

## PURCHASE ORDER TERMS AND CONDITIONS

The following are the standard terms and conditions of ITC Defense Corp. (ITC). These are applicable to all ITC purchase orders.

The offeror/quoter acknowledges that ITC Terms and Conditions have been received and deemed acceptable for incorporation into all ITC purchase orders issued to offeror/quoter during the year following date of acceptance below:

**1. ACCEPTANCE** – This Purchase Order, which represents the entire agreement between ITC Defense Corp (hereinafter referred to as "Buyer") and the Seller, becomes a binding contract upon the terms and conditions set forth herein by acknowledgment or commencement of performance. Acceptance is limited to the terms and conditions set forth in this Purchase Order. No change, modification, or revision to this Purchase Order shall be valid and binding unless in writing and signed by the authorized representative of Buyer. The express terms of this Purchase Order supersede and control any course of dealing or usage of trade. In any contract between Buyer and Seller resulting from the subject matter hereof, this Purchase Order shall conclusively be presumed to be the offer.

**2. ADVERTISING OR PUBLICITY** – Seller shall not without first obtaining the written consent of Buyer in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the articles or services here mentioned or disclose any of the details connected with this Purchase Order to any third party except as herein specified and except as may be required to perform this Purchase Order.

**3. ASSIGNMENT** – Neither this Purchase Order nor any interest under it shall be assignable nor any duties delegated by Seller, voluntarily or involuntarily, without the Buyer's prior written consent. Any such consent given shall not be deemed to waive or prejudice Buyer's right to recoupment and/or set off claims arising out of this or any other transactions with Seller, its divisions, affiliates, or subsidiaries, or to settle or adjust matters with Seller without notice to assignees. Seller shall not enter into any Subcontract or Purchase Order for the procurement of items covered here or substantial portion thereof without first obtaining the written approval of Buyer.

**4. BUYER OR U.S. GOVERNMENT PROPERTY** – All property used by Seller but owned, furnished, charged to or paid for by Buyer or U.S. Government shall be the property of Buyer or Government, subject to inspection and/or removal by Buyer or Government at any time without cost or expense to Buyer or Government. All such property shall be identified and marked appropriately as Buyer's or Government's property, used only for this Purchase Order and, if having a value in excess of \$1,500, insured in Buyer's or Government's name in the amount of its full replacement value as determined by Buyer or Government. If insurance is required to be obtained pursuant to this clause, then, at time of delivery of such tools to Seller, Seller shall furnish to Buyer a certificate of insurance evidencing such coverages as are required by this clause. Seller shall maintain full insurance on Buyer's or Government's property while it is out of the possession of Buyer or Government. Seller shall pay the premiums of all the aforesaid insurance policies. All insurance policies shall contain a provision whereby the insurance company agrees to give Buyer and Government a thirty (30) day written notification prior to cancellation or reduction in coverage of any or all of the policies.

**5. CHANGES** – Buyer shall have the right at any time to make changes in the drawings, designs, specifications, quantities, delivery schedules, methods of shipment or packaging, and place inspection, acceptance and/or point of any items in this Purchase Order, and Seller agrees to be bound thereby. No change shall be effective unless authorized in writing by Buyer. If such changes result in delay or an increase or decrease in expense to Seller, Seller shall notify Buyer immediately and negotiate an equitable adjustment, provided, however, that Seller shall, in all events, proceed diligently to perform the work or service or supply the items contracted for under this Purchase Order as so changed. No claim by Seller for such equitable adjustment shall be valid unless submitted to Buyer in writing within fifteen (15) days from the date of such change notice, accompanied by an estimate of changes resulting from such change.

Buyer's engineering and technical personnel may, from time to time, render assistance or give technical advice to, or effect an exchange of information with Contractor's personnel in a liaison effort concerning the articles to be furnished hereunder. However, such exchange of information or advice shall not vest Seller with the authority, nor shall such change in articles or provisions of the contract be binding upon Buyer unless incorporated as a change directed in writing by an authorized official of Buyer.

**6. COMPLIANCE WITH LAWS** – Seller shall comply with all applicable federal, state, and local laws, Government orders, and regulations in performing this Purchase Order. Seller covenants to save and hold Buyer harmless from—and to reimburse it for—any and all costs, damages, and expenses (including attorney's fees) incurred directly or indirectly through any failure of Seller to comply with any such law, regulation, or order. Notwithstanding the above, this clause shall not be construed, nor shall this clause in any way compromise the interests of the Government.

**6.1 US Equal Employment Opportunity Regulations: To the extent employment activities of the Seller occur in the United States and if otherwise applicable, this Buyer and Seller shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered Buyers/prime contractors and Sellers take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Buyer/Seller agrees to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).**

**7. REQUIREMENTS FOR PACKAGING** – Packaging/packing shall be in accordance with ASTM D 3951-10, Standard Practice for Commercial Packaging, Level of Protection (LOP): Commercial, Level of Pack (LPK): Commercial, Quantity Unit Pack (QUP): 001. Marking shall be in accordance with MIL-STD-129R.

**8. DELIVERY** – Time is of the essence in the performance of this Purchase Order. Deliveries (as specified in the order) shall be strictly in accordance with the quantities and schedule specified in the order. If at any time it appears Seller may not meet such schedule, Seller shall immediately notify Buyer verbally (to be confirmed in writing) of the reasons for and estimated duration of the delay and, if requested by Buyer, make every effort to avoid or minimize delay to the maximum extent possible, including the expenditure of premium time and shipment via air, both at Seller's expense. In the event of early delivery, Buyer may store goods at Seller's expense. Seller shall not, without Buyer's written consent, manufacture or procure materials in advance of Seller's normal flow time or delivery in advance of schedule. In the event of termination or change, no claims will be allowed for any such manufacture or procurement in advance of such normal flow time unless there has been such prior written consent of Buyer. Shipment shall be made F.O.B. Buyer's plant at the address prescribed in this order, unless a different F.O.B. point is prescribed. Unless otherwise provided herein, title in supplies hereunder vests in Buyer only upon final acceptance at Buyer's designated facility.

**9. FAIR LABOR STANDARDS ACT** – Seller shall, at time of delivery of invoicing, certify that goods sold hereunder were manufactured or produced in full compliance with the Fair Labor Standards Act, as amended to the date of certification, and all applicable United States Department of Labor Regulations promulgated thereunder.

**10. INDEMNIFICATION AND INSURANCE**

10.1 Seller shall indemnify and save Buyer harmless from and against any and all liability for injury to persons or property occasioned wholly by an act or omission of Seller, its lower-tier subcontractors, agents, or employees, including any and all expense, legal or otherwise, incurred by Buyer in the defense of any claim or suit arising out of the work done under this Purchase Order, provided, however, that Seller shall not be liable for injury to persons or property caused by the sole negligence of Buyer, its agents and employees. To the extent both Buyer and Seller, their agents or employees are partially responsible for injury to persons or property through an act or omission of either party, both Parties shall be liable for their proportionate share of the injury, including all expense, legal or otherwise, incurred by either party in the defense of any claim or suit arising out of the work done under this Purchase Order. One party shall not be liable for injury to persons or property caused by the sole negligence of the other party, its agents and employees. Buyer shall promptly notify Seller of any claim against Buyer which is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent Buyer in, or to take charge of, any litigation in connection therewith.

10.2 If Seller's agents, employees, or subcontractors enter upon premises occupied by or under the control of the Buyer or any of its customers or suppliers in the course of the performance of this Purchase Order, Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) to any person or any damage to any property arising out of any acts or omission of Seller's agents, employees or subcontractors. Seller shall maintain such public liability, property damage insurance, and worker compensation insurance as will protect Buyer from any of said risks and from any claims under any applicable Worker Compensation Acts. Buyer reserves the right to establish the limits of insurance coverage applicable to this Purchase Order and to require Seller to secure and maintain said coverage. Upon request of Buyer, Seller shall furnish Buyer certificates of such insurance which will provide that at least ten (10) days prior notice in writing shall be given to Buyer of cancellation or reduction in coverage. Seller shall defend, at its own expense, any actions or claims against Buyer or its customers relating to infringement or alleged infringement of patent rights, copyrights, or trademarks arising out of this Purchase Order. Notwithstanding the above, this clause shall not be construed, nor shall this clause in any way compromise the interests of the Government.

**11. INSPECTION** – Seller shall permit Buyer's inspectors and inspectors of the Government and/or Buyer's customers to have access to Seller's plant at all reasonable hours for the purpose of inspecting any items covered by this Purchase Order or work in process for production of said items. Seller, without additional cost to Buyer, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspection, Seller shall make available to the inspectors copies of all drawings, specifications, process, preservation and packaging data applicable to the articles ordered herein. Seller shall promptly furnish to Buyer an inspection certificate. Unless otherwise specified, all supplies will be subject to final inspection and acceptance by Buyer at Buyer's plant, notwithstanding any prior payment or inspection and acceptance. Buyer may, at its option: (1) hold the rejected items for Seller's instructions and at Seller's risk; (2) return them to Seller at Seller's expense and require their correction; (3) retain said supplies and make such expenditures for improvements, changes, and alterations to said supplies as it may deem necessary in order to bring them into conformity with the contract requirements at Seller's expense, and the contract price shall be reduced accordingly, or if payment has already been made, Seller shall promptly reimburse Buyer for any such expenditures; and/or (4) terminate this order for default, in which case Seller shall promptly reimburse Buyer for any and all damages sustained by Buyer as a result of said failure of supplies to meet contract requirements. Recovery of damages shall be in accordance with paragraph 21(b) of these terms and conditions. Buyer may charge Seller any and all costs of inspection and test when supplies tendered for final inspection and acceptance do not comply with the requirements of this Purchase Order. No replacement or correction of rejected supplies shall be made unless otherwise specified on Buyer's returned material orders. All rejects will be charged back at full billing price plus the cost of inbound freight and handling. No item rejected by Buyer will be resubmitted for acceptance by Seller without the prior written consent of Buyer. If such consent is given by Buyer, the resubmitted items must be designated as having been previously rejected.

Subject to paragraph 24, "Warranties," acceptance by the Buyer will be considered conclusive except for latent defects, fraud, or such gross mistakes as amount to fraud.

**12. LEGAL CONSTRUCTION AND INTERPRETATION** – This Purchase Order shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. Notwithstanding the above, if the Purchase Order is issued cognizant to a Federal Government contract, the following clause shall apply:

12.1 Irrespective of the place of performance, this order will be construed and interpreted according to the federal common



law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. To the extent that the federal common law of government contracts is not dispositive, the laws of the state from which Buyer's order is issued shall apply.

**13. LIENS** – All supplies to be delivered by Seller hereunder and all property to be returned to Buyer shall be free and clear of any and all liens and encumbrances whatsoever.

**14. MISCELLANEOUS CHARGES** – No charges will be allowed for boxing, wrapping, cartage, or storage other than those specified in this Purchase Order.

**15. PAYMENT** – Invoices will be paid according to discount terms or, if no discount is offered, as indicated on the Purchase Order. If there are no payment terms indicated in the Purchase Order, invoices will be paid within forty-five (45) days after receipt and acceptance of goods or completion and acceptance of services. Discount periods will be computed from either date of acceptance of goods ordered plus three (3) days allowance for inspection or the date of receipt of correct invoices, prepared in accordance with the terms of this Purchase Order, whichever date is later. Buyer may set off any of its claims against payments otherwise due to Seller.

**16. RECORDS AND AUDIT** –

16.1 Records: Supplier will retain and preserve all records and materials, including invoice records pertaining to any services or supplier provided under this Agreement for a period of three (3) years after the expiration or termination of this Agreement or for the period prescribed by applicable law, whichever period is longer.

16.2 Audit: For a period of ten (10) years from the last date of delivery or for the period prescribed by applicable law, whichever period is longer, an audit may be conducted in connection with this Agreement by the Government or a third party mutually agreed to by both Parties. Seller will provide, and will cause each of its sub-tier suppliers to provide access for auditors to Seller's and Seller's sub-tier supplier's books and other pertinent records and any information as requested by the auditors. During the audit, if any invoice submitted by Seller is found to be in error, an appropriate adjustment including the costs of the audit will be made to the invoice or the next succeeding or new invoice following the discover of the error and the resulting payment or credit will be issued promptly. Seller will promptly correct any deficiencies discovered as a result of the audit.

**17. PRICE** – The price for each item covered by this Purchase Order shall be the lower of the price shown for such items on the face of this Purchase Order or the price of Seller in effect on the date of delivery for like quantities of items of like grade and quality to customers in the same class as Buyer.

**18. STOP WORK** – The Buyer may, by written notice to Seller, require the Seller to stop for a period not to exceed ninety (90) days all or any part of the work called for by this order in accordance with the "Stop Work Order" clause in FAR 52.242-15, which is incorporated herein by reference except "Government" and "Contracting Officer" means Buyer, and "Contractor" means Seller as used therein. The FAR 52.242-15 may be obtained from the United States Government Printing Office, Washington, D.C., or from Buyer upon request.

**19. TAXES** – Excepting for Virginia sales and use tax, if applicable, the price for each item covered by this Purchase Order is inclusive of all other taxes, fees, excises and/or charges which are now or may hereinafter be imposed (whether by federal, state, municipal, or other local public authority) with respect to the manufacture and sale of such items, any services to be rendered by Seller hereunder, or this Purchase Order itself. Seller shall separately state on its invoice the amount of Virginia sales and use tax as applicable to the sale of the items or services covered by this Purchase Order.

**20. INDEPENDENT CONTRACTOR** – Seller acts as an independent contractor and not as Buyer's agent or employee in carrying out the requirements of this Purchase Order.

**21. TITLE AND RISK OF LOSS** – Except as otherwise expressly provided herein, title to and risk of loss on all conforming supplies shipped by Seller to Buyer shall pass to Buyer upon final acceptance of the supplies by Buyer.

**22. TERMINATION**

22.1 Without Cause - Buyer may terminate all or any part of this Purchase Order at any time or times without cause by electronic or other written notice to Seller. The rights and obligations of the Parties shall be in accordance with the clause set forth in Federal Acquisition Regulation 52.249-1 (Fixed Price \$100,000 or less) or 52.249-2 (Fixed Price over \$100,000) in accordance with FAR Section 49.502 in effect on the date of this Purchase Order unless otherwise specified. This Regulation may be obtained from the United States Government Printing Office, Washington, D.C., or from Buyer upon request. Seller must submit its termination claim to Buyer within sixty (60) days after the effective date of termination. The provisions of this subparagraph shall not limit or affect the right of Buyer to terminate this Purchase Order for cause.

22.2 For Cause - If Seller fails to make any delivery in accordance with the agreed delivery date or schedule or otherwise fails to observe or comply with any of the other instructions, terms, conditions, or warranties applicable to this Purchase Order or fails to make progress so as to endanger performance of this Purchase Order, Buyer may terminate all or part of this Purchase Order by electronic or other written notice to Seller without any liability by Buyer to Seller on account thereof. Buyer may require a financial statement from Seller at any time during the term of this Purchase Order for purpose of determining Seller's financial responsibility. Buyer may, by written notice to Seller, terminate the whole or any part of this Purchase Order in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, reorganization, arrangement, or liquidation proceeding by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment by Seller for the benefit of creditors. In the event of termination for cause, Buyer may produce or purchase or otherwise acquire similar supplies or services elsewhere on such terms or in such manner as Buyer may deem appropriate, and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer.

22.3 If this Purchase Order is terminated for cause, the Buyer, in addition to any other rights, may require the Seller to transfer title and deliver to the Buyer, in the manner and extent directed by Buyer (1) any completed supplies, (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing



materials") as the Seller has specifically produced or specifically acquired for the performance of the terminated portion of this Purchase Order; and the Seller shall, on direction from the Buyer, protect and preserve property in possession of the Seller in which the Buyer has an interest.

22.4 If, after notice of termination of this contract under the provisions of this paragraph 22.2, it is determined for any reason that the Seller was not in default or where the failure to perform the subcontract arises out of causes beyond the control and without the fault or negligence of the Seller or if the failure to perform is caused by default of a lower-tier subcontractor, and if such default arises out of causes beyond the control of both the Seller and the lower-tier subcontractor and without the fault or negligence of either of them, the rights, obligations, and liabilities of the Parties shall be the same as if the notice of termination had been issued pursuant to paragraph 22.1 above.

22.5 The rights and remedies of Buyer provided by this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this Purchase Order.

**23. WAIVER OF TERMS AND CONDITIONS** – The failure of Buyer in any one or more instances to enforce one or more of the terms and conditions of this Purchase Order or to exercise any right or privilege in this Purchase Order or the waiver by Buyer of any breach of the terms or conditions of this Purchase Order shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

**24. WARRANTIES** – Seller warrants that the goods and services described herein shall be free from defects in workmanship and materials and shall strictly conform to applicable specifications, drawings and approved samples, if any, including performance specifications and, if of Seller's design, will be free from design defects, fit for their intended purpose, and of merchantable quality. All warranties shall run to Buyer, its customers, and subsequent owners of the goods or end products of which they are a part. These warranties shall be in effect for a period of eighteen (18) months after Buyer has accepted such supplies. In the event of a breach thereunder, Buyer may require that the goods be repaired or replaced, or Buyer may return all or part of the goods to Seller for refund or Buyer may retain the goods. In the event Buyer retains the goods, the price of this Purchase Order will be equitably reduced and, if the contract price has been paid, a refund will be made to the Buyer. Seller agrees to indemnify Buyer, its customers or subsequent owners for all liability loss, costs and expenses, including costs of test performed by Buyer, its customers or subsequent owners in determining whether a breach has occurred, any and all costs of disassembly and reassembly incurred as a result of the breach and reasonable attorney's fees and costs of litigation, resulting from any breach of any or all said warranties, express or implied. Notice of breach shall be deemed sufficient if given any time during aforesaid warranty period. All warranties shall be construed as conditions as well as promises and shall not be deemed to be exclusive remedies. The aforementioned warranties shall be commutative with all other warranties and remedies provided by law. The provisions of this clause apply unless the prime contract requirements for warranties are different. If such is the case, the prime contract provisions shall prevail and the Seller shall provide the Buyer a comparable or better warranty.

**25. DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION**

25.1 **of Buyer:** Drawings, data, designs, inventories, and other technical information applied by Buyer shall remain Buyer's property and shall be held in confidence by Seller. Such information shall not be reproduced, used, or disclosed to others by Seller without Buyer's prior written consent, and shall be returned to Buyer upon completion of this Purchase Order or upon demand. Buyer does not grant indemnity to Seller for infringement of any patent, trademark, copyright or data rights. Without limiting the indemnity provisions of Clause 10 hereof, Seller agrees to fully indemnify the Buyer against all damages, including, but not limited to, lost profits, expenses, court costs, and attorney's fees suffered or incurred by Buyer to enforce the terms of this provision.

25.2 **of Seller:** Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the items covered by this Purchase Order shall be deemed to have been disclosed as part of the consideration for this Purchase Order, and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof. All data generated or developed in the course of or under this Purchase Order shall be the sole property of Buyer and Seller shall not use, duplicate or disclose such data for any purpose other than the performance of the work required hereunder without the prior written consent of Buyer. The purchase price of this Purchase Order is, in part, consideration of any design work performed by Seller in connection with this Purchase Order and incorporated in the articles to be delivered hereunder, and Seller, therefore, shall not supply such articles to others without Buyer's written permission.

**26. DATA REQUIREMENTS** – Seller agrees to furnish data called for by this order and data ordered separately which relates to the supplies or services ordered hereunder. The price for any such data ordered separately shall include only the estimated costs for reproduction, packaging, handling and shipment of the data and a profit factor not in excess of that charged for said supplies and services.

**27. NOTICES** – Notices relating to this Agreement shall be delivered by electronic mail or in writing. A notice will be deemed given three (3) days after being placed in the mail or the time date stamp on the electronic mail.

**28. PATENT PROTECTION** –

28.1 To the extent that the items covered by the Purchase Order are manufactured pursuant to designs not originated by Buyer, Seller shall indemnify and save Buyer, its agents and customers harmless from any expense, cost, loss, damage, or liability for infringement or alleged infringement of any patents, with respect to such items and their process of manufacture and agrees at its own expense to defend or assist in the defense of, at Buyer's option, any action in which such infringement is alleged with respect to the manufacture, sale, or use of such items delivered hereunder, provided Seller's indemnity as to use shall not apply to any infringement arising out of use in combination with other items where such infringement would not have occurred in the normal use for which the article was designed. If this Purchase Order is issued under a United States Government contract containing any authorization and consent clause and not including any patent indemnification requirements, Seller's liability under this clause shall be reduced to the

extent Buyer is afforded protection from any expense cost loss, damage, or liability by such authorization and consent clause. Notwithstanding the above, nothing in this clause shall prevent the Government from asserting a claim against the Buyer for an infringement of a patent by the Seller.

28.2 Seller shall report to Buyer, promptly and in reasonable written detail, each notice or claim of patent infringement arising out of the performance of this Purchase Order or the manufacture, use, or sale of any supplies furnished or work or services performed hereunder and, in the event of claim or suit against Buyer, shall furnish to Buyer, upon request of Buyer and at Buyer's expense, all evidence and information in possession of Seller pertaining to such suit or claim.

**29. PATENT RIGHTS** – As determined by Buyer pursuant to Federal Acquisition Regulation Subpart 27.000, Seller agrees to grant and grants to Buyer an irrevocable, non-exclusive, royalty-free license to make, use, and sell any invention conceived or first actually reduced to practice in the course of or under this Purchase Order. Seller hereby agrees to assign and hereby assigns to Buyer any interest Seller may have in inventions conceived by Buyer and reduced to practice by Seller using funds provided by Buyer under this Purchase Order. This Clause is not applicable if this Purchase Order is issued cognizant to a Federal Government agency and if that contract from the issuing agency contains the clauses found at FAR 52.227-12 or 52.227-13. Notwithstanding the above, the interest of the Government, without exception, shall in no way be comprised.

**30. PATENT LICENSE RIGHTS** – Notwithstanding any other provisions of this Purchase Order, the placing of this order does not grant Seller any license, expressed or implied, under the patents of any company other than Buyer, regardless of whether or not such other company is associated with Buyer. No licenses under any patents owned by Buyer are granted to Seller except as expressly provided in writing in this order and then only to the extent necessary to perform this order.

**31. DISPUTES** – The Parties agree to make a good faith effort mutually to resolve any dispute concerning this Purchase Order as quickly as possible. Notwithstanding any provisions herein to the contrary:

31.1 If a decision relating to the Prime Contract is made by the Contracting Officer and such decision is also related to this Purchase Order, said decision, if binding upon Buyer under the Prime Contract, shall in turn be binding upon Buyer and Seller with respect to such matter, provided, however that if Seller disagrees with any such decision made by the Contracting Officer and Buyer elects not to appeal such decision, Seller shall have the right reserved to Buyer under the Prime Contract with the Government to prosecute a timely appeal in the name of Buyer as permitted by the contract or by law, Seller to bear its own legal and other costs. If Buyer elects not to appeal any such decision, Buyer agrees to notify Seller in a timely fashion after receipt of such decision and to assist Seller in its prosecution of any such appeal in every reasonable manner. If Buyer elects to appeal any such decision of the Contracting Officer, Buyer agrees promptly to furnish Seller with a copy of such appeal. Any decision upon appeal, if binding upon Buyer, shall in turn be binding upon Seller. Pending the making of any decision, either by the Contracting Officer or on appeal, Seller shall proceed diligently with performance of this Subcontract.

31.2 If, as a result of any decision or judgment which is binding upon Seller and Buyer, as provided above, Buyer is unable to obtain payment or reimbursement from the government under the Prime Contract for, or is required to refund or credit to the government, any amount with respect to any item or matter for which Buyer has reimbursed or paid Seller, Seller shall, on demand, promptly repay such amount to Buyer. Additionally, pending the final conclusion of any appeal hereunder, Seller shall, on demand, promptly repay any such amount to Buyer. Buyer's maximum liability for any matter connected with or related to the Subcontract which was properly the subject of a claim against the Government under the Prime Contract, shall not exceed the amount of Buyer's recovery from the Government.

31.3 Seller agrees to provide certification that data supporting any claim made by Seller hereunder is made in good faith and that the supporting data is accurate and complete to the best of Seller's knowledge or belief, all in accordance with the requirements of the Contract Disputes Act of 1978 (41USC601-613) and implementing regulations. If any claim of Seller is determine to be based upon fraud or misrepresentation, Seller agrees to defend, indemnify and hold Buyer harmless for any and all liability, loss, cost, or expense resulting therefrom.

31.4 Any dispute not disposed of in accordance with this clause shall be determined in other appropriate legal proceedings. Pending any decision, appeal, or judgment referred to in this provision or the settlement of any dispute arising under this Purchase Order, Seller shall proceed diligently with the performance of this Purchase Order. However, Seller shall not be obligated to perform in the absence of Buyer providing funding for the effort under dispute.

The rights and obligations of the Parties under this paragraph 31 shall survive completion or termination of this Purchase Order.

**32. HAZARDOUS SUBSTANCES** – If this Purchase Order covers chemicals that are "hazardous chemicals" within the meaning of 29 CFR 1910.1200, Seller must comply with all requirements of that regulation, and all containers of chemicals delivered hereunder must comply with the labeling, tagging, and marking requirements thereof. All Materials Safety Data Sheets supplied per the requirements of 29 CFR 1910.1200(g)(6) shall comply with the then current revision of Federal Standard No. 313, "Material Safety Data Sheets, Preparation and Submission."

**33. GOVERNMENT PROPERTY** – FAR 52.245-1, hereby incorporated by reference, is applicable if property is furnished or acquired under the purchase order with the following clarifications and statements supplementing the clause.

33.1 Seller shall keep all property furnished by Buyer and all property to which Buyer acquires title by virtue of this Purchase Order segregated and clearly marked and will maintain a complete inventory thereof. Seller assumes all risk of loss, destruction, or damage to such property while in Seller's custody or control. Seller will immediately notify Buyer in writing of any such loss, destruction, or damage. Upon termination or completion of this contract, Seller will deliver such property, as directed by Buyer in good condition, subject to ordinary wear and tear and normal manufacturing losses.

33.2 Seller shall comply with Subpart 45.5 of the FAR "Management of Government Property in the Possession of Contractors" as in effect on the date of this Purchase Order and which is hereby incorporated into this Purchase Order by reference. For purposes of this

clause, "Contractor" shall mean Seller. With respect to Government property transferred to Seller by Buyer, Seller assumes all risk of loss of, or damage to, said Government property while in Seller's custody or control and will immediately notify Buyer of loss of, or destruction of, or damage to such property. Upon termination or completion of this Purchase Order, Seller will deliver such property, as directed by Buyer, in good condition, subject to ordinary wear and tear and normal manufacturing losses. Per subject clause, "Contracting Officer" means Buyer; and the terms "Government property" and "Government-furnished property" are not changed.

**34. FORCE MAJEURE** – Seller shall not be held responsible for any delay or failure in performance of any part of this purchase order to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party or its subcontractors ("force majeure conditions"). Notwithstanding the foregoing, Seller's liability for loss or damage to Buyer's material in Seller's possession or control shall not be modified by this clause. If any force majeure condition occurs, the party delayed or unable to perform shall give immediate notice to the other party, stating the nature of the force majeure condition and any action being taken to avoid or minimize its effect. The party affected by the other's delay or inability to perform may elect to: (1) suspend this order for the duration of the force majeure condition and (i) at its option buy, sell, obtain or furnish elsewhere material or services to be bought, sold, obtained or furnished under this Purchase Order (unless such sale or furnishing is prohibited under any potential Government Prime Contract) and deduct from any commitment the quantity bought, sold, obtained or furnished or for which commitments have been made elsewhere and (ii) once the force majeure condition ceases, resume performance under this Subcontract or an order with an option in the affected party to extend the period of this Purchase Order or order up to the length of time the force majeure condition endured and/or (2) when the delay or non-performance continues for a period of at least fifteen (15) days, terminate, at no charge, this Purchase Order or an order or the part of it relating to material not already shipped or services not already performed. Unless written notice is given within fifteen (15) days after the affected party is notified of the force majeure condition, (1) shall be deemed selected.

**35. EXPORT LAWS AND REGULATIONS** – Seller agrees that it shall comply with all applicable U.S. export laws and regulations, including International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). Seller agrees not to export or re-export any products, materials, items and/or technical data, or the product(s) thereof, received from Buyer unless Seller has obtained in advance all required licenses, agreements or other authorizations from the U.S. Government. Exports of technical data include, without limitation, the sending or taking of any technical data out of the United States in any manner; disclosing or transferring technical data to a Foreign Person (i.e., any person who is not a lawful permanent resident of the U.S. or is not a protected individual as defined by 8 U.S.C. section 1101 and 1324), whether in the United States or abroad; or performing services for a foreign client, whether in the United States or abroad. Seller shall indemnify and hold Buyer harmless for damages resulting from their failure to comply with any U.S. export laws and regulations.

**36. COMBATING TRAFFICKING IN PERSONS** – Pursuant to the FAR (52.222-50), Subcontractors, suppliers and agents directly engaged in the performance of work on a Government contract who have "other than a minimal impact or involvement in contract performance" are prohibited from: engaging in severe forms (i.e., using force, fraud, or coercion) of trafficking in persons; procuring commercial sex acts (regardless of whether the act is legal or illegal in the jurisdiction where it is procured and regardless of whether the conduct occurs during or outside working hours); using forced labor; destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents; using misleading or fraudulent recruiting practices; charging employees recruitment fees; failing to pay return transportation costs for certain employees who have finished employment outside that employee's nation of residence; providing or arranging housing that fails to meet the host country housing and safety standards; and if required, failing to provide an employment contract, recruitment agreement, or similar work document in writing in the employee's native language and prior to the employee departing from his or her country of origin. Buyer does not and will not permit its subcontractors, vendors, suppliers, or other entities doing business with Buyer to engage in any form of human trafficking and the above activities. Failure to comply with the aforementioned requirements is grounds for Buyer to take appropriate actions, up to and including immediate termination of business with Buyer.

**37. ETHICS/ANTI-CORRUPTION** – Each of the Parties hereto represents and warrants that, in the performance of this Agreement and in the pursuit of any business to which this Agreement relates, it has complied with and shall at all times comply with (and shall ensure that its subcontractors, agents and employees have complied with and at all times comply with) all applicable laws prohibiting bribery or other forms of corruption, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977 (as amended) and the UK Bribery Act 2010.

**38. NON-DISCLOSURE AGREEMENT** – Seller agrees to not disclose to any other person, firm, or corporation, nor use for its own personal benefit during or after the term of this Purchase Order, any Buyer-proprietary information given to Seller relating to the products or custom hardware work of Buyer or any affiliated companies. All information to be protected shall be marked "Proprietary" and formally provided to the Seller by the Buyer. This requirement shall survive the termination of the Purchase Order for an extended duration of five (5) years after acceptance by the Buyer of the final supplied item or service listed on the Purchase Order.

**39. NO HIRE** – During the term of this Purchase Order, and for a period of six (6) months after its completion, Seller shall not knowingly solicit, entice, or persuade, or knowingly attempt to solicit, entice, or persuade, any employee of Buyer to terminate such employee's business relationship with Buyer for any reason. The foregoing shall not apply to individuals hired as a result of the use of a general solicitation (such as an advertisement, in newspapers or a website) not specifically directed to the employees of Buyer.

**40. SEVERABILITY** – If any provision of this Agreement (or portion thereof) is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the Parties agree that the court will construe the provision in a manner that renders the provision valid and



enforceable to the fullest extent possible under the law of the applicable jurisdiction and that the remaining provisions will remain in full force and effect.

**41. SEVERABILITY** – All provisions of this Agreement which by their nature should apply beyond its Term will remain in force after any termination or expiration of this Agreement including, but not limited to, those addressing the following subjects: Pricing, Expenses, Invoicing and Payment Terms, Records and Audit, Warranties and Remedies, Intellectual Property Ownership, Indemnification and Remedies, Confidential Information, Waiver, Severability, Advertising of Publicity, Disputes, Counterfeit Parts, and Governing Law.

**42. COUNTERFEIT PARTS PREVENTION** – The Suppliers, Distributors and Contract Manufacturers shall implement and maintain counterfeit electronic parts management process to comply with "Counterfeit Electronic Parts; Avoidance, Detection, Mitigation, and Disposition," in accordance with industry standards, as a minimum AS5553 or equivalent.

42.1 Definitions for purposes of this Purchase Order:

(i) "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to, (A) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (B) defective parts and/or surplus material scrapped by the original manufacturer, and (C) previously used parts pulled or reclaimed and provided as "new".

(ii) As used herein, "authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; 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.

(iii) "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by an Original Component Manufacturer ("OCM") to sell or distribute the OCM's products but which purports to sell, broker, and/or distribute such OCM products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers.

42.2 Seller represents and warrants that only new and authentic materials are used in products required to be delivered to Buyer and that the Work delivered contains no Counterfeit Parts. No other 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")/OCMs or through the OEM's/OCM's authorized distribution chain. Seller must make available to Buyer, at Buyer's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. In addition, Seller must produce, upon request from Buyer, proof that they are authorized distributors for material being purchased at the time of shipment. Purchase of parts/components from Independent Distributors 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 Purchase Order requirements, including the representations and warranties in this paragraph.

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

42.4 If the Seller is providing electronic components/devices only, the following certification applies:

Certification of Origin of Product:

Acceptance of this Purchase Order constitutes confirmation by the Seller that it is either the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. Seller further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM is available upon request. If the Seller is not the OEM/OCM or a franchised or authorized distributor, the Seller confirms by acceptance of this Contract that each product supplied to Buyer has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to Buyer upon Buyer's request.

42.5 Seller shall flow above listed requirements to its subcontractors and suppliers at any tier for the performance of this Purchase Order.

42.6 Buyer has zero tolerance regarding Counterfeit and substandard parts which will not be accepted. If the parts are determined to be counterfeit or substandard, they will be permanently disabled; payment will be withheld, and Seller may be disqualified from Buyer's Approved Vendor List.



**PART II - GOVERNMENT CONTRACTS**

**1. GOVERNMENT CLAUSES**

(A) If the face of this Purchase Order indicates that it is placed under a Department of Defense prime contract or lower tier subcontract or purchase order or if the face of this order does not indicate that it is placed under a commercial contract, the FAR or agency supplemental (DFARS) provisions in effect on the date of this order as noted below are applicable to such order. If this order is placed under a NASA prime or lower tier subcontract or purchase order or if the face of this order does not indicate that it is placed under a commercial contract, references to DFARS clauses in this order shall be deemed to have reference to the equivalent, if any, NASA FAR SUPPLEMENT clauses in effect on the date of this order. When necessary to make the context applicable to this order, the term "Contractor" shall mean Seller, "Government" and "Contracting Officer" or equivalent phrases shall mean Buyer or the Government, and "Contract" shall mean this order.

In the event of any conflict between the terms and conditions set out herein above and the clauses on the following page incorporated by reference hereinafter, then the terms and conditions of the latter shall prevail.

All notices or reports or other material required or permitted to be furnished shall be furnished to Buyer for forwarding or action pursuant to the prime contract under which this Purchase Order is issued and the instructions of the Contracting Officer.

If any FAR or DFARS clauses do not apply to a specific Purchase Order, such clauses are considered to be self-deleting.

(B) Defense Material Priorities System Certification. If applicable, a priority rating or allotment number will be indicated on the Purchase Order, and will be certified as follows: "Certified for National Defense Use Under DPAS Regulation 15CFR700." Seller shall follow the provisions of DPAS Regulation 15CFR700 and of all other applicable regulations and orders of DIBA in obtaining controlled materials and other products and materials to fill this order.

(C) Cost and Pricing Data. The clauses and requirements set forth or imposed by Public Law 87.653, 10USC2306(F), FAR 52.214-27, 52.214-28, 52.215-20, 52.215-21, and ERDA PR, FPR, or NASA PR are incorporated herein by reference, provided that term "Contracting Officer" shall include Buyer and the term "Contractor" shall mean Seller. Provided further that Seller agrees to indemnify the Buyer against any damages, expenses, or price reductions under Buyer's contract resulting from Seller or its lower tier subcontractor's failure to comply with the following laws and regulations and any certifications made by Seller to Buyer.

(D) Cost Accounting Standards. If a government contract is indicated on the face of the Purchase Order, or as otherwise required by law, the following clauses are requirements of the Purchase Order:

FAR 52.230-1 Cost Accounting Standards Notices and Certification (National Defense)(JUN 2000)

FAR 52.230-2 Cost Accounting Notices and Certification (Non-defense)(APR 1998)

(E) This Purchase Order incorporates one or more FAR/DFAR clauses by reference, with the same force and effect as if they were given in full text. Upon request, Buyer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://farsite.hill.af.mil/>

FAR SECTION	TITLE
52.202-1	Definitions
52.203-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-6	Restrictions on Subcontract Sales to the Government
52.203-7	Anti-Kickback Procedures
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (over \$100,000)
52.203-12	Limitation on Payment to Influence Certain Federal Transactions (over \$100,000)
52.204-4	Printed or Copied Double-sided on Recycled Paper (over \$100,000)
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
52.211-5	Material Requirements (Non-commercial only)
52.211-15	Defense Priority and Allocation Requirements
52.215-1	Instructions to Offerors – Competitive Acquisition
52.215-2	Audit and Records Negotiation
52.215-5	Facsimile Proposals
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data -- Modifications
52.215-14	Integrity of Unit Prices (over \$100,000)
52.219-2	Equal Low Bids
52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (over \$100,000)
52.219-8	Utilization of Small and Small Disadvantaged Business Concerns (over \$100,000)
52.219-9	Small Business Subcontracting Plan (over \$500,000)
52.222-1	Notice to the Government of Labor Disputes
52.222-3	Convict Labor
52.222-4	Contract Work Hours and Safety Standards Act—Overtime Compensation
52.222-19	Child Labor – Cooperation with Authorities and Remedies
52.222-20	Walsh-Healy Public Contracts Act
52.222-21	Prohibition of Segregated Facilities
52.222-22	Previous Contracts and Compliance Reports
52.222-26	Equal Opportunity
52.222-29	Notification of Visa Denial



FAR SECTION	TITLE
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era and Other Eligible Veterans (over \$25,000)
52.222-36	Affirmative Action for Workers with Disabilities (over \$10,000)
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era and Other Eligible Veterans (over \$25,000)
52.222-40	Notification of Employee Rights Under The National Labor Relations Act
52.222-50	Combating Trafficking in Persons
52.223-3	Hazardous Material Identification and Material Safety Data
52.223-6	Drug-Free Workplace (over \$100,000)
52.225-1	Buy American Act—Supplies
52.225-2	Buy American Act—Certificate
52.225-3	Buy American Act—Free Trade Agreements - Israeli Trade Act (over \$25,000)
52.225-4	Buy American Act—Free Trade Agreements - Israeli Trade Act—Certificate (over \$25,000)
52.225-5	Trade Agreements (over \$177,000)
52.225-6	Trade Agreements Certificate (over \$177,000)
52.225-9	Buy American Act – Construction Materials
52.225-13	Restrictions on Certain Foreign Purchases (over \$2500)
52.225-15	Sanctioned European Union Country End Products (less than \$169,000)
52.225-16	Sanctioned European Union Country Services (less than \$169,000)
52.226-1	Utilization of Indian Organizations and Indian-owned Economic Enterprises
52.226-2	Historically Black College or University and Minority Institution Representation (over \$2500)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (over \$100,000)
52.227-14	Rights in Data - General
52.227-19	Commercial Computer Software—Restricted Rights
52.229-3	Federal, State, and Local Taxes
52.229-4	Federal, State, and Local Taxes (State and Local Adjustments) (Noncompetitive Contract) - Applicable if the subcontract was noncompetitive - Delete 52.229-3
52.229-6	Taxes—Foreign Fixed-Price Contracts (over \$100,000)
52.232-1	Payments
52.233-1	Disputes
52.233-3	Protest After Award
52.242-15	Stop Work Order
52.243-1	Changes (Fixed Price)
52.243-6	Change Order Accounting
52.244-5	Competition in Subcontracting
52.244-6	Subcontracts for Commercial Items
52.245-1	Government Property
52.246-2	Inspection of Supplies (Fixed Price over \$100,000)
52.246-4	Inspection of Services (Fixed Price over \$100,000)
52.246-15	Certificate of Conformance
52.246-16	Responsibility for Supplies (over \$100,000)
52.246-23	Limitation of Liability (over \$100,000)
52.246-16	Warranty of Supplies of a Noncomplex Nature
52.246-17	Warranty of Supplies of a Complex Nature
52.246-24	Limitation of Liability—High-Value Items
52.246-25	Limitation of Liability – Services (over \$100,000)
52.247-29	FOB Origin
52.247-63	Preference of United States Flag Air Carriers (over \$100,000)
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels
52.249-1	Termination for the Convenience of the Government (Fixed Price \$100,000 or less)
52.249-2	Termination for the Convenience of the Government (Fixed Price)
52.249-8	Default (Fixed Price Supply and Service over \$100,000)

DFARS SECTION	TITLE
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense Contract-related Felonies (exceeding \$100,000)
252.203-7002	Requirement to Inform Employees of Whistleblower Rights
252.205-7000	Provision of Information to Cooperative Agreement Holders (exceeding \$500,000)
252.209-7001	Disclosure of Ownership or Control by the Government of a Terrorist Country (over \$100,000)
252.209-7004	Subcontracting with Firms That are Owned or Controlled by the Government of a Terrorist Country
252.223-7004	Drug-Free Work Place (over \$100,000)
252.225-7002	Qualifying Country Sources as Subcontractors
252.225-7003	Report of Intended Performance Outside of US and Canada – Submission with Offer
252.225-7012	Preference for Certain Domestic Commodities (over \$100,000)
252.225-7025	Restrictions on Acquisition of Forgings
252.225-7031	Secondary Arab Boycott of Israel
252.225-7048	Export-Controlled Items
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
252.227-7015	Technical Data—Commercial Items
252.231-7000	Supplemental Cost Principles
252.243-7001	Pricing of contract Modifications
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts)
252.246-7001	Warranty of Data
252.247-7023	Transportation of Supplies by Sea (over \$100,000)