APPROPRIATE FLOW DOWN CLAUSES AS REQUIRED BY THE FAR AND DFARS.*

**FAR/DFARS Clauses - Applicable to This Order Irrespective of the Amount of the Order (Exceptions as noted).**



52.203-13 Contractor Code of Business Ethics and Conduct (if this contract exceeds \$5,000,000 and the performance period is 120 days or more. All disclosures of violation of the civil False Claims Act or of the Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.)

52.219-8 Utilization of Small Business Concerns (if the contract exceeds \$150,000),

52.222-17 Nondisplacement of Qualified Workers

52.222-26 Equal Opportunity

52.222-35 Equal Opportunity for Veterans (if the contract exceeds \$100,000),

52.222-36 Affirmative Action for Workers with Disabilities (if the contract exceeds \$15,000)

52.222-40 Notification of Employee Rights under the National Labor Relations Act (Applies if this contract exceeds \$150,000)

52.222-41 Service Contract Labor Standards (if subject to the Labor Standards and the contract exceeds \$2,500)

52.222-50 Combating Trafficking in Persons

52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements

52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements

52.222-54 Employment Eligibility Verification (if contract exceeds \$3,000)

52.225-26 Contractors Performing Private Security Functions Outside the United States

52.226-6 Promoting Excess Food Donation to Nonprofit Organizations

252.204-7012 Safeguarding of Unclassified Controlled Technical Information In reading the clause, the word “Buyer” shall be substituted for the word “Government” or “Contracting Officer” and the word “Subcontractor” shall be considered the “Contractor”, thereby creating a legal relationship between the Buyer and Subcontractor identical to, but not dependent upon, the legal relationship intended to be created by said regulations between the Government and a contractor; provided however, that all reports of cyber incidents required by section (d) of the Clause shall be made in the first instance by Subcontractor to the Buyer within 4 hours of discovery of any cyber incident.

252.223-7008 Prohibition of Hexavalent Chromium

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (if the contract exceeds \$150,000)

252.239-7018 Supply Chain Risk

252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System

(b) In the event it is determined that the Work to be performed under this contract is not a Commercial Item as defined at FAR 2.101, then Seller agrees that Buyer’s General Provisions - Fixed Price (In Support of a U. S. Government Contract) E1008-2 and the corresponding agency flowdowns shall be applicable to this Contract, in lieu of these commercial terms and conditions, effective as of the date of this Contract. Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.

If Buyer’s contract price is reduced because of a non-commercial item determination for Item(s) provided by the Seller; then the Buyer may make a corresponding reduction, excluding Buyer added G&A, and profit or fee, in the price of this Contract or may demand payment of the corresponding amounts. Seller shall promptly pay amounts so demanded.

*For General Dynamics C4 Systems, Inc., General Dynamics Information Technology, Inc., General Dynamics Advanced Information Systems, Inc., General Dynamics Global Imaging Technologies and General Dynamics SATCOM Technologies Inc.*

**E1008-04 (Formerly PROC-1028 and 1137826)**  
15 AUG 2014 THROUGH 18 FEB 2015