



## Standard Terms & Conditions

### 1. Acceptance

This Purchase Order is an offer to buy the goods and/or services described herein and becomes a binding contract on the terms and conditions herein when accepted by the seller either by acknowledgment or by shipment or other commencement of work. Any acceptance hereof is limited to acceptance of the express terms of the offer contained in the provisions of this PO and its attachments. No revision of this order or any of the terms and conditions hereof shall be valid unless in writing and signed by an authorized representative of Buyer, and no condition stated by Seller in acceptance of or acknowledging this order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein unless expressly accepted in writing by Buyer.

### 2. Termination

Buyer reserves the right to terminate any undelivered or unperformed portion of this order for its sole convenience. Upon such termination Seller agrees to cease all work hereunder and shall immediately cause any and all of its suppliers to cease work. Seller may submit a claim to Buyer within 60 days after the effective date of termination. Buyer may also terminate this order or any part hereof for extenuating cause and in such event, Buyer shall not be liable to Seller for any amount. For purposes of the foregoing sentence "cause" shall include late delivery or performance, a delivery of defective or nonconforming goods or workmanship, a breach of any of Seller's warranties hereunder, any other material default or failure of compliance by Seller with the terms and conditions hereof, the commencement or continuance of any bankruptcy or insolvency proceeding by or against Seller, or any legal process or order directing or requiring Buyer to undertake or refrain from undertaking any business or certain types of business with the result that the goods and/or services ordered hereunder shall be unnecessary to Buyer.

### 3. Quantities and Specifications

By acceptance hereof, Seller shall be deemed to have inspected and approved all plans, drawings, and specifications applicable to the goods and/or services ordered hereunder. IN NO CASE SHALL SELLER MAKE ANY TYPE OF SUBSTITUTION WITHOUT WRITTEN CONSENT from the Buyer. Seller shall not deliver and Buyer shall not have any obligation or liability with respect to any quantity of goods in excess of the quantity specified herein unless Buyer shall otherwise direct in writing.

### 4. Warranties

Seller expressly warrants that it will convey good title to all goods furnished hereunder and that all goods and/or services furnished hereunder will conform to all specifications and appropriate standards, will be free from defects in material and workmanship, will be merchantable, and will be safe and appropriate for the purpose for which goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods, Seller warrants that such goods will be fit for such particular purpose. The warranties of Seller shall run to Buyer, its successors, assigns, and customers and users of products sold by Buyer. Seller hereby assigns to Buyer any warranties or guaranties provided by manufacturers or sellers of products incorporated into goods or services provided by Seller hereunder and shall upon request enforce any such warranty or guaranty on behalf of Buyer. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

### 5. Defective or Nonconforming Goods or Services

No goods or services received by Buyer pursuant hereto shall be deemed accepted until Buyer has had reasonable opportunity to inspect and/or observe performance of such goods or services. Buyer shall have access to and the right to inspect all work prior to its completion. Notwithstanding any such inspection, Seller shall be solely responsible for the conformance of the work to the specifications. Seller shall promptly correct defects or replace any goods or services not conforming to any of Seller's warranties hereunder without expense to Buyer, provided Buyer elects to provide Seller with the opportunity to do so. Irrespective of whether such defect or nonconformity was discovered upon initial inspection, or a later time if not readily ascertainable upon initial inspection in the event of a failure by Seller to correct defects or replace nonconforming goods promptly, Buyer after reasonable notice to Seller may make such corrections or replace such goods and charge Seller for the costs incurred by Buyer in doing so. Such remedies shall not affect Buyer's discount privileges and shall not exclude any other legal, equitable or contractual remedies of Buyer as a result of Seller's delivery of defective or nonconforming goods or services.

### 6. Price Warranty

Seller warrants that the prices for the goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities. If Seller reduces its price for such goods during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this Purchase Order shall be complete and no additional charges or charges of any type shall be added without Buyer's express written consent. Such additional



charges include, but are not limited to, shipping, packaging, labeling, customer duties, taxes, insurance, storage, boxing and crating. Delay in receiving invoices and errors and omissions on statements or invoices will be considered just cause for withholding settlement without losing discount privileges.

#### **7. Delivery**

Time is of the essence of this Purchase Order. In the event that Seller shall fail to deliver any goods or perform any services on time Buyer reserves the right to cancel this order. If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified herein, any increased transportation costs resulting there from shall be paid for by Seller unless the necessity for such costs has been caused by Buyer. Seller shall notify the Buyer promptly of any delays or threatened delays in the performance of this order. No acceptance of goods or services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms hereof.

#### **8. Risk of Loss**

All risk of loss shall be upon Seller from the time the goods first come under Seller's control until such time as the goods shall be delivered to the destination specified herein and there accepted by Buyer. Seller agrees to indemnify and hold Buyer harmless for any and all loss, cost, damage, and expense which Buyer shall sustain as a result or in consequence of the loss of or damage to the goods during such period of time.

#### **9. Legal Compliance**

Seller warrants and agrees that in the performance of its obligations hereunder, Seller, its agents, employees, carriers and subcontractors shall (a) comply with all applicable laws, ordinances, codes, rules, regulations and orders, including executive orders now existing or hereafter enacted, adopted or enforced by any governmental body or agency, including where applicable all such laws, ordinances, codes, rules, regulations and orders pertaining to labor and working conditions (including Executive Order 11246, the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistant Act of 1974), safety and health, food and drug quality, and hazardous materials; (b) apply for, obtain, and pay for all necessary permits and licenses, and pay applicable fees in connection therewith, and (c) pay promptly when due any and all applicable sales, excise, or other taxes due on materials furnished in connection with services performed, and all taxes and amounts due under applicable unemployment, social security, and worker's compensation laws.

#### **10. Indemnification**

To the fullest extent permitted by law, Seller shall save and hold Buyer, its directors, officers, employees, agents and representatives harmless from and indemnify, defend, and protect such parties against all liability, loss, claims, demands, damage (including damage to property or bodily injury), and expense (including reasonable attorney's fees) arising out of or in any way resulting from Seller's performance or non-performance hereunder, including any defect or nonconformity with Seller's warranties of the goods and services delivered hereunder, any act or omission of Seller, its agents, employees, or subcontractors; any act or omission of any carrier selected and employed by Seller to deliver goods ordered hereunder to Buyer; any failure by Seller, its agents, employees, carriers, or subcontractors to comply with the terms hereof; any infringement or claim of infringement of any patent, unpatented invention, copyright, design process, trademark, tradename, brand, slogan, unfair competition, or other adverse rights; or any litigation based on or arising out of the foregoing.

#### **11. Set Off**

All claims for money due or to become due from Buyer shall be subject to deduction or set off by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

#### **12. Force Majeure**

Buyer or Seller may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of Buyer and shall deliver them when the cause affecting the delay has been removed. Causes beyond the control of Buyer or Seller shall include government action or failure of the government to act where such action is required, acts of god, strikes, fires, accidents, or other such causes not due to Buyer's fault or negligence.

#### **13. Changes**

Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, an equitable negotiated adjustment shall be made and the agreement created by the acceptance of this Purchase Order shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph. Seller shall undertake no work on any such change, addition or omission unless and until Seller delivers a Quote and Buyer issues a written change order.



#### **14. Confidentiality**

The contents of this order and all related commercial and technical information shall be kept secret and confidential by Seller and will not be divulged by Seller to any third party or utilized by Seller otherwise than in connection with this order. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time to Buyer by Seller shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto except such rights as any exist under any applicable patent law.

#### **15. Limitation on Buyer's Liability, Statute of Limitation**

Except as provided in Paragraph 2 hereof, in no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods and services delivered hereunder must be commenced within one year after the cause of action has accrued.

#### **16. Assignment**

Seller shall not assign, transfer or hypothecate this Purchase Order or any part hereof or any monies payable or to become payable hereunder without in each case obtaining the prior written consent of Buyer, which may not be unreasonably withheld.

#### **17. Waiver**

Any waiver by Buyer of strict compliance with any of the provisions hereof shall not be deemed a waiver of any other provisions hereof and shall not be deemed a waiver of any of Buyer's rights, privileges, claims, or remedies, nor of Buyer's right to insist on strict compliance thereafter.

#### **18. General**

- (a) This Purchase Order and any documents referenced to on the face hereof constitute the entire agreement between the parties, and all prior agreements, written or oral, relating to the subject matter hereof are superseded by the terms hereof. Such terms may be modified only by a writing signed by both parties.
- (b) The provisions of this Purchase Order are severable and in the event any provision is held to be unenforceable, the remaining provisions will continue in full force and effect.
- (c) It is understood that Seller is an independent contractor and not an employee or agent of Buyer and that Seller shall have no power whatsoever to bind Buyer in any way in any dealings between Seller and third parties and shall not attempt or purport to do so.
- (d) 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 by federal judicial bodies and by the 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 the Buyer's purchase order is issued shall apply, not including its rules with respect to choice of laws.

#### **19. 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 in Harrison County, MS 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 unless otherwise agreed between Buyer and Seller.

#### **20. Federal Acquisition Regulation (FAR), DOD FAR Supplement (DFARS)**

The applicable FAR and DFARS are attached as a supplement to this PO.

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 or DFARS clauses do not apply to a particular purchase order, such clauses are considered to be self-deleting.

#### **21. Government Source Inspection Access**

The government reserves the right to inspect at source, supplies, and services not manufactured or performed at the Buyer's facility. In the event this right is to be exercised, you will be notified and paragraph 22 (below) will become applicable.

#### **22. Government Source Inspection**

Government inspection is required prior to shipment from your plant. Upon receipt of this order, promptly notify the Government Representative who normally services your plant so that appropriate planning for Government inspection can be accomplished. You are required to provide an acceptable inspection area for the Government Representative.



### **23. Buyer's Source Inspection Access**

The Buyer reserves the right to inspect at source, or have inspected by an authorized representative, supplies and services not manufactured or performed at the Buyer's facility. In addition, the Seller is required to inform the Buyer of the tentative dates of the conductance of all tests applicable to this item at least twenty-one (21) days in advance of such tests. The seller is further required to inform the Buyer of any changes in the above schedule. Should the Buyer not be present when the test/inspection/operation is scheduled, testing shall proceed unless otherwise notified by the buyer. Witness of manufacturing processes and/or tests by the Buyer's Quality representative shall not be construed to indicate acceptance of the product. Evidence of Source Inspection shall normally accompany each shipment.

### **24. Malpractice, Fraud and Falsification**

Suppliers (management and employees) are contractually obligated and expected to meet all purchase order requirements. Suppliers are required to inform sub-tier Supplier's hired by the Supplier that they are likewise contractually obligated and expected to meet all purchase order requirements.

Suppliers and sub-tier Suppliers shall be aware and vigilant for Malpractice and Fraud and Falsification (F&F), as it affects contract compliance. All parties associated with product and services destined for ultimate delivery to the Purchaser must be aware that Malpractice and F&F are grave and serious matters. The act of Malpractice or F&F has the potential for severe and costly damages.

It is the responsibility of all parties to avoid the slightest possibility or appearance of impropriety or malpractice and to report known or suspected occurrences to the proper authorities. All personnel working within the program must be aware of malpractice and fraud & falsification, pitfalls that could lead to malpractice and fraud & falsification, methods to eliminate potential situations, and Purchaser expectations of supplier's, their employees, and subcontractors.

Consequences of malpractice and fraud & falsification could involve functional failure of product in operation on land or at sea, causing loss of equipment and life. Consequences also include severe dollar loss to the Purchaser, the Government, and the Supplier due to lengthy investigations, possible disqualification from future contracts, production shutdown, and loss of employment. Acts of malpractice or fraud & falsification will result in purchase order contractual action and will also be subject to federal criminal prosecution for violations of law under Title 18 of the U.S. Code, Chapter 47, Section 1001.

Suppliers must ensure that employees and sub-tier Suppliers are provided documentation and information necessary to perform assigned and contracted work correctly. Employees and sub-tier Supplier's must follow established work procedures and contract documents to perform best possible effort within the program.

Any party aware of, or having reason to suspect, malpractice or fraud & falsification is obligated to report this violation anonymously or in person to:

- a.) Local Supervision or Management
- b.) Purchaser Supervision or Management
- c.) Purchaser Quality Representative
- d.) Purchaser Buyer
- e.) Department of Defense Hotline
  - Telephone (800) 424-9098
  - Website <http://www.dodig.osd.mil/hotline/hotline7.htm>
  - Email [hotline@dodig.osd.mil](mailto:hotline@dodig.osd.mil)
  - Mail to
    - Department of Defense Hotline
    - The Pentagon
    - Washington, DC 20301-1900

Should such a notification be necessary, information including location, date(s), time, names of people involved, and violation suspected would be most helpful to promote an investigation.



False allegations of malpractice and fraud & falsification are likewise serious matters and subject to federal investigation and prosecution. It is imperative that persons making allegations be knowledgeable and truthful with the facts and not be with vindictive or spiteful intent.