

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

- 1. GENERAL/ACCEPTANCE** - This purchase order (which term shall be deemed to include plans, specifications, regulations and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the supplies/services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this purchase order: (a) acknowledgment of this purchase order; (b) furnishing of any part of the supplies/services under this purchase order; (c) acceptance of any payment for the supplies/services or (d) commencement of performance under this purchase order. Any additional or different terms proposed by Seller are objected to and are hereby rejected unless the same shall be accepted in writing by Buyer. Failure of any party to enforce its rights under this purchase order shall not constitute a waiver of such rights or of any other rights under this purchase order or otherwise.
- 2. ASSIGNMENT** - Neither this purchase order, nor any payment, claim or interest hereunder, is assignable or transferable without the prior written approval of Buyer, which approval will not be unreasonably withheld. Buyer shall be entitled to the right of set-off against any amounts payable under this purchase order.
- 3. BUYER'S AUTHORIZED REPRESENTATIVE** - (a) Buyer's Authorized Purchasing Representative is the individual authorized by Buyer's cognizant procurement organization to administer and/or execute the purchase order. Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the purchase order.

(b) Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the supplies or services being provided under this purchase order. No such action shall be deemed to be a change under the Changes clause of this purchase order and shall not be the basis for an equitable adjustment.
- 4. CHANGES** - (a) Buyer's Authorized Purchasing Representative may at any time, by written order, without notice to any surety, make changes or additions within the general scope of this purchase order in any one or more of the following: (1) drawings, designs, statement of work or specifications, or other technical documents; (2) method of shipment or packing; (3) time and place of inspection, delivery or acceptance; (4) quantities, where reasonable; (5) delivery schedules, where reasonable; and (6) the amount of Buyer/Government-furnished property. Seller hereby acknowledges any such direction provided by anyone other than Buyer's Authorized Representative is of no force and effect and Seller accepts all risks of accepting and/or otherwise proceeding with such unauthorized direction. Seller hereby acknowledges any such direction provided by anyone other than Buyer's Authorized Purchasing Representative is of no force and effect and Seller accepts all risks of accepting and/or otherwise proceeding with such unauthorized direction.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any work under this purchase order, whether changed or not changed by any such written order, Seller shall notify Buyer in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this purchase order. Any claim by Seller for such adjustment must be asserted within 15 days, or such other period as may be agreed on in writing by the parties, after Seller's receipt of the notice of the change. Seller will make available its books and records for Buyer's examination to allow Buyer, its authorized representatives, and its customer, including the U.S. Government, to verify any claim for adjustment by Seller. If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the Disputes provision of these terms and conditions. Pending resolution of any such adjustment, Seller will diligently pursue the performance of the order as changed.
- 5. CHOICE OF LAW** - Irrespective of the place of performance, this purchase order will be construed and interpreted according to the federal common law of Government contracts as enunciated and applied to federal judicial bodies and boards of contract appeals 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 purchase order is issued shall apply.
- 6. COMPLIANCE WITH LAWS AND REGULATIONS** - (a) Seller agrees to indemnify Buyer against loss, cost, liability, or damage by reason of Seller's violation of any applicable law, executive order, or regulation.

(b) Seller agrees that performance under this purchase order is subject to applicable regulations and directives of the United States Government.
- 7. CORRECTION OF DEFECTS** - (a) Buyer, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any services which are defective in material or workmanship or otherwise fail to meet the requirements of this purchase order.

(b) Corrected or replacement materials and services shall not be tendered again for acceptance unless the former tender and the requirement of correction or replacement is disclosed.

(c) If Seller fails to proceed with reasonable promptness to perform such replacement or correction, and if such replacement or correction may be performed within the ceiling price, or the ceiling price as increased by Buyer, Buyer may: (i) by contract or otherwise perform such replacement or correction and charge to Seller any increased cost occasioned Buyer thereby, and may deduct such increased cost from any amounts due the Seller under this purchase order (or require repayment of any payments theretofore made), or (ii) terminate this purchase order for default as provided in the Termination for Default clause of this purchase order. Failure to agree to the amount of any such increased cost to be charged to Seller, or to such reduction in, or repayment of, any amount due under this purchase order, shall be a dispute within the meaning of the Disputes clause of this purchase order.
- 8. DELIVERY** - Time is of the essence of this purchase order. Unless otherwise provided in this purchase order, delivery in whole or in part shall not be made more than ten (10) days prior to required delivery dates. Buyer may return earlier deliveries at Seller's risk and expense. Seller shall comply with the delivery schedule but shall not make material or production commitments in advance of such time as the Seller reasonably believes necessary to meet the schedule without prior written approval by Buyer. Representatives of Buyer, the Government, or both shall at all reasonable times have access to Seller's plant for the purpose of assuring delivery in accordance with the schedule.
- 9. DISPUTES** - Any dispute arising under this purchase order which is not settled by agreement of the parties will be litigated in the state or federal courts of the state from which the purchase order is issued. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this purchase order, Seller shall proceed diligently with the performance of this purchase order in accordance with the decision of Buyer.
- 10. EQUAL OPPORTUNITY** - The information set forth in FAR clause 52.222-26 and in FAR Section 22.810 as applicable, as in effect on the date of this purchase order are incorporated herein by reference unless this purchase order is exempt under regulation issued by the Secretary of Labor. Where necessary to make the FAR applicable to this purchase order, the word "Contractor" shall mean "Subcontractor".
- 11. FEDERAL, STATE AND LOCAL TAXES** - Except as may be otherwise provided in this purchase order, the price includes all applicable federal, state and local taxes and duties.
- 12. GOVERNMENT OR BUYER PROPERTY** - If, in connection with the performance of this purchase order, any property is furnished to Seller

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by Buyer or by the Government, Seller shall assume the risk of, and be responsible for, any loss, theft, destruction of or damage to the property while in Seller's possession or control except to the extent that this purchase order, with the prior approval of Buyer and/or Government, provides for the relief of Seller from such liability. In the absence of such approval, Seller shall return all such property in as good a condition as when received except for reasonable wear and tear for the utilization of such property in accordance with the provisions of the prime contract. Seller shall establish and maintain a system in accordance with the provisions of FAR 52.245-1 for the control of the Government or Buyer-owned property. Seller shall also notify Buyer if approval of its property system has been withdrawn by the Government. At all times, Buyer and the Government shall have access to Seller's facilities for the purpose of reviewing its compliance with the management of Government or Buyer property related to this purchase order.

- 13. INDEMNITY** - (a) If Seller, in connection with the performance of this purchase order, shall send any of its agents or employees onto premises owned or controlled by Buyer, Seller shall provide safety protection for persons and property in accordance with all applicable laws and regulations and indemnify and save harmless Buyer from and against any and all liabilities and losses whatsoever, whether resulting from or contributed to by negligence of buyer, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to, or death of, any person whomsoever, or loss of or damage to any property whatsoever, suffered or sustained in the course of, or in connection with, the performance of the work. Buyer, at its option, may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification provided above but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify;

(b) Seller shall comply with the provisions of FAR 52.215-22, 52.215-23, 52.215-24, and 52.215-25 which are incorporated herein by reference (Paragraph 33) to the extent such clauses are or become applicable to this purchase order. Seller shall indemnify and hold harmless the Buyer from any amount, loss and expense, including interest assessed by the Government under 10 USC 2306a, by which this purchase order is determined by the Government to have been defectively priced because of Seller's or Seller's subcontractor's failure to comply with such provisions. The rights of the parties hereunder shall survive completion or termination of this purchase order.

- 14. INSPECTION** - All materials furnished and services performed by Seller under this purchase order shall be subject to inspection and test by Buyer and, if the goods or services are for ultimate delivery to the Government, as evidenced by a Government Contract Number on Buyer's purchase order, the Government, to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance Buyer and, if applicable, the Government, through any authorized representative, may inspect the plant or plants of the Seller or of any of its lower-tier subcontractors engaged in the performance of this purchase order.

If any inspection or test is made by Buyer or, if applicable, the Government on the premises of Seller or a lower-tier subcontractor, Seller shall provide and shall require its lower-tier subcontractors to provide all reasonable facilities and assistance for the safety and convenience of Buyer and/or Government inspectors in the performance of their duties. All inspections and tests by Buyer and, if applicable, the Government shall be performed in such manner as will not unduly delay the work. Except as otherwise provided in this purchase order, acceptance of services performed and materials furnished under this purchase order shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

- 15. INTELLECTUAL PROPERTY INDEMNITY** - Seller shall indemnify Buyer, Buyer's customer and/or the Government and their respective officers, agents and employees against liability, including costs, for

infringement of any patent, copyright, trademark, or other intellectual property arising out of the manufacture or delivery of supplies or services under this purchase order or out of the use or disposal by, or for the account of, Buyer, Buyer's customer and/or the Government of such supplies. The foregoing indemnity shall not apply unless Seller shall have been informed as soon as practicable by Buyer, Buyer's customer and/or the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

Such indemnity shall not apply if: (a) the infringement results from compliance with specific written instructions of Buyer directing a change in the supplies or services to be delivered or in the materials or equipment to be used, or directing a manner of performance of this purchase order not normally used by Seller, or (b) the infringement results from an addition to, or change in, the supplies or services furnished made subsequent to delivery or performance by Seller, or (c) the claimed infringement is settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction.

- 16. MILITARY SECURITY REQUIREMENTS** - (a) Seller shall be responsible for safeguarding all classified information in accordance with the provisions of the Seller's Security Agreement with the Department of Defense and with all applicable Government requirements including, without limitation, of FAR 52.204-2 which is incorporated herein by reference.

(b) Seller shall insert in all subcontracts under this purchase order that require access to classified information, terms which conform substantially to the language of this clause, including lower-tier subcontracts.

- 17. NEWS OR ADVERTISING RELEASE** - No news release in any way relating to Buyer or Seller concerning the purchase order shall be made by either party to any news media or the general public without prior approval of the other party. The parties agree that in the event a news release is so approved and made, such news release will recognize Buyer and Seller.

- 18. NOTICE TO THE BUYER OF POTENTIAL DELAYS** - (a) Whenever Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Such occurrences shall include (1) actual or potential labor disputes; (2) fires, floods, unusually severe weather, (3) acts of Nature, (4) acts of the Government in either its sovereign or contractual capacity and any other cause for delay;

(b) Seller agrees to insert this clause including this subparagraph (b) in any purchase order or subcontract hereunder.

- 19. ORDER OF PRECEDENCE** - The various documents constituting this purchase order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this purchase order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items: (a) provisions required by statute, regulation or government contract; (b) typed purchase order form; (c) this terms and conditions document; (d) statement of work; (e) specifications; and (f) drawing(s).

- 20. PAYMENTS** - The amounts due to Seller hereunder will be paid upon the submission of monthly invoices certified by two (2) officers or other authorized officials of Seller, one of whom shall be a person supervising accounting with respect to this purchase order. Their certification shall be to the effect that the amount contained therein is correct and just, and payment for the amount claimed has not been received or previously covered by a prior invoice. Seller shall be paid as follows upon the submission of valid invoices approved by Buyer:

(a) Hourly Rate

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(1) The amounts are computed by multiplying the appropriate hourly rate, or rates, set forth in the purchase order by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by Buyer), to Buyer. Seller will substantiate vouchers by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by Buyer. Promptly after receipt of each substantiated voucher, Buyer shall, except as otherwise provided in this purchase order, and subject to the provisions of (e) below, make payment thereon as approved by Buyer.

(2) Unless otherwise set forth in the purchase order, five percent (5%) of the amount due under this paragraph (a) shall be withheld from each payment by Buyer but the total amount withheld shall not exceed \$50,000. Such amounts withheld shall be retained until the execution and delivery of a release by Seller as provided in paragraph (f) hereof.

(3) Unless provisions of the purchase order specify otherwise, the hourly rate or rates set forth in the purchase order shall not be varied by virtue of Seller having performed work on an overtime basis. No overtime shall be performed without Buyer's Authorized Purchasing Representative's written authorization. Failure to agree upon these overtime rates will be treated as a dispute under the Disputes clause of this purchase order. If the purchase order provides for overtime rates, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Buyer.

### **(b) Materials and Subcontracts**

(1) Allowable costs of direct materials shall be determined by Buyer in accordance with Part 31, of the Federal Acquisition Regulation in effect on the date of this purchase order. Reasonable and allocable material handling costs may be included in the charge for material at cost to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense, allocated to direct materials in accordance with Seller's usual accounting practices consistent with Part 31 of the Federal Acquisition Regulation.

Seller shall be reimbursed for items and services purchased directly for the purchase order only when cash, checks, or other forms of actual payment has been made for such purchased items or services. Seller shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to Buyer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product. All costs included in the invoice must be computed in accordance with the latest revision of Section 31 of FAR and allowable with the principles therein. No payment shall be made for costs included in the invoice that are unallowable by Section 31.

(2) The cost of subcontracts which are authorized pursuant to these terms shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by Seller to the lower-tier subcontractor and shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under (a) (1) above. The requirement of payment for reimbursement shall not apply to the subcontractor who is a small business concern.

(3) Seller shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to

securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, Seller shall promptly notify Buyer to that effect, and provide rationale. Credit shall be given to Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Seller, or would have been so accrued except for the fault or neglect of the Seller. Such benefits lost through no fault or neglect on the part of the Seller, or lost through fault of Buyer, shall not be deducted from gross costs.

(c) It is estimated that the total cost to Buyer for the performance of this purchase order will not exceed the ceiling price set forth in the purchase order, and Seller agrees to use its best efforts to perform the work specified in the purchase order and all obligations under this purchase order within such ceiling price. If at any time during the performance of this purchase order, Seller has reason to believe that the hourly rate payments and material costs which will accrue in the performance of this purchase order in the next succeeding thirty (30) days when added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the ceiling price then set forth in the purchase order, Seller shall notify Buyer to that effect giving his revised estimate of the total price to Buyer for the performance of this purchase order, together with supporting reasons and documentation.

If at any time during the performance of this purchase order, Seller has reason to believe that the total price to Buyer for the performance of this purchase order will be substantially greater or less than the then stated ceiling price, Seller shall so notify Buyer, giving his revised estimate of the total price for the performance of this purchase order, together with supporting reasons and documentation. If at any time during the performance of this purchase order, Buyer has reason to believe that the work to be required in the performance of this purchase order will be substantially greater or less than the stated ceiling price, Buyer's Authorized Purchasing Representative will so advise Seller, giving the then revised estimate of the total amount of effort to be required under this purchase order.

(d) Buyer shall not be obligated to pay Seller any amount in excess of the ceiling price set forth in the purchase order, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the purchase order, unless and until Buyer shall have notified Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this purchase order. When and to the extent that the ceiling price set forth in the purchase order has been increased, any hours expended and material costs incurred by Seller in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.

(e) At any time or times prior to final payment under this purchase order the Buyer or Cognizant Government Audit Agency may audit the invoices or vouchers and substantiating material as shall be deemed necessary. Each payment made shall be subject to reduction to the extent of amounts which are found by Buyer or the Cognizant Government Audit Agency not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers.

Upon receipt and approval of the voucher or invoice designated by Seller as the "completion/final voucher" or "completion/final invoice" and substantiating material, and upon compliance by Seller with all provisions of this purchase order (including, without limitation, provisions relating to patents and the provisions of (f) and (g) below), Buyer shall as promptly as may be practicable pay any

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balance due and owing Seller. The completion invoice or voucher, and substantiating material, shall be submitted by the Seller as promptly as may be practicable following completion of the work under this purchase order, but in no event later than one (1) year (or such longer period as Buyer may, in its discretion, approve in writing) from the date of such completion.

Notwithstanding any other provision of this purchase order, if at any time the Government does not approve or the Government disallows, for any reason, the payment or reimbursement by the Government to Buyer of any amount paid by Buyer to Seller under this purchase order, the Seller shall promptly upon Buyer's written demand refund such amount to Buyer. Such repayment, disapproval or disallowance shall be without prejudice to Seller's right to prosecute an appeal or bring suit against the Government.

(f) Seller and each assignee, under an assignment entered into under this purchase order and in effect at the time of final payment under this purchase order, shall execute and deliver, at the time of and as a condition precedent to final payment under this purchase order, a release discharging Buyer, its officers, agents, and employees of and from all liabilities, obligations and claims arising out of or under this purchase order, subject only to the following exceptions:

(i) specified claims in stated amounts, or in estimated amounts where the amounts are not susceptible of exact statement by Seller;

(ii) claims, together with reasonable expenses incidental thereto, based upon the liabilities of Seller to third parties arising out of the performances of this purchase order, which are not known to Seller on the date of the execution of the release, and of which Seller gives notice in writing to Buyer and not more than three (3) years after the date of the release or the date of any notice to Seller that Buyer is prepared to make final payment, whichever is earlier; and

(iii) claims for reimbursement of costs (other than expenses of Seller by reason of its indemnification of Buyer and/or the Government against patent liability), including reasonable expenses incidental thereto, incurred by Seller under the provisions of this purchase order relating to patents.

(g) Seller agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by Seller or any assignee which arise under the materials portion of this purchase order and for which Seller has received reimbursement, shall be paid by Seller to Buyer. Seller and each assignee, under an assignment entered into under this purchase order and in effect at the time of final payment under this purchase order shall execute and deliver at the time of and as a condition precedent to final payment under this purchase order, an assignment to Buyer of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to Buyer.

**21. INTELLECTUAL PROPERTY RIGHTS** - Any invention, discovery, proprietary information, maskwork, software, system, data or report resulting from the work performed under this purchase order shall be the sole property of Buyer. All patents, copyright, trade secrets, trademarks, maskworks or other intellectual property resulting from work under this purchase order shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of Seller and without any duty to account to Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this purchase order, and to provide reasonable support for Buyer's prosecution of such patent application. The parties agree that any original work of authorship created under this purchase order is a work made for hire for purposes of copyright ownership. To whatever extent Seller has any interest in any original work of authorship created under this purchase order, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.

This purchase order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of the purchase order.

With respect to DFARS 252.227-7013(b)(1), all technical data and computer software will be furnished to the Government with unlimited rights.

**22. PROTECTION OF INFORMATION** - (a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller which relates to the subject matter of this purchase order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and paragraphs (b) through (g) of this clause shall not apply.

(b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller, paragraphs (c) through (g) of this clause apply.

(c) For purposes of this clause, "Information" shall mean information disclosed to Seller by Buyer in connection with this purchase order, which is either identified to Seller as being proprietary or which is information a reasonable person would understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer's products, services, equipment or processes, as well as duplicates, copies or derivative works thereof. Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Seller from a third party without obligation of confidence.

(d) Information furnished to Seller shall remain Buyer's proprietary property, shall be duplicated only as authorized in writing by Buyer, and shall be returned to Buyer upon request or when no longer required for the performance of this purchase order. Seller shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties, including any foreign national, firm or country, and foreign nationals employed by or associated with Seller's company except as specifically authorized by Buyer. Seller agrees not to use Information to develop any product, service or system, or to support any third party in the development of any product, service or system.

(e) Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller's proprietary data and information will be used by Buyer only upon approval by Seller.

(f) Seller's obligations with respect to Information disclosed hereunder prior to the performance in full, termination or cancellation of this purchase order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.

(g) Buyer or its authorized representatives may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. Seller will, in all of its contracts with its suppliers relating to any Buyer purchase order, include provisions which secure for Buyer all of the rights and protections provided for by this clause.

**23. QUANTITY** - Buyer need not accept any variation in quantity except as specified in this purchase order. Overshipments may be returned to Seller at Seller's expense, which shall include a reasonable cost for Buyer's handling, or be retained by Buyer at no increase in price. To the extent that supplies covered by this purchase order are produced in accordance with drawings or specifications which are proprietary to Buyer or to Buyer's customer, Seller shall not manufacture or retain for the purpose of display, or otherwise, any more such supplies, or parts thereof, than are required to be delivered under this purchase order. Any such excess supplies, or parts therefore, shall be

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delivered free of charge to Buyer at the designated delivery point at Seller's risk and expense or destroyed and the destruction certified by Seller.

**24. RESPONSIBILITY FOR SUPPLIES** - Except as specifically otherwise provided in this purchase order, Seller shall be responsible for supplies meeting the requirements of this purchase order until final inspection and acceptance thereof by Buyer and shall bear all risks as to rejected supplies or supplies requiring correction after notice of rejection notwithstanding any prior acceptance.

**25. SPECIAL TOOLING (ST), SPECIAL TEST EQUIPMENT (STE) AND FACILITIES** - Unless specifically provided to the contrary in this purchase order, Seller warrants that the price set forth in this purchase order does not include; (a) any amount representing rent for the use of Government-owned ST, STE or Facilities capital cost of money (FAC) or (b) as a direct charge to this purchase order, the cost of any (ST), (STE) or (FAC) as the same are defined in subpart 2.1 of the Federal Acquisition Regulation (FAR). Any such (ST), (STE) or (FAC) to be charged to Buyer will be covered by a separate purchase order.

**26. STANDARDS OF SERVICES** - All services hereunder shall be performed by employees or agents of Seller who are experienced and highly skilled in their professions and in accordance with the highest standards of workmanship in their profession. Seller shall not change or transfer such employees once assigned except for good cause. Buyer shall have the right to request and have replaced any personnel who fail to perform to Buyer's satisfaction.

**27. ASSIGNMENT, SUBCONTRACTING, AND PLACE OF PERFORMANCE** - (a) Neither this purchase order nor any payments hereunder are assignable or transferable, in whole or in part, without Buyer's written approval, which approval will not be unreasonably withheld. Buyer shall be entitled to the right of set-off against any amounts payable under this purchase order.

(b) Neither the entirety nor any part of this purchase order may be further subcontracted without the prior written consent of Buyer.

(c) This provision shall not apply to purchases of standard commercial articles or raw materials on which Seller will perform further work.

(d) Seller further agrees that no subcontract placed under this purchase order shall provide for payment on a cost-plus-a-percentage-of-cost basis. Seller further agrees to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this purchase order.

(e) Seller shall notify Buyer of any change in the place of performance, including but not limited to change in design, manufacturing, assembly, integration, or testing location of components or lower subassemblies, with regard to the requirements of this purchase order. Such notification shall be made to the Buyer's Authorized Purchasing Representative not less than 30 days prior to the change to the place of performance,

(f) Buyer may charge to Seller any additional cost of inspection or requalification in connection with any change in the place of performance of this purchase order.

**28. SUBSTITUTIONS** - Seller shall not substitute materials or accessories without written consent of Buyer.

**29. TERMINATION** - Without limiting Buyer's right to cancel this order for default of Seller as provided in FAR 52.249-6 Alternate IV, which is incorporated herein by reference, Buyer may terminate all or any part of the work under this order and process Seller's claims therefore in accordance with the provisions of the Termination Clause set forth in Part 52.249-6, Alternate IV of the Federal Acquisition Regulation as in effect on the date of this order. Where necessary to make this FAR part applicable to this purchase order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and "Government"

shall mean "Buyer" or the "Government". In paragraph (e) of 52.249-6, change "1 year" to "6 months or any extension thereto." Delete Paragraph (i) of 52.249-6. However, Seller shall have the rights under the "Disputes Clause" of this purchase order.

**30. TOXIC SUBSTANCES CONTROL ACT** - (Public Law 94-469 Oct 11, 1976) Seller warrants that each and every chemical substance delivered under this purchase order shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act (Title 15 USC Para. 2601).

**31. WARRANTY** - Seller warrants that the services and necessary supplies covered by this purchase order will conform to the design and specifications and to drawings, samples or other descriptions referred to in this purchase order, will be free from defects in material and workmanship, and, to the extent that the Seller knows or has reason to know of the purpose for which the supplies are intended, will be fit and sufficient for such purpose. The warranties contained in this paragraph shall run to Buyer and its Customer.

Seller warrants that supplies/services provided under this purchase order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which in any manner would interfere with Buyer's property rights as described in the Intellectual Property Rights and Protection of Information provision in these terms and conditions. In so far as the FAR Authorization and Consent regulation incorporated by reference below applies as to any patent infringement claim, no warranty of non-infringement of any such patent claim is provided.

**32. EXPORT RELATED REQUIREMENTS** - (a) Export Compliance. Seller is advised that its performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 - 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 - 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 - 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is a U.S. Person as that term is defined in the Export Laws and Regulations or 2) that it has disclosed to Buyer's Authorized Purchasing Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Foreign Personnel/Persons. Seller shall not give any Foreign Person (including Seller's own non-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph (b) shall relieve Seller of its obligations to comply with the provisions of paragraph (a) or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph (a), nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

(c) Indemnification. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph (a). Any failure of Seller to

**TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

comply with the requirements or any breach of the warranty contained in this clause shall be a material breach of this purchase order.

(d) Subcontracts. The substance of this clause shall be incorporated into any subcontract or purchase order entered into by the Seller for the performance of any part of the work under this purchase order.

- 33. RESEARCH INVOLVING HUMAN SUBJECTS** - No research involving human subjects, as defined in 45 CFR Part 46, may be performed by Seller on this purchase order without prior written approval of Buyer's Human Research Protection Administrator (HRPA). Any Buyer approved research involving human subjects must, at all times, (a) conform to any conditions or restrictions provided in the HRPA's written approval, (b) be guided by "Ethical Principals and Guidelines for the Protection of Human Subjects," The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, April 18, 1979 ("The Belmont Report"), and (c) remain in full compliance with the applicable regulations of the Government agency or instrumentality funding the research (e.g., 32 CFR Part 219 for the Department of Defense).
- 34. FEDERAL ACQUISITION REGULATION (FAR)/DOD FAR SUPPLEMENT (DFARS)** - The following clauses set forth in the (FAR) and the (DFARS) as in effect on the date of this purchaser order are incorporated herein by reference. Where necessary to make the clauses applicable to this purchase order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and the "Government" shall mean "Buyer" or the "Government" whenever appearing in the clauses. If any of the following FAR/DFARS clauses do not apply to a particular purchase order, such clauses are considered to be self-deleting.

- 52.227-10 Patent Rights – Retention by the Contractor (Short Form)
- 52.227-11 Patent Rights – Retention by the Contractor (Long Form)
- 52.227-12 Filing of Patent Applications - Classified Subject Matter
- 52.227-14 Rights in Data – General
- 52.229-3 Federal, State, and Local Taxes
- 52.233-3 Protest After Award
- 52.244-6 Subcontracts for Commercial Items
- 52.245-1 Government Property
- 52.247-63 Preference for U.S. Flag Air Carriers
- 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels
- \*252.204-7000 Disclosure of Information
- \*252.222-7000 Restrictions On Employment of Personnel
- \*252.223-7006 Prohibition On Storage and Disposal of Toxic and Hazardous Materials
- \*252.225-7001 Buy American Act and Balance of Payments Program
- \*252.225-7010 Duty Free Entry – Additional Provisions
- \*252.225-7014, Alt. I Preference for Domestic Specialty Metals
- \*252.225-7028 Exclusionary Policies and Practices of Foreign Governments
- \*252.225-7030 Restriction on Acquisition of Carbon, Alloy and Armor Steel Plate
- \*252.225-7036 Buy American Act – North American Free Trade Agreement Implementation Act – Balance of Payments Program
- \*252.227-7013 Rights in Technical Data - Noncommercial Items
- \*252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
- \*252.227-7016 Rights In Bid or Proposal Information
- \*252.227-7019 Validation of Asserted Restrictions – Computer Software
- \*252.227-7025 Limitations On the Use or Disclosure of Government Furnished Information Marked With Restrictive Legends
- \*252.227-7030 Technical Data - Withholding of Payment
- \*252.227-7037 Validation of Restrictive Markings on Technical Data
- \*252.228-7001 Ground and Flight Risk
- \*252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles
- \*252.231-7000 Supplemental Cost Principles
- \*252.243-7001 Pricing of Contract Modifications
- \*252.246-7001 Warranty of Data – Alternate I

**a) All Orders**

- 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity
- 52.204-2 Security Requirements
- 52.211-5 Material Requirements
- 52.211-15 Defense Priority and Allocation Requirements
- 52.214-27 Price Reduction for Defective Cost or Pricing Data – Modifications – Sealed Bidding
- 52.215-10 Price Reduction for Defective Cost or Pricing Data
- 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications
- 52.215-15 Pension Adjustment and Asset Reversions
- 52.215-18 Reversions or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions
- 52.215-19 Notification of Ownership Changes
- 52.215-20 Requirements for Cost or Pricing Data Other Than Cost or Pricing Data
- 52.219-8 Utilization of Small Business Concerns
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-41 Service Contract Act of 1965, As Amended
- 52.222-50 Combating Trafficking in Persons
- 52.223-7 Notification of Radioactive Materials
- 52.225-1 Buy American Act – Balance of Payments Program - Supplies
- 52.225-3 Buy American Act – North American Free Trade Agreements – Israeli Trade Act – Balance of Payments Program
- 52.225-8 Duty Free Entry
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.227-1 Authorization and Consent

**b) All Orders of \$3,000 or Above**

- 52.222-54 Employment Eligibility Verification

**c) All Orders of \$10,000 or Above**

- 52.222-20 Walsh-Healey Public Contracts Act
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans
- 52.222-36 Affirmative Action for Workers with Disabilities
- 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

## **TERMS AND CONDITIONS – Time and Material Under U.S. Government Contract**

### **d) All Orders of \$25,000 or Above**

52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment

### **e) All Orders of \$100,000 or Above**

52.203-7 Anti-Kickback Procedures  
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions  
52.215-2 Audit and Records – Negotiation  
52.215-14 Integrity of Unit Prices  
52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation  
52.223-13 Certification of Toxic Chemical Release Reporting  
52.223-14 Toxic Chemical Release Reporting  
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement  
52.248-1 Value Engineering  
\*252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies  
\*252.249-7002 Notification of Anticipated Contract Termination or Reduction

### **f) All Orders of \$500,000 or Above**

52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan  
52.230-2 Cost Accounting Practices  
52.230-3 Disclosure and Consistency of Cost Accounting Practices  
52.230-5 Cost Accounting Standards – Educational Institution  
52.230-6 Administration of Cost Accounting Practices  
\*252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan  
\*252.225-7026 Reporting of Contract Performance Outside the United States

### **g) All Orders of \$550,000 or Above**

52.214-26 Audit and Records – Sealed Bidding  
52.214-28 Subcontractor Cost or Pricing Data – Modifications- Sealed Bidding  
52.215-12 Subcontractor Cost or Pricing Data  
52.215-13 Subcontractor Cost or Pricing Data – Modifications

### **h) All Orders of \$5 Million or Greater**

52.203-14 Display of Hotline Poster(s)

### **i) All Orders of \$5 Million or Greater and Period of Performance of 120 days or greater**

52.203-13 Contractor Code of Business Ethics and Conduct  
(Notwithstanding any alterations to this clause to reflect the relationship between Northrop Grumman and Seller, all disclosures of violation of the civil False Claims Act or of federal criminal law shall be directed to the Office of the Inspector General of the agency issuing the prime contract, with a copy to the Contracting Officer of the prime contract.)

\* Denotes DFARS