

## Commercial Terms and Conditions of Purchase

**1. DEFINITIONS.** As used in this Purchase Order, the below terms shall have the following meanings: (a) "Contractor" or "Buyer" means the legal entity purchasing the supplies/services; (b) "Subcontractor," "Seller," "Supplier," or "Vendor" means the legal entity that has entered into this agreement with the Buyer; (c) "Contract," "Subcontract," "Purchase Order," "Agreement," and "Order" (whether capitalized or not) are used interchangeably and refer to this contractual instrument; (d) "Government" means the Government of the United States; and (e) "Prime Contract" means the contract under which this Purchase Order is issued.

**2. APPLICABLE LAW.** This Purchase Order shall be governed by and construed in accordance with the laws of the state of the Buyer's office indicated on the face of the Purchase Order.

**3. COMPLIANCE WITH LAWS.** (a) Seller shall comply with all applicable federal, state, and local laws, rules, regulations and orders in effect on the date of this Purchase Order. If the Seller is engaged in exporting or manufacturing ITAR controlled defense articles or furnishing defense services, they are required to register with the Department of State, Directorate of Defense Trade Controls ("DDTC") in accordance with ITAR 22 C.F.R 122. Seller, by issuance of this Purchase Order, represents that it is registered with the DDTC. Proof of such registration will be promptly provided to Buyer upon request. If Buyer provides Seller with any export controlled defense articles or technical data, Seller agrees to limit access to such defense articles or technical data to U.S. Person employees or U.S. Person third parties (other suppliers) only or agrees to obtain appropriate U.S. export authorization to allow access. Seller agrees to indemnify and hold Buyer harmless against any loss or liability due to Seller's violation or non-compliance with such regulations. Upon Buyer's request, Seller shall furnish evidence demonstrating such compliance. (b) By acceptance of these regulations, Seller shall accept under Government Prime Contracts mandatory Government Flowdown Clauses; as applicable to Fixed-Price, Cost-Plus and

Time & Material Contracts, specifically Seller agrees to accept FAR Clause 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and FAR Clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (subcontractor will not provide any covered telecommunications services or equipment as part of its deliverables under this Purchase Order). Seller also agrees to accept the FAR and DFARS clauses set forth in Section 42 below.

**4. INTERPRETATION OF PURCHASE ORDER.** This Purchase Order and any documents incorporated by reference or attached constitute the parties' complete agreement. No prior representations or agreement, either written or oral, shall be considered to change, add to, or contradict it. Any ambiguity, conflict, or inconsistency in the Purchase Order shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time of contracting.

**5. ACCEPTANCE OF PURCHASE ORDER.** This Purchase Order supersedes all previous written or verbal representations and agreements between the parties with respect to the subject matter hereof and becomes a binding agreement, subject to the specific terms and conditions stated herein, upon Seller's acceptance by acknowledgement or commencement of work.

**6. ASSIGNMENT/SUBCONTRACTING.** Seller shall not assign this Purchase Order, or any rights, interest or payments, or the performance of any of its duties under this Purchase Order without the prior written consent of Buyer. Seller shall not subcontract the complete or any substantial portion of the work without the prior written consent of Buyer. Any attempted or purported assignment / subcontracting by Seller without Buyer's prior written consent shall be void and not binding upon Buyer.

**7. SETOFF.** Buyer shall have the right at all times to setoff any amount due or payable to Seller hereunder

against any claim or charge Buyer may have against Seller.

**8. TAXES.** The price of the supplies/services procured hereunder includes all applicable federal, state, and local taxes and duties unless otherwise stated in the Purchase Order.

**9. SELLER CONTACTS WITH BUYER'S CUSTOMER AND OTHER VENDORS.** Buyer shall be responsible for all communications with Buyer's customer relevant to this agreement. Seller shall not take direction from Buyer's customer unless authorized by Buyer's contractual point of contact.

**10. INFORMATION DISCLOSED TO BUYER.** Any information or knowledge Seller discloses to Buyer regarding this Purchase Order shall not be deemed confidential or proprietary unless expressly agreed upon by the parties in writing. Any such unpatented information or knowledge shall be acquired by Buyer free of any restrictions.

**11. PAYMENT TERMS.** Unless otherwise specified in this Purchase Order, terms of payment are "Net 45 days." If a discount for prompt payment of Seller's invoice is allowed, payment shall be made within the allowable period to qualify for such discount. The time allowable for payment shall begin after both: (a) Buyer's receipt of Seller's invoice, and (b) delivery of acceptable supplies or performance of satisfactory services.

**12. INVOICES.** An itemized invoice shall be submitted in duplicate to the address shown on the face of the Purchase Order to the attention of the Accounts Payable Department. The invoice should contain the Purchase Order number, description of supplies/services furnished, quantity, unit prices, and total price. Payment of invoices may be delayed pending correction of any errors or omissions.

**13. WORK ON BUYER'S OR BUYER'S CUSTOMER'S PREMISES.** If this Purchase Order requires Seller to perform work on Buyer's or Buyer's customer's premises, Seller shall take all necessary precautions to prevent any injury to persons or damage to property during the progress of such work. Except to the extent that any injury to persons or damage to property is due solely and directly to Buyer's or its customer's fault or negligence, Seller agrees to indemnify Buyer and its

customer against all loss or liability resulting from any act or omission of Seller, its employees, agents, or subcontractors.

**14. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY.** Seller agrees to indemnify, defend, and hold harmless Buyer, its customer, and those for whom Buyer may act as agent, from any costs, expenses, damages, or liability that Buyer may incur as a result of any proceedings charging infringement of any patent, copyright, or trademark by reason of sale or use of any supplies/services/data furnished by Seller. Seller shall have no liability regarding alleged patent infringement for supplies furnished to Buyer in accordance with Buyer's design specifications. Seller agrees that all materials and work products that it develops under the resulting Purchase Order, including software and documentation, shall be considered "Works for Hire." All Works for Hire shall be owned exclusively by Buyer, and Seller will have no property or other proprietary rights in them. Works for Hire shall be turned over to Buyer promptly upon Buyer's request and upon termination of this Agreement. Seller agrees to assign to Buyer all right, title, and interest in and to all Works for Hire created by Seller. Additionally, Seller shall take all acts and execute all documents reasonably necessary in order to affect such assignment, at Seller's expense.

**15. WARRANTY OF SUPPLIERS/SERVICES.** Seller warrants that all supplies/services furnished under this Purchase Order shall conform to the Buyer's drawings, specification, or other description and will be of good material and workmanship and free of defects. Seller further warrants that the supplies/services will meet Seller's published specifications and standards, will be new (not used or reconditioned), merchantable and suitable for the purpose intended. If applicable, Seller warrants that electronic parts included within its deliveries are sourced from the original manufacturer or an authorized aftermarket manufacturer. These warranties shall survive inspection, acceptance, and payment. Supplies/services that do not conform to the above warranties may, at any time within twelve (12) months after delivery to Buyer, be rejected and returned to Seller, at Seller's expense, for correction or replacement. If Seller does not promptly correct or replace same, Buyer may correct or replace the nonconforming supplies/services at Seller's expense.

**16. PRICE WARRANTY.** Seller warrants that the price(s), charged for the supplies/services specified in this Purchase Order do not exceed the selling price(s) Seller charges its most favored customer for the same or substantially similar items, whether sold to the government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale.

**17. CHANGES.** Buyer may, at any time, in writing, make changes to this Purchase Order. If any such change causes an increase or decrease in the cost or time required for performance of the work, the price and/or delivery schedule shall be equitably adjusted and the Purchase Order so modified.

**18. DISPUTES.** Any dispute arising under this Purchase Order that is not settled by agreement between the parties may be settled by appropriate legal proceedings in any court of competent jurisdiction. Pending final resolution, Seller shall proceed with the performance of this Purchase Order in accordance with Buyer's instructions.

**19. STOP-WORK ORDER.** Buyer may, at any time, by written notice to Seller, stop all or any part of the work hereunder for up to ninety (90) days. Upon receiving a stop-work order, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional cost allocable to such work. Within ninety (90) days after the effective date of the stop-work order, Buyer shall either cancel the stop-work order or terminate the work covered by the stop-work order. Buyer shall make an equitable adjustment in the Purchase Order delivery schedule and/or price if the stop-work order results in an increase in time or cost for performance. Seller must assert a claim for equitable adjustment within thirty (30) days after the end of the work stoppage.

**20. TERMINATION FOR CONVENIENCE.** Buyer reserves the right, at any time, in its own best interest, and without liability, to terminate this Purchase Order in whole or in part, by written notice of termination for convenience to Seller. If the Purchase Order is so terminated, then, within thirty (30) days following Seller's receipt of the termination notice, Seller shall submit a claim for equitable adjustment. If the termination involves only services, Buyer shall be obligated to pay only for services performed before the

termination date. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller's termination for convenience claim.

**21. TERMINATION FOR DEFAULT.** Buyer may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this Purchase Order in whole or in part by written notice of default if Seller: (a) fails to deliver the supplies or perform the services within the time specified; (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or (c) fails to comply with any of the other instructions, terms, or conditions. Buyer's rights to terminate for default may be exercised if Seller does not cure the failure within ten (10) days after receiving Buyer's notice of such failure. If Buyer terminates this Purchase Order in whole or in part, Buyer may repurchase similar supplies or services from others and Seller shall be liable for any additional costs for the terminated supplies/services. In the event of a partial termination, Seller shall continue the work not terminated. Seller shall not be liable for any additional costs if failure to perform arises from causes beyond Seller's or Seller's subcontractor's control and without fault or negligence of either of them; provided, however, that the supplies/services to be furnished by Seller's subcontractor (at any tier) were not obtainable from others in time for the Seller to meet the Purchase Order delivery requirements. Buyer shall pay Seller the Purchase Order price for any completed supplies/services delivered and accepted. Buyer may withhold from any payments due Seller, any sum necessary to protect Buyer against any liability or expenses due to the termination for default. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Buyer's termination for default claim.

**22. PACKAGING AND PACKING.** Seller shall be responsible for properly packing and packaging the supplies in suitable containers for protection during shipment in accordance with transportation regulations and good commercial practices. Seller shall label each package with the corresponding Purchase Order number.

**23. BUYER'S PROPERTY AND INFORMATION.** Buyer's property, such as drawings, specifications, data and the like, furnished to Seller for performance of the work shall remain the property of Buyer, shall be considered private and confidential Buyer information, and shall not be given to others not having a need-to-know or used by Seller for its own purposes. Any designs, drawings, dies, molds, tooling, technical data/information, materials, equipment, etc. that Seller makes or buys from others for producing the supplies/services and charged to Buyer's account, shall become Buyer's property immediately upon manufacture or procurement. When practical, all such Buyer property shall be marked as belonging to Buyer, shall be held by Seller on consignment at Seller's risk, and shall be used exclusively to perform the work requirements of this Purchase Order. Upon Purchase Order completion, all Buyer furnished property shall be returned to the Buyer in the same condition as received, allowing for reasonable wear and tear, except to the extent that the property has been incorporated into supplies delivered or consumed in the performance of the work.

**24. UNAUTHORIZED CHANGES TO SUPPLIES/SERVICES.** Upon Buyer's approval of Seller's drawings, designs, specifications, etc., Seller shall make no changes affecting form, fit, or function of the supplies without Buyer's prior written approval. Any approvals by Buyer shall not relieve Seller of responsibility for any error or deficiencies that may exist, or for performing the work and furnishing the supplies/services in strict accordance with the Purchase Order requirements.

**25. PERMITS, FEES, AND LICENSES.** Except as otherwise provided in this Purchase Order, Seller shall obtain and pay for all permits, fees, and licenses required for the work at no additional charge to Buyer.

**26. FAILURE TO COMPLY.** If Seller fails to comply with any of the Purchase Order requirements, Buyer may exercise its option to terminate the Purchase Order for default or invoke applicable warranties for non-conformance. In lieu of this, however, Buyer may waive the Seller deficiency. In return therefore, Seller agrees to negotiate an equitable reduction in the Purchase Order price.

**27. CESSATION OF PRODUCTION.** If Seller plans to permanently discontinue production of any of the

supplies, parts, support services, etc. provided to Buyer hereunder at any time during the useful life of the equipment, Seller shall give Buyer at least six (6) months advance written notification of such discontinuance and, during this time, agrees to accept Buyer's Purchase Orders for such items.

**28. ORDER OF PRECEDENCE.** The following descending order of precedence shall apply in the event of an ambiguity, discrepancy, or conflict in the documents comprising this Purchase Order: (a) the Purchase Order, (b) the statement of work, (c) the technical specs (d) the drawings, and (e) any other documents referenced or appended to the Purchase Order. However, in the event of an ambiguity, discrepancy, or conflict in any of the technical requirements or drawings, Seller shall immediately consult Buyer for a resolution.

**29. INSPECTION AND TEST.** Buyer and its customer may inspect and/or test materials, work in progress, and completed supplies at all reasonable times and places during performance of the work and prior to shipment. Rejected supplies shall be corrected or replaced. Rejected services shall be re-performed in an acceptable manner. If inspection and test are made on Seller's premises, Seller shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of the inspectors performing these duties. Inspections and tests shall be performed in such a manner as not to unduly delay work in progress. Unless otherwise agreed in writing, all supplies furnished under this Purchase Order are subject to Buyer's inspection and acceptance or rejection at destination notwithstanding any previous Buyer or its customer's source inspection or test. Inspection/test at source or at destination shall not relieve Seller of its responsibility to furnish the supplies/services in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and its customer. Seller shall furnish Buyer the records of inspection/test for supplies and services furnished hereunder at any time during the warranty period upon Buyer's request.

**30. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION.** Seller certifies that the price(s) proposed have been arrived at independently, without

consultation, communication, or agreement with any others for the purpose of restricting competition, and that Seller has not and will not knowingly disclose the price(s), directly or indirectly, to any other offeror.

**31. TRANSPORTATION CHARGES.** Unless otherwise provided in this Purchase Order, transportation charges shall be prepaid and separately invoiced to Buyer. No insurance or premium transportation costs will be allowed unless authorized by Buyer. If Seller is delinquent in delivery, Buyer may require shipment by the fastest means available, and any premium transportation charges therefor shall be Seller's responsibility.

**32. DELIVERY.** Seller agrees that time is of the essence in the performance of this Purchase Order. Deliveries shall be strictly in accordance with the Purchase Order delivery schedule. Buyer reserves the right to refuse or return, at Seller's expense, any excess shipments or deliveries made in advance of the Purchase Order schedule. Invoices for early deliveries, when accepted, may be deferred until the scheduled delivery date. Seller agrees to advise Buyer, as soon as possible, of any delays in meeting the Purchase Order delivery schedule and the reason therefor. If a delay is due to causes beyond Seller's and, when applicable, its subcontractor's control, and without fault or negligence of either of them, Buyer may, at its sole discretion, either adjust the delivery schedule or terminate the Purchase Order for convenience. If the delay is due to Seller's or its subcontractor's failure, and the failure is not cured within ten (10) days after Seller's receipt of Buyer's notice thereof, Buyer may, at its sole discretion, either accept a revised delivery schedule and an equitable reduction in the Purchase Order price or terminate the Purchase Order for default. Acceptance of late deliveries shall not constitute a waiver thereof by Buyer.

**33. PUBLIC RELEASE OF INFORMATION.** No public release of information, news release, announcement, advertisement, denial or confirmation of this Purchase Order or the subject matter hereof, shall be made without Buyer's prior written approval.

**34. WAIVER OF RIGHTS.** Failure of either party to insist on performance of any provision of this Purchase Order shall not be construed as a waiver of that provision or a waiver of Buyer's or Seller's right to

require compliance with such provision in any later instance. If any provision of this Purchase Order is found to be illegal or unenforceable under law, that provision shall be deleted; however, all other provisions of this Purchase Order shall not be affected thereby, and shall remain in full force and effect.

**35. INSOLVENCY.** If Seller ceases to conduct normal business operations (including inability to meet its obligations), or if any proceedings under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or Seller makes an assignment for the benefit of creditors, Buyer may terminate this Purchase Order, without liability, except for deliveries previously made and for supplies completed and subsequently deliver in accordance with the terms of the Purchase Order. In the event of Seller's insolvency, Buyer shall have the right to procure the balance of this Purchase Order from others without liability.

**36. INSURANCE.** Seller shall maintain insurance in at least the following amounts: (a) Comprehensive General Liability: \$250,000 minimum per person and \$500,000 minimum per accident for bodily injury, and \$100,000 property damage; (b) Automobile Insurance: \$250,000 per person and \$500,000 per accident for bodily injury and \$100,000 per accident for property damage; (c) Standard Workmen's Compensation and Employer's Liability Insurance: in the minimum amount of \$100,000, or such greater amount as may be proper under applicable state or federal statutes. If any of the work is to be performed on Buyer's or Buyer's customer's premises, Seller shall, if so request, furnish Buyer certificates of such insurance prior to commencement of work. Seller also agrees to provide insurance for all Buyer's property in Seller's possession against loss or damage resulting from fire or theft, including extended coverage, malicious mischief and vandalism. Buyer shall be given at least ten (10) days advance written notice of cancellation of any such insurance.

**37. NOTICE OF LABOR DISPUTES.** When an actual or potential labor dispute or other condition delays or threatens to delay the timely performance of this Purchase Order, Seller shall immediately notify Buyer in writing. Such notice shall include all relevant information regarding such dispute or other condition.

Seller shall insert the essence of this provision in all subcontracts issued hereunder.

**38. TITLE AND RISK OF LOSS.** Unless otherwise provided in this Purchase Order, the F.O.B. point shall be the delivery destination indicated in this Purchase Order, and title to the supplies and risk of loss or damage shall pass to Buyer upon Buyer's acceptance of the supplies regardless of where Buyer takes physical possession.

**39. GRATUITIES.** Seller warrants that it has not offered or given, and will not offer or give to any employee, agent, or representative of Buyer, a payment, gratuity, or kickback for obtaining or rewarding favorable treatment by Buyer with respect to the terms, conditions, price, performance, or award of a Purchase Order.

**40. NO EXTRA CHARGES.** The total price payable to Seller hereunder for supplies/services furnished in accordance with the procurement requirements shall be stated in this Purchase Order. The price shall not be increased to cover any future Seller price increases and shall be inclusive of packing, packaging, and cartage, premium transportation charges, reusable containers, service or carrying charges, permits, fees, and licenses, or any other charges whatsoever unless specifically agreed to in writing by Buyer.

**41. LIMITATION OF LIABILITY.** With the exception of Paragraphs 3 and 14, each party's liability to the other party hereunder shall not, under any circumstances, be greater than the total dollar amount of the Purchase Order indicated herein. In no event will Buyer or Seller be liable for consequential, incidental, indirect, punitive or special damages (including loss of profits, data, business or goodwill), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.

**42. PROTECTION OF CONTROLLED UNCLASSIFIED INFORMATION.** If Seller will possess Controlled Unclassified Information, Seller agrees to accept FAR Clause 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (requires basic safeguarding of contractor information systems that process, store, or transmit Federal contract information); DFARS Clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Security Incident Report (requires that prime and subcontractor internal systems have adequate security to protect CDI and comply with the security controls contained in the National Institute of Standards and Technology (NIST) Special Publication 800-171); DFARS Clause 252.204-7019, Notice of NIST SP800-171 DoD Assessment Requirements, and DFARS Clause 252.204-7020, NIST SP800-171 Assessment Requirements (requires that all subcontractors have and maintain a current assessment score (less than three years old, using the DCMA assessment methodology) in the DoD Supplier Performance Risk System (SPRS)); and DFARS Clause 252.204-7021, Cybersecurity Maturity Model Certification Requirements (describes DoD's adoption of the Cybersecurity Maturity Model Certification (CMMC)).

**43. ENTIRE AGREEMENT.** This Purchase Order constitutes the entire agreement between Buyer and Seller regarding this procurement and supersedes all previous written or oral agreements and commitments. No terms or conditions of sale set forth in Seller's quotation or acknowledgement shall be included as a part hereof, nor shall any prior course of dealing, custom, or usage in the trade supersede or modify any Purchase Order provisions. Any subsequent additions, deletions or modifications to this agreement shall not be binding upon the parties unless same are mutually agreed upon and incorporated herein in writing.

\*\*\* Terms and Conditions End \*\*\*