



**ASTRONICS TEST SYSTEMS INC. STANDARD PURCHASE ORDER TERMS AND CONDITIONS
(09/2015)**

1. DEFINITIONS

"Buyer" means Astronics Test Systems Inc. including its subsidiaries, affiliates, divisions, sectors, and business areas as identified on the face of the Order.

"Buyer's authorized purchasing representative" means the person who signs the Order on behalf of Buyer.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes, among other things, technical data and computer software.

"Order" or "Purchase Order" means the instrument of contracting including this purchase order and all referenced documents.

"Parties" means Buyer and Seller collectively.

"Party" means either Seller or Buyer individually.

"Proprietary Information" means all Data that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the Data as proprietary to the Party disclosing the information.

"Seller" means the person or entity with whom Buyer is contracting.

"Service" means Seller's time and effort, including any goods, supplies, materials, articles, items, parts, components or assemblies incidental to the performance of the Service.

2. ACCEPTANCE

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

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

3. BUYER AUTHORIZATION

A. The Buyer's authorized purchasing representative has sole authority to make contractual commitments on behalf of the Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order.

B. Buyer's representatives other than Buyer's authorized purchasing representative may release to Seller information applicable to this Order. If information so provided to the Seller changes the contractual requirements and/or performance of the Order, Seller shall not act on that information and it shall not be contractually effective until Seller receives written contractual direction to act from the Buyer's authorized purchasing representative.

4. ORDER OF PRECEDENCE

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

- A. Typed Order.
- B. Order Terms and Conditions.
- C. Statement of Work.
- D. Specification/Drawing.
- E. Other Referenced Documents

5. SHIPPING ADDRESS

As per shipping instructions given on face of order. Delivery will not be accepted at any other address.

6. PACKING

No charge will be allowed for packing, boxing, or cartage unless fully and separately itemized on the face of the order, but damage to any material not packed to insure proper protection to same will be charged to Seller.

7. DELIVERY

Seller agrees to perform the Services, or to deliver the Products, in the quantities, within the time, in accordance with specifications (and approval samples, if furnished) and at the prices specified on the face of this Order. Any actual or reasonably anticipated default of which shall entitle Buyer to cancel this Order, in addition to any other rights or remedies, and be relieved of all liability under this Order. A waiver of Buyer's right to cancel, by acceptance of any items after delivery date, or otherwise, shall not constitute a waiver of such right as to future deliveries.

8. TIME IS OF THE ESSENCE/EXCUSABLE DELAYS



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Time is of the essence in the performance of the Services and delivery of the Products by Seller specified in this Order. Failure of Seller to make delivery of Products or to provide Services within the time specified on the face of the Order, or within any extension specified by written change Order, shall be a breach hereof.

For the purposes of this Order, an event of "force majeure" shall mean any or all of the following events or occurrences: strikes, work stoppages or other labor difficulties; fires, floods or other acts of God; transportation delays; acts of government or any subdivision or agency thereof; or any other cause, whether or not similar to the causes or occurrence enumerated above which are beyond the control of the Party claiming the occurrence of a force majeure event and which delays, interrupts or prevents such Party from performing its obligations under this Order. Notwithstanding any provision hereof to the contrary, the reduction, depletion, shortage, curtailment or cessation of Seller's raw materials or any other supplies or materials of Seller shall not be regarded as an event of force majeure. The Party affected by a force majeure event shall give notice thereof to the other Party within ten (10) days following the occurrence thereof and shall apprise the other Party of the probable extent to which the affected Party will be unable to perform or will be unable to perform or will be delayed in performing its obligations hereunder. The affected Party shall exercise due diligence to eliminate or remedy the force majeure cause and shall give the other Party prompt notice when that has been accomplished. Except as provided herein, if performance of this Order by either Party is delayed, interrupted or prevented by reason of any event of force majeure, both parties shall be excused from performing hereunder while and to the extent that the force majeure condition exists after which the parties' performance shall be resumed. Notwithstanding the foregoing, within five (5) days following Seller's declaration of a force majeure event which prevents its full and/or timely delivery of the goods hereunder, Buyer may, at its option and without liability (1) require Seller to apportion among its customers the goods available for delivery during the force majeure period; (2) cancel any or all delayed or reduced deliveries; or (3) cancel any outstanding deliveries hereunder and terminate this Order. If Buyer accepts reduced deliveries or cancels the same, Buyer may procure substitute goods from other sources, in which event this Order shall be deemed modified to eliminate Seller's obligation to sell and Buyer's obligation to purchase such substituted goods. After cessation of a force majeure event declared by Seller, Seller shall, at Buyer's option but not otherwise, be obligated to deliver goods not delivered during the force majeure period. After cessation of a force majeure event declared by the Buyer, neither Party shall be obligated to deliver or purchase goods not so delivered and purchased during the force majeure period.

9. ADEQUATE ASSURANCE OF PERFORMANCE

A. If at any time Buyer has reasonable grounds for insecurity whether Seller's performance will be full, timely, and continuing in accordance with the requirements of this Order, Buyer may request, by written notice to Seller, satisfactory assurances in writing that Seller is able or willing to perform all of its respective obligations under this Order.

B. Seller shall provide with its assurances of performance any information, reports, or other materials, prepared by Seller as Buyer may reasonably request. Upon Buyer's request and as soon as practicable, Seller shall make available employees, including members of Seller's senior management, to meet with Buyer to discuss those assurances of performance.

C. If Seller does not provide adequate written assurances within fifteen (15) days of Buyer's written notice and request, Buyer may elect to terminate the Order in accordance with Section 22C.

10. CHANGES

A. Buyer's authorized purchasing representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order in (1) description of Services or Products, (2) time of performance (i.e., hours of the day, days of the week, etc.), (3) place of performance of the Services, (4) drawings, designs, specifications, planning, and other technical documents, (5) method of shipment, packaging, or packing of any Products, and (6) place of delivery of any Products.

B. If the change causes an increase or decrease in the cost or time required to perform this Order, an equitable adjustment shall be made in the purchase price and/or delivery schedule and the Order shall be modified in writing accordingly.

C. Any claim for such an adjustment shall be unconditionally waived unless asserted in writing and delivered to Buyer within fifteen (15) days of the date of the written Change Order.

D. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause hereof. However, Seller shall not be excused from proceeding with the Order as changed.

11. WARRANTY

Seller warrants that all Services performed under this Order will be performed in accordance with the standards of care and diligence normally exercised by persons performing such Services in the industry, be free from defects in material or workmanship and conform Buyer's instructions and with the requirements of this Order. Seller warrants that all Products provided hereunder will conform to Buyer's instructions, specifications, drawings and data current as of date of this Order (unless otherwise specified in writing by Buyer), will be merchantable, will be new material, free from defective materials or workmanship and will be fit for Buyer's purposes. Seller further warrants that the Products and Services furnished under this Order shall conform to all representations, affirmations, promises, descriptions, samples or models which are a part of this Order. Seller agrees that these warranties shall survive inspection and acceptance of the Products and Services. The warranties stated in this Section 11 are hereby extended to, and shall inure to the benefit of, Buyer and Buyer's affiliates, subsidiaries, successors, assigns and direct and indirect customers to whom the Products and Services provided hereunder may be sold or transferred. In the event of breach of the warranty, Buyer may take any or all of the following actions at no cost to Buyer and without prejudice to any rights or remedies available to Buyer by law: (i) require Seller to repair or replace such Products, and upon Seller's failure or refusal to do so, repair or replace the same at Seller's expense; (ii) reject any shipment or delivery containing defective or non-conforming Products and return for credit or replacement at Buyer's option, said return to be made at Seller's cost and risk; (iii) cancel any outstanding deliveries hereunder and treat such breach by Seller as Seller's repudiation of this Order. Seller shall also reimburse Buyer for any incidental and consequential damages caused by such nonconforming goods including, but not limited to costs, expenses and losses incurred by Buyer: (a) in inspecting, sorting, repairing or replacing such



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goods; (b) resulting from any production interruptions; (c) conducting any recall campaigns or other corrective actions and (d) claims for personal injury or property damage.

12. PRICE WARRANTY

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

13. COUNTERFEIT PARTS PREVENTION

(a) Definitions for purposes of this 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 un-franchised distributors, unauthorized distributors, and/or brokers.

(b) Seller represents and warrants that only new and authentic materials are used in Products required to be delivered to Buyer and that the Products 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") or through the OEM's authorized distribution chain. Seller must make available to Buyer, at Buyer's request, OEM documentation that authenticates traceability of the components to that applicable OEM. 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 Order requirements, including the representations and warranties in this paragraph.

(c) Seller shall maintain a documented system in accordance with SAE AS5553 (policy, procedure, or other documented approach) that provides for prior notification and Buyer approval before parts/components are procured from sources other than OEMs or through the OEM's authorized distribution chain. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request.

(d) If the Seller is providing electronic components/devices only, the following certification applies:

Certification of Origin of Product:

Acceptance of this 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 Order that each Product supplied to Buyer has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The Seller further warrants that OEM/OCM acquisition traceability documentation is accurate and available to Buyer upon Buyer's request.

(e) Seller shall flow the requirements of this Section 13 to its subcontractors and suppliers at any tier for the performance of this Order.

(f) The Sellers quality system and counterfeit avoidance procedures are subject to review and analysis with appropriate notice by the Buyer representative and/or authorized Government representatives. This includes surveillance of products, systems, procedures, facilities and records associated with components they have purchased. The responsibility for quality functions and counterfeit avoidance procedures shall be clearly identified within the Sellers organization. Personnel performing these functions shall have sufficient authority and independence to evaluate the problems and to initiate and recommend corrective action.

14. QUALITY CONTROL SYSTEM

(a) Seller shall provide and maintain a quality control system to an industry recognized quality standard and in compliance with any other specific quality requirements identified in this Order.

(b) Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers for a period of 7 years from the date of shipment.



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15. DESIGN, TOOLS, ETC

Any design pattern, tool, die, jig, fixture, drawing, or test equipment ("Buyer Equipment") heretofore or hereafter furnished by Buyer in connection with this order shall remain Buyer's property, to be delivered to Seller, upon request, and shall not be used in the manufacture of any article for others than Buyer, provided, however, that upon written notice to Buyer and to the extent such use will not interfere with Seller's performance of this or other order from Buyer in effect at the same time Seller enters into a direct contract with the U.S. Government. Seller shall have the right to use such items in the manufacture of end items for direct sale to the U.S. Government to the extent the Government has the right under its prime contracts with Buyer to authorize such use by Seller, provided that to the extent practicable Seller prominently identifies each such end item as being manufactured by Seller for direct sale to the U.S. Government. Seller shall maintain the Buyer Equipment in good working condition, less normal wear tear. In the event the Seller does not return the Buyer Equipment upon request, Seller shall reimburse Buyer the full value of the Buyer Equipment. Seller Special tools, dies, jigs, fixtures and test equipment, acquired specifically for the performance of this order and the cost of which has been included in computing the price specified on the face hereof or for which Buyer is to pay Seller as a separate item as indicated on the face of the order, shall, upon such payment, become the property of Buyer and shall be marked as directed, held for delivery to Buyer, and shall not be used in the manufacture of any articles for other than Buyer. Unless otherwise stated on the face of the order, Buyer shall have no obligation to furnish or pay tools, dies, jigs, or equipment of any kind required for Seller's performance of this order.

16. PROPRIETARY INFORMATION

- A. Seller agrees to keep confidential and not to disclose to any other person any Proprietary Information received from Buyer in connection with this Order. Seller further agrees to use Proprietary Information only for purposes necessary for performing this Order, unless Seller has obtained Buyer's written and specific authorization to so use the information.
- B. Seller may disclose Proprietary Information to its subcontractors only as required for the performance of this Order, provided that each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to such Proprietary Information.
- C. All documents and other tangible media (excluding Products) containing or conveying Proprietary Information and transferred in connection with this Order, together with any copies thereof, are and shall remain the property of the Buyer.
- D. Neither the existence of this Order nor the disclosure of Proprietary Information or any other information shall be construed as granting expressly by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by the Buyer or Buyer's customer, except as specifically set forth herein.
- E. Seller's obligations with respect to Proprietary Information disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.

17. SELLER'S DATA

Any Data, which Buyer receives from Seller while performing this Order, that Seller has not marked with a protective or limited rights legend shall not be considered proprietary to Seller or in any way restrict Buyer's use of such Data.

18. RELEASE OF INFORMATION AND ADVERTISING

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

19. PAYMENT AND INVOICING

- A. Buyer shall pay Seller the price set forth in this Order for the Services and Products specified. Price includes all profit, wages, salaries, overhead, taxes, and other costs and expenses. No overtime, expedite charges, or other premium rates will be paid unless authorized by Buyer, in writing.
- B. Unless otherwise specified, Seller shall submit an invoice in duplicate to Buyer's purchasing representative at the location identified on the face of this Order and shall include: Order number, Order type, item number, part number (if applicable), a brief description of the Service or Product and "Remit To" information to include Company Name, Address, and Tax Identification Number. Seller shall also provide such evidence as Buyer may reasonably require in support of the invoice.
- C. Seller shall invoice monthly, and Buyer shall pay amounts owing within forty five (45) days of either receiving a correct invoice or of acceptance of Services or Products, whichever is later. No invoice shall be submitted for Services prior to their performance or for Products prior to their shipment except as noted on the face of the Order. Payment due dates, including discount periods, will be calculated from the date of acceptance of Service or Product, or receipt of correct invoice, whichever is later. Payment of invoice shall not constitute approval or acceptance of Services or Products rendered. At any time prior to final payment under this Order, Buyer may have invoices audited as to validity. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced.

20. PAYMENT FOR LABOR AND MATERIAL AND WAIVER OF LIENS

- A. Seller shall be responsible for the prompt payment of all persons who perform labor upon or furnish Services, materials, equipment, supplies or other items used, or to be used, in the performance of the Service called for by this Order.
- B. Seller shall:



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1. Defend, hold harmless, and indemnify Buyer from all claims, demands, causes of action or suits, of whatever nature, arising out of the Services, labor and materials furnished by Seller or its subcontractors and from all laborer's, material men's and mechanic's liens upon any real property and fixtures thereto and upon any tangible personal property provided by Buyer, arising out of the Services, labor and materials furnished by Seller or any of its subcontractors under this Order; and
2. Keep said property free and clear of all liens, claims and encumbrances arising from the performance of this Order by Seller or its subcontractors.
- C. Seller, for its subcontractors, material men, laborers and for all other persons performing any labor or furnishing any Services, labor or materials for any of the work, hereby waives, to the full extent permitted by law, all right to file or maintain any mechanical or other liens or claims for and on account of the Services, labor or materials to be furnished hereunder.
- D. It is the intention of the Parties hereto, and Seller agrees, that if Seller or any of its subcontractors, of any tier, fail to pay all such persons, Buyer may, at any time after five (5) days written notice to Seller, pay such persons directly and deduct such payments from any amounts due Seller hereunder.

21. TERMINATION FOR CONVENIENCE

- A. Buyer may terminate performance of Services or delivery of Products under this Order, at any time, in whole or in part, if Buyer determines that a termination is in its interest. Buyer shall terminate by delivering to Seller a termination notification specifying the extent of termination and the effective date of such termination ("Notice of Termination"). Seller, however, shall continue to perform any part of this Order not terminated.
- B. After receipt of a Notice of Termination, and except as directed by Buyer, Seller shall immediately, as to the terminated portion of this Order, promptly stop work, notify subcontractors to stop work, and protect property in Seller's possession in which Buyer has or may acquire an interest.
- C. In the event of termination, the Order shall be amended and Seller paid:
 1. The actual costs incurred up to and including the date of termination which, using recognized accounting practices, are properly allocable to, or apportionable under the terminated portion of the Order; this will include costs to subcontractors which are so allocable.
 2. Reasonable termination expenses.
 3. A fair and reasonable profit, determined by Buyer; however, if it appears that Seller would have sustained a loss on the entire Order had it been completed, Buyer shall allow no profit and shall reduce the amount paid to reflect the indicated rate of loss.
- D. Seller shall take all reasonable steps to minimize costs associated with a termination under this provision. In no event shall payment to Seller exceed the total Order price as reduced by the amount of payments previously made and the Order price for Services or Products not terminated. Except as set for in clause (C) above, in no event shall Buyer be liable for any incidental, indirect, special or consequential damages. Seller shall submit its termination claim to Buyer within three (3) months after the effective date of the termination, unless otherwise directed by Buyer.
- E. Unless otherwise provided in this Order, Seller shall maintain all records and documents relating to the terminated portion of this Order for three (3) years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Order. Seller shall make these records and documents available to Buyer, at Seller's office, at all reasonable times, without any direct charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

22. TERMINATION FOR DEFAULT

- A. Subject to paragraphs C and D below, Buyer may terminate this Order, at any time, in whole or in part, by written notice of default to Seller if Seller:
 1. Fails to perform the Services or deliver the Products within the time specified in this Order or any extension;
 2. Fails to make progress so as to endanger performance of this Order or to perform any of the other provisions of this Order and does not cure that failure within a period of 10 days after receipt of notice from Buyer specifying Seller's failure to perform; or
 3. Fails to provide adequate assurances of performance in accordance with Section 9, Adequate Assurance of Performance clause herein;
 4. Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business; or assignment.
- B. If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Products or Services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those Products or Services. However, Seller shall continue to perform any part of this Order not terminated.
- C. If the failure to perform is caused by an excusable delay, as described in the Excusable Delay clause herein, Seller shall not be liable for any excess costs of re-procurement.
- D. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted Services or Products were obtainable from other sources in sufficient time for Seller to meet the required delivery schedule.
- E. If this Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed or partially completed Products, supplies, materials, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.
- F. Buyer shall pay the Order price for completed Services performed and accepted and Products delivered and accepted. Seller and Buyer shall agree on the amount of payment for protection and preservation of the property.
- G. Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this Order, all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- H. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Order.

23. RIGHTS IN COPYRIGHTS



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The Parties expressly agree that all original works of authorship fixed in any tangible form, including software improvements, enhancements, derivative works and mask works, whether specially ordered or commissioned, made by Seller alone or jointly with others in connection with this Order ("Works") shall become and remain the property of Buyer. These Works shall be considered "a work made for hire" and Seller hereby assigns all its right, title, and interest in the Works to Buyer. Seller agrees to require its personnel or others hereinafter associated with or used by Seller in the performance of this Order to execute all necessary documents to transfer and assign all right, title and interest in said Works to Buyer.

24. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY

Seller shall defend, hold harmless, and indemnify Buyer, Buyer's officers, agents, employees, and customers against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Services performed or Products delivered under this Order or, at Seller's option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. Seller's obligation shall not apply to Services performed or Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale by Buyer of Products in combination with Products not delivered by Seller if such infringement would not have occurred from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. Government only if and to the extent Buyer has agreed to indemnify the U.S. Government.

25. RESPONSIBILITY FOR CLAIMS/INDEMNITY

Seller agrees to defend, hold harmless, and indemnify the Buyer from all claims, suits, damages, liabilities and losses which Buyer may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction, or damage to any property, contamination of or adverse effects on the environment and any clean up costs in connection therewith, or any violation of governmental law, regulation or orders, to the extent caused by (a) Seller's breach of any term or provision of this agreement, (b) any negligent or willful act, error or omission by Seller its employees, officers, agents, representatives, or sub-contractors in the performance of Services under this Order or (c) failure to perform the Services in accordance with the standards provided in the Warranty clause. If Seller fails to defend, hold harmless, and indemnify Buyer as provided in this clause, then Seller shall also pay for any attorney's fees, and any other fees, costs, and expenses that may be incurred by Buyer in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.

26. EXPORT AND IMPORT COMPLIANCE

(a) Seller shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774. Seller shall obtain all required export licenses or agreements necessary to perform Seller's Services or work, as applicable.

(b) Without limiting the foregoing, Seller shall not transfer any export controlled item, data or services, to include transfer to "Foreign Persons" employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of a United States Government export license, export agreement, or applicable license exemption or exception. For purposes of this paragraph 13, "Foreign Persons" shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).

(c) Seller shall notify Buyer if any use, sale, import or export by Buyer of Product or Services to be delivered under this Order is restricted by any export control laws or regulations applicable to Seller.

(d) Seller shall immediately notify the Buyer Procurement Representative if Seller is listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

(e) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.

(f) Where Seller is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to the Buyer Procurement Representative in the event of changed circumstances affecting said license or agreement.

(g) Seller shall indemnify, hold harmless and, at Buyer' election, defend Buyer, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this Section 26. Seller shall include the requirements of this Section 26 in all agreements with lower tier subcontractors.

27. INSURANCE



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A. During the entire Order period and irrespective of the place of performance, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:

1. Commercial General Liability - \$1,000,000 per person/\$2,000,000 per occurrence bodily injury and/or property damage (alternative: \$2,000,000 combined single limit (CSL). Coverage's shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.

B. Whenever performance requires work on Buyer's customer, or Buyer's installation, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the additional following insurance coverage in the minimum limits indicated:

1. Automobile Liability - \$1,000,000 per person/\$2,000,000 per occurrence bodily injury and/or property damage (alternative: \$2,000,000 combined single limit (CSL)) covering all owned, hired and non-owned vehicles.

2. Workers' Compensation and Employer's Liability - The workers' compensation insurance coverage shall be as required by the laws of the state in which the work is performed regarding such insurance. The employer's liability insurance limit shall be \$1,000,000.

C. All insurance required as a part of this Order shall be placed with insurance companies which are authorized to do business under the laws of the state or states in which the installation is located and shall be in a form reasonably acceptable to Buyer. All insurance shall contain a provision prohibiting cancellation or material revision except upon at least thirty (30) days prior written notice to Buyer.

D. Upon request, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates. Insurance coverage, except for workers' compensation, shall provide that Buyer is named as an additional insured with waiver of subrogation for each required insurance coverage. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least fifteen (15) days prior to the expiration date of the insurance under each required coverage.

28. PRIORITY RATING

If so identified, this Order is a "rated order" certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 CFR Part 700). Under DPAS regulations, if this Order supports the U.S. Government, is DX or DO Rated, and exceeds \$50,000.00, the Seller must acknowledge acceptance of DX-Rated orders within ten (10) days, and DO-Rated orders within fifteen (15) days of receipt hereof. Commencement of performance of the Service called for by this Order in the absence of Seller's written acknowledgement thereof shall be deemed acceptance of this Order as written.

29. CHOICE OF LAW

Both Parties agree that, irrespective of the place of performance of this Order, this Order will be construed and interpreted according to the internal laws of the state of California.

30. DISPUTES

A. Any dispute that may arise under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be reduced to writing and submitted for resolution to ascending levels of management of the respective Parties up to the Senior Executive of the Materiel or Procurement organization placing the Order, and Seller's equivalent executive level.

B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim is received by the other Party, or such additional time as the Parties mutually agree in writing, either Party may bring suit against the other in federal or state court.

C. Unless otherwise agreed to in writing by the Parties, either Party bringing a legal proceeding of any kind or nature against the other to enforce any provisions of this Order may bring such proceeding in the United States District Court for the Eastern District of Virginia or in any state court of the Commonwealth of Virginia located in Arlington County. Each Party to this Order submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of Virginia and any state court of the Commonwealth of Virginia located in Arlington County for purposes of all legal proceedings arising out of or related to this Order.

D. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, Seller shall proceed diligently, as directed by Buyer, with performance of the Order.

E. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY EITHER SELLER AGAINST BUYER OR BUYER AGAINST SELLER ON ANY MATTER WHATSOEVER ARISING UNDER, RELATING TO, OR IN ANY WAY CONNECTED WITH THIS ORDER, THE RELATIONSHIP OF SELLER AND BUYER OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE OR REGULATION NOW OR HEREAFTER IN EFFECT.

31. SELLER'S EMPLOYEES

A. All personnel assigned by Seller to perform the Services to be furnished hereunder shall be capable, skilled, qualified and competent to perform such Services.

B. Buyer may require Seller to remove from its or customer's premises any employee, agent, or representative of Seller, or any of its subcontractors, Buyer deems incompetent, careless or otherwise objectionable. Seller shall remove such employee, agent or representative from the premises immediately.



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C. At all times Seller shall take suitable safety precautions, including, as a minimum, those safety precautions issued in instructions and directions by Buyer or Buyer's customer. Such safety precautions shall include, but not be limited to, the use of proper materials, tools, equipment and other safeguards, as appropriate.

D. Seller and Seller's personnel shall also comply with all applicable rules, regulations and orders of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 29 USC 651-678), as amended, and all applicable safety laws, rules, regulations and orders of the United States and the State wherein this Order is being performed. Seller agrees to defend, hold harmless, and indemnify. Buyer from and against any noncompliance by Seller with any of the above laws, rules, regulations and orders as may be applicable.

E. If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, as requested by Buyer and at times to be specified by Buyer, at Seller's expense (unless otherwise herein specified), for attendance at a training session or sessions concerning Buyer's or its customer's standards and procedures relating to on-site rules of behavior, work schedule, security procedures and any other standards and procedures adhered to by Buyer's or customer's employees.

32. RELATIONSHIP OF THE PARTIES

The relationship of Seller to Buyer shall be that of an independent contractor and nothing herein contained shall be construed as creating any employer/employee, agency, or other relationship of any kind. Seller's employees, agents or representatives (hereinafter "Employees") performing Services under this Order shall at all times be under Seller's direction and control. Seller shall pay all wages, salaries, and other amounts due its Employees in connection with this Order and shall be responsible for all reports and obligations for its Employees, including, but not limited to, social security and income tax withholdings, unemployment compensation, worker's compensation, and equal employment opportunity reporting.

33. BADGES AND PLANT SECURITY

If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's or Buyer's customer's premises, at times to be specified by Buyer, so that Buyer may, at buyer's discretion, provide said personnel with identification badges, which will permit such personnel to enter and leave the premises where the work is to be performed, as Buyer determines appropriate under security requirements. Seller personnel may be required to be escorted by Buyer or Buyer's customer personnel while on Buyer's or Buyer's customer's premises. Seller further agrees that, when requested by Buyer, said badges shall be worn by said personnel, in a conspicuous place upon the person of each of its personnel, when such personnel are in, on, or about the premises. Seller further agrees to abide by and comply with, and require its Employees to abide by and comply with, such rules and regulations pertaining to plant security as may be prescribed by Buyer.

34. SUBCONTRACTING

A. Seller shall not subcontract the Services, or for the design or procurement of the whole or any major component of any Product ordered hereunder, without the prior written authorization of Buyer, and Seller shall require a like agreement from immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.

B. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

35. BONDS

If any bond is specifically required by the terms of this Order, the provisions of this clause shall apply. Prior to commencing Services hereunder, or within such time as Buyer may allow in writing, Seller shall deliver to Buyer performance and payment bonds executed by a corporate surety acceptable to Buyer, in amounts not less than the Order total price, on the bond forms furnished by Buyer and in accordance with the instructions on said forms. Failure to deliver acceptable bonds within the time allowed shall constitute a material breach of this Order and entitle Buyer to (1) cancel Seller's right to proceed with the Order, and (2) recover from Seller any damages resulting from such breach. If any surety on such bonds becomes unacceptable to Buyer or if the Order price is substantially increased after such bonds are delivered, Seller shall promptly deliver additional bond security as Buyer may require.

36. SEVERABILITY

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

37. CONFLICT OF INTEREST

Seller warrants that no conflict of interest exists between the Services and Products to be provided under this Order and Seller's other activities. Seller shall immediately advise Buyer of any such conflict of interest or potential conflict of interest which arises during performance of this Order.

38. LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer including all relevant information. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

39. NONWAIVER



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A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

40. ASSIGNMENT

A. Seller shall not assign any of its rights under this Order without Buyer's prior, written consent, except as specifically stated in this clause. Seller may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:

1. The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and set off or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller; and

2. Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.

B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.

C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document (including this Order) until and unless authorized to do so by Buyer's authorized representative.

41. ENVIRONMENTAL REQUIREMENTS

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

42. CONFLICT MINERALS COMPLIANCE

In accordance with applicable "Conflict Minerals" laws, Buyer must determine whether its products contain tin, tantalum, tungsten or gold ("3TG") originating in the Democratic Republic of the Congo and adjoining countries ("Conflict Minerals"). To the extent Seller supplies direct materials containing 3TG to Buyer under this Purchase Order, Seller commits to have a supply chain process to ensure and document a reasonable inquiry into the country of origin of the 3TG minerals incorporated into products it supplies to Buyer. If requested, Seller will promptly provide information or representations that Buyer reasonably believes are required to meet its conflict minerals compliance obligations.

43. HEADINGS

The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.

44. RELIANCE

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

45. COMPLETE AGREEMENT

This Order is intended by the Parties as a final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, and agreements between the Parties, whether written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order.