



Terms and Conditions of Purchase, General

1. ACCEPTANCE OF CONTRACT/TERMS OF PURCHASE

- a) This document, when specified on the face of the Purchase Order, constitutes the "Terms and Conditions" for the Contract between the parties; purchases are made only on these Terms and Conditions, and acceptance is strictly limited to these Terms and Conditions. Additional or differing terms, conditions or limitations of liability proposed by Seller, whether in a quote, acceptance or delivery document are hereby objected to by Buyer and shall have no effect unless accepted in writing by Buyer. In particular, any limitation of liability or disclaimer of warranty is expressly rejected.
- b) Seller's written or verbal acceptance of the Purchase Order; (b) the furnishing of any goods, products, or services by Seller pursuant to the terms of the Purchase Order; (c) Seller's acceptance of Buyer's materials, equipment, supplies or services pursuant to the terms of the Purchase Order; (d) acceptance of any payment for the supplies/services; or (e) where Seller has not communicated to Buyer its written or verbal acceptance of the Purchase Order, 15 days after the submission of the Purchase Order to Seller by Buyer, Buyer will be deemed to have accepted the terms of the Purchase Order, and these Terms and Conditions of Sale, including but not limited to the price, the scope of work to be performed or goods to be delivered, the payment schedule, and any other documents referred to or incorporated into the Purchase Order.

2. DEFINITIONS:

Words, as employed in this Agreement, shall have their normally accepted meanings. The following terms shall have the described meaning:

- a) "Buyer" shall mean Comtech Corporation and/or the entity identified as the Buyer in this Contract.
- b) "Contract" shall mean the Purchase Order, these Terms and Conditions, and any special conditions appended hereto or documents incorporated herein.
- c) "Goods or Services" shall mean those Goods or Services identified in this Contract, which may be changed from time to time by the mutual written agreement of the parties.
- d) "Seller" shall mean the party identified as the Seller in this Contract.

3. PRICE:

- a) Unless otherwise specified, the prices established by this Contract are firm fixed prices. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.
- b) In the event Seller is liable to Buyer for any amounts, Buyer may, at its election, set-off against any amounts payable to Seller under this Contract.

4. SCHEDULE AND DELIVERY; NOTICE OF DELAY:

Seller shall strictly adhere to all Purchase Order schedules. Time is and shall remain of the essence in the performance of this Contract. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Contract. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder.

5. NOTICE OF LABOR DISPUTES

Seller is required to give notice of any actual or potential labor dispute at either its place of business or the places of business of any of its subcontractors, where the labor dispute threatens to delay the timely performance of the Purchase Order. Seller's written notice shall include but not be limited to the type of labor dispute and the expected length of delay.

6. NEW MATERIALS; PACKAGING AND SHIPPING:

- a) All goods to be delivered hereunder shall consist of new materials.
- b) The Seller's authorization to perform Material Review is limited to "Rework to Specification" and "Scrap" only. All other material dispositions must be submitted to Buyer for review. The Seller shall prepare and submit a Problem Statement Form ("PSF") for materials, parts, or assemblies which do not conform to the requirements specified in drawings, specifications, Purchase Order, or other applicable product description. Material may not be shipped until an approved PSF has been returned to your facility per OI/QUA-012; a copy of the PSF approval is to accompany the shipment. The Seller's quality rating is not adversely affected by pre-approved PSFs. PSFs requested after receiving has found an issue will affect the quality rating.
- c) Seller shall prepare and package the goods to prevent damage or deterioration and shall use best commercial practice

for packing and packaging of items to be delivered under this Contract, unless otherwise specified in the Purchase Order.

- d) All transportation charges on goods shipped hereunder must be prepaid. No insurance charges shall be allowed unless authorized by Buyer.

7. SHIPMENT/RISK OF LOSS

All prices/shipments are F.O.B. at the place specified on the face of the applicable Order. Risk of loss and title shall pass to Buyer upon delivery to Buyers specified locations receiving dock. Buyer may select the manner of shipment and the carrier by providing Seller with written shipping instructions at the time of placing the order.

8. INSPECTION AND ACCEPTANCE:

- a) Buyer's final acceptance of Goods or Services is subject to Buyer's final inspection within sixty (60) days after receipt at Buyer's facility or such other place as maybe be designated by Buyer, notwithstanding and payment or prior test or inspection.
- b) Seller and its suppliers shall establish and maintain a quality control and inspection program as specified in the Purchase Order. Subject to applicable national security regulations, Buyer and Buyer's representatives shall have the right of access, on a non-interference basis, to any area of Seller or Seller's suppliers.
- c) The Seller is required to flow-down to subcontractors any applicable requirements in the purchasing documents, including key characteristics where required.
- d) Buyer shall have access to Seller's premises and all Provided Property, at reasonable times, for the purposes of reviewing, inspecting and evaluating Seller's property management plan(s), systems, procedures, records, reports and supporting documentation that pertain to Provided property accountable to Buyer.
- e) Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of the Buyer and the Buyer's representatives in the performance of their duties.
- f) Seller shall keep and maintain inspection, test, and related records, which shall be available to Buyer or Buyer's representative. Seller shall allow copies to be made and shall furnish all information required by the Buyer or Buyer's representative. Seller shall grant access and cause access to be granted at any level within the Seller's supply chain involved in the order to the Buyer and the regulatory authorities to the applicable areas of all facilities and all applicable records.

9. SUSPECT/COUNTERFEIT PARTS:

- a) Seller represents and warrants that it has policies and procedures in place to ensure that none of the supplies or materials furnished under this Purchase Order are "suspect/counterfeit parts" and certifies, to the best of its knowledge and belief, that no such parts have been or are being furnished to Buyer by Seller. "Suspect/counterfeit parts" are parts that may be of new manufacture but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. They also include refurbished parts, complete with false labeling, that are represented as new parts or any parts that are designated as suspect by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP). If Buyer reasonably determines that Seller has supplied suspect/counterfeit parts to Buyer, Buyer shall promptly notify Seller and Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer. Notwithstanding any other provision contained herein, Seller shall be liable for all costs incurred by Buyer in having to analyze and process the counterfeit materials.
- b) In addition, Buyer may unilaterally terminate this order for Convenience depending on the impact of the delivery of Suspect/Counterfeit parts on the Seller's overall performance on this order. Seller's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Purchase Order.
- c) Buyer shall seize and quarantine any all suspected counterfeit products it receives from seller on this Purchase Order. Only a sample may be moved from quarantine for analysis purposes as needed for manufactures, labs, government entities to confirm the condition. If parts are confirmed counterfeit quarantined status will continue a GIDEP report files and parts shall wait for disposition notice from GIDEP.

10. REJECTION:

- a) If Seller delivers nonconforming Goods or Services, Buyer may, at its opinion and Seller's expense:
 - i. Return the goods for refund or credit,
 - ii. Require Seller to promptly correct or replace the Goods or Services;
 - iii. Correct the nonconformance and notify all up and down stream participants as needed of non-conforming materials
 - iv. Obtain conforming Goods or Services from another source.
- b) Buyer shall specify the reason for any return or rejection of nonconforming Goods or Services and/or describe the action taken. Seller shall be liable for any increase in costs, including procurement costs, attributable to Buyer's rejection of the nonconforming Goods or Services.
- c) Seller is responsible for notifying Buyer purchasing representative at any stage of non-conforming material discovery. Already delivered the seller shall identify the PO, Part# & QTY for a recall situation of the suspected or known non-conforming material. Not yet delivered non-conforming material that requires disposition other than scrap must have Buyer approval thru the use of the Problem Statement Form. The PSF must be filled out prior to delivery and disposition approved prior to shipment and sent to Buyer (Request the PSF form & OI/QUA-012 for details and instructions on the use

of the PSF).

11. INVOICES:

- a) Invoices may be mailed when goods are shipped, but the time for payment shall not commence until Buyer's actual or scheduled receipt, whichever is later, of items at their destination or upon satisfactory completion of services. Buyer shall promptly pay Seller the amount due within 45 days, unless a different payment time is identified elsewhere in the Contract, or unless the invoiced amount is in dispute. Buyer may withhold payment for shortages and/or nonconforming Goods or Services.
- b) Buyer will be liable for payment only for quantities of materials and services specified in this Purchase Order. Over-shipments will be held at Seller's risk and expense for a reasonable time, until return shipping instructions are received from Seller. Shipping charges for such returns shall be at Seller's expense. Buyer shall have no obligation to pay for Seller's performance on any services in excess of those specified in this Purchase Order. Any adjustments in Seller's invoice due to shortages, late delivery, rejections, or failure to comply with the requirements of this order may be made by Buyer prior to its payment. Payment shall not constitute final acceptance.

12. CHANGES:

- a) By written order, Buyer may from time to time direct changes for:
 - i. technical requirements;
 - ii. shipment or packing methods;
 - iii. place of delivery, inspection, or acceptance;
 - iv. reasonable adjustments in quantities, delivery schedules or both;
 - v. amount of Buyer-furnished property;
 - vi. time of performance; and,
 - vii. place of performance.
- b) If any such changes cause an increase or decrease in the price or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse Seller from proceeding immediately with the directed change(s). Changes shall not be binding upon Buyer except when specifically confirmed in a written Purchase Order of Change Order.
- c) Seller shall notify Buyer 30 days in advance when there is a change in the company name, location, executive management, product and/or commodities or whenever a change directly affects quality. Product and/or Process changes that could affect quality will require Buyer's approval prior to implementation.
- d) Buyer expects and requires that the seller identified on the PO is in fact the seller and sole responsible entity of the goods or services requested. Buyer approves fabrication or design build materials by a specific name and location that also matches their ISO certification. It is the sole responsibility of the fabricator on the PO to notify Buyer of any changes in location, cert status and or subcontracting activities. All Buyer suppliers should and do have access to communicate to Buyer on a PSF "Problem Statement Form". Approved PSF's are the only acceptable method for changing a requirement, location or asking to subcontract. Buyer has and will disqualify suppliers that do not notify Buyer of major changes to the original agreement. All suppliers on Buyer POs are responsible for notifying and flowing down requirements to their supply chain as needed, this includes subcontracting.

13. FORCE MAJEURE:

The following events, and only the following events, shall constitute force Majeure under this Contract:

- a) Acts out of Seller's control;
- b) Acts of God or of a public enemy;
- c) Acts of Government;
- d) Fires;
- e) Floods;
- f) Epidemics;
- g) Quarantine restrictions;
- h) Strikes;
- i) Freight embargoes; and
- j) Unusually severe weather.

In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a Force Majeure condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the Force Majeure Condition.

14. TERMINATION FOR CONVENIENCE:

- a) Buyer may, by notice in writing, direct Seller to terminate work under this Contract in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either

at law or in equity, including Buyer's rights to title and possession of the goods and materials paid for. Buyer may take immediate possession of all work performed upon notice of termination.

- b) Seller shall immediately stop work and limit costs incurred on the terminated work.
- c) If such termination is for the convenience of the Buyer, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated, and allowable costs with the total amount to be paid by the Buyer being determined by negotiation.

15. TERMINATION FOR DEFAULT:

- a) Buyer may, by written Notice of Default to Seller, terminate this Contract in whole or in part, or, at Buyer's sole discretion, require the Seller to post such financial assurance as Buyer deems reasonably necessary, if the Seller fails to:
 - i. deliver the goods or to perform the services within the time specified in this Contract or any extension;
 - ii. make progress, so as to endanger performance of this Contract; or,
 - iii. perform any of the other provisions of this Contract.
- b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, services, information, and contract rights ("Materials") as Seller has produced or acquires for the performance of this Contract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the Contract price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller moneys otherwise due Seller for completed goods and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said goods and Materials.
- c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under this Contract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Contract.

16. TERMINATION BY SELLER

- a) Purchase Orders shall not be terminated by Seller without the express written consent of the Buyer. In no event shall any order be terminated for any portion thereof already manufactured, or in the process of manufacture, at the time request for modification or cancellation is received by Buyer, except upon terms satisfactory to Buyer which shall protect and indemnify Buyer against all loss.

17. COMPLIANCE WITH LAW:

- a) Seller warrants Seller's compliance with all applicable provisions of Federal, state, and local laws and ordinances, and all lawful orders, Environmental Laws, rules, regulations, FAA, DOT and other transportation regulations, and Seller shall comply with the following:
 - i. Comtech is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.,
 - ii. Dodd-Frank Wall Street Reform and Consumer Protection Act by submitting or causing the Seller's Supplier to submit annually a completed, most current release of the Electronic Industry Citizenship Coalition Global e- Sustainability Initiative (EICC GeSI template). Seller shall not provide any deliverable item that contains Conflict Minerals which originate from the Democratic Republic of the Congo or an adjoining country,
 - iii. Hazard Communication Standards promulgated pursuant to the Occupational Health and Safety Act,
 - iv. Executive Order 11246 section 202 Paragraphs 1 through 7 of, as amended,
 - v. Vietnam Era Readjustment Assistance Act of 1974 38 USC 2012 as amended,
 - vi. Rehabilitation Act of 1973 Section 503 as amended, relative to Equal Employment Opportunity, and
 - vii. Implementing rules of the
 - 1. Office of Federal Contract Compliance Programs and
 - 2. The Fair Labor Standards Act of 1938 are incorporated herein by specific reference.
- b) Seller shall comply with the following as applicable to the order;
 - i. National Labor Relations Act, exceeding \$10,000.
- c) Trade/Export Control

- i. Seller certifies by acceptance of these Terms and Conditions that Seller is not included on any export debarment list. Seller agrees to provide immediate written notice to the Buyer if, during the term of the Contract, the Seller or any of its principals are debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any U.S. contract or export transaction. Seller agrees that debarment, suspension, proposed debarment or suspension, ineligibility, or exclusion of Seller, or any of its principals or subcontractors, shall constitute cause for immediate termination of the Contract.
- ii. Seller agrees to comply with all applicable export and import laws and regulations of the Seller's and Buyer's country, and with all applicable export or import authorizations.
- iii. Seller agrees to notify Buyer of the U.S. export and import classifications of each deliverable under the Contract, such as the USML, ECCN, and HTS information.
- iv. Seller shall provide Buyer all information necessary to support any export or import authorization requirements by Buyer for deliverables under the Contract.
- v. Seller shall complete Buyer's Part Information Form providing required export classification information (e.g. ECCN, USML, HTS, Country of Origin, etc.), as well as copies of relevant export authorizations permitting export or re-export to Buyer or Buyer's designated end- user.
- vi. Seller acknowledges that if it engages in the U.S. in the business of either manufacturing, exporting, or brokering of defense articles or defense services, as defined in 22 C.F.R. 120 and 129, then Seller is required to register with the U.S. Department of State, Directorate of Defense Trade Controls.
- vii. In the event Seller pays or offers to pay any fee, commission, loan, gift, donation, political contribution, or other payment with respect to such defense articles or defense services, Seller shall provide to the Buyer, in a timely manner and not later than 20 days after such an event, full disclosure of all information necessary for the Buyer to fully comply with 22 C.F.R. 130 of the ITAR.
- viii. Trade Compliance Sourcing Assurance
Supplier agrees:
 1. Items and services provided to Comtech under this Agreement shall not be supplied through Iran, Cuba, North Korea, Syria, or other country which would be prohibited by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC").
 2. The location of where the items or services being supplied by Supplier to Comtech is not located in Iran, Cuba, North Korea, Syria, or other countries/regions which would be prohibited by OFAC.
 3. The location of Supplier's billing and invoicing locations are not located in Iran, Cuba, North Korea, Syria, or other country which would be prohibited by OFAC.
 4. Supplier will comply with all applicable U.S. laws, including laws by OFAC, the U.S. Department of State's, Directorate of Defense Trade Controls, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) and Census Bureau, the U.S. Office of Antiboycott within the BIS, and the U.S. Department of the Treasury's Internal Revenue Service.
 5. Supplier shall flow down these terms and conditions to its suppliers and their suppliers will flow down these terms and conditions to their suppliers and so on down to the original provider.
- d) Environmental Laws
The Seller warrants or causes the Seller's Supply Chain to warrant that the resale, supply or export of any product (whether used as a component or otherwise) by the Buyer in any market will not violate any law or regulation in any jurisdiction world-wide on the use of hazardous substances including but not limited to European Directive (2011/65/EU) on the Restriction on the Use of Certain Hazardous Substances in Electronic and Electrical Equipment (RoHS), European Directive (2002/96/EC) on Waste Electrical and Electronic Equipment (WEEE), European Regulation (EC 1907/2006) on Registration, Evaluation, Authorization and Restriction of Chemical (REACH) and U.S. Environmental Protection Agency "EPA", etc., collectively known as "Environmental Laws".
- i. European Union Directive: 2011/65/EU (RoHS): Seller is obligated to provide a Certificate of Compliance for each individual item indicating the status of compliance to European Union Directive: 2011/65/EU (RoHS) as follows. Seller needs to submit only one certificate per item sold to Buyer.
 1. Compliant, or
 2. Compliant by utilizing one or more of the following exemptions. The exemption(s) taken must appear on the Certificate of Compliance:
 - Lead in glass of electronic component
 - Lead as an alloy in steel, aluminum, copper
 - Lead in high melting temperature type solder
 - Lead in solders for network infrastructure equipment
 - Lead in electronic ceramic parts
 - Cadmium plating except in certain applications
 - Lead in compliant pin connector systems
 - Lead in microprocessors connecting die to package
 - Lead in flip chips connecting die to package
 3. Not Compliant.
- ii. European Union Directive: 2002/96/EC (WEEE) The Seller shall identify in writing to the Buyer:
 1. any and all components and materials contained in the products that may require recycling or other treatment under the laws and regulations implementing the Environmental Laws,

2. the location of any component or materials contained in the products that is hazardous within the meaning of the WEEE Directive or other Environmental Laws, and
 3. any product that is required by the Environmental Laws to be marked shall be so marked by the Seller.
- iii. Toxic, Hazardous or Carcinogenic Substances
1. Seller represents and warrants that the Goods and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with, any laws or regulations of any country or jurisdiction in the world, including but not limited to the United States, the European Union ("EU"), and nations adopting legislation similar to that of the EU, and that nothing prevents the sale or transport of the Goods or substances in Goods in any country or jurisdiction in the world and that all such Goods and substances are appropriately labeled, if labeling is required, and have been pre-registered and/or registered and/or authorized under REACH, if pre-registration, registration and/or authorization is required,
 2. In addition to complying with REACH, the EU's regulation of chemical substances, Seller shall timely provide Buyer with all relevant information on the Goods so that the intent of REACH is met for communicating with downstream users as defined in Article 33 of REACH and in any case, Seller shall provide all information necessary for the Buyer and/or any downstream user to timely and accurately fulfill their obligations under REACH.
- iv. Asbestos: The Seller shall not provide any Product that contains asbestos or Mercury and shall submit certification to Buyer on demand that the Products contain no asbestos or Mercury.
- v. Seller shall reimburse Buyer for all costs and expenses in connection with any expenditure required by Buyer for compliance of Items with such Materials Declaration Regulations, including, but not limited to, testing for REACH compliance which testing shall be performed, at Buyer's option, by Buyer or Seller.
- e) Safety
- All nonconformances or deficiencies that may result in a safety impact for the systems, subsystems, assemblies, subassemblies, or parts integral to a system acquired by or serviced for the Buyer under this contract. The Seller will be responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor. Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Buyer, or the Seller established elsewhere within these terms and conditions.

18. ETHICAL STANDARDS OF CONDUCT:

Seller shall neither receive nor give any gifts or gratuities in connection with this Contract. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. Seller shall not participate in any unethical conduct during performance of this Contract. Seller shall not engage in any personal, business, or investment activity that may be defined as a conflict of interest, whether real or perceived. Seller agrees to comply with the "Standards of Business Conduct" as shown at URL: <http://www.comtechtel.com/ir.cfm>.

The Seller does not directly or indirectly restrict the Buyer from selling any item made or furnished under this contract to the US Government.

19. PROPRIETARY INFORMATION AND RIGHTS:

- a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller which relates to the subject matter of the Purchase Order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and this Paragraph shall not apply.
- b) All Specifications, information, data, drawings, software, and other items supplied to Buyer shall be disclosed to Buyer without and restrictive rights on a non-proprietary basis.
- c) All Specifications, information, data, drawings, software, and other items which are:
 - i. supplied to Seller by Buyer; or
 - ii. paid for by Buyer during the performance of this Contract shall be treated as proprietary to Buyer and shall not be disclosed to any third party without Buyer's express written consent. Seller agrees not to use any such information or property furnished by Buyer except to perform this Contract.

20. INTELLECTUAL PROPERTY:

- a) Any work, writing, idea, discovery, improvement, invention (whether patentable or not), trade secret or intellectual property of any kind first made or conceived by Seller in the performance of this Contract or which is derived from the use of information supplied by Buyer shall be the exclusive property of the Buyer. Seller shall disclose promptly all such works, writings, ideas, property, discoveries, improvements, inventions, trade secrets or intellectual property to the Buyer, and shall execute all necessary documents to perfect Buyer's title thereto and to obtain and maintain effective protection thereof. Any work produced under this Contract is to be deemed a work-for-hire to the extent permitted by law, and, to the extent not so permitted, shall be assigned to, and shall be, the exclusive property of the Buyer.
- b) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, in connection with the use, offer for sale, or

sale of products provided to or work being performed for Buyer, an irrevocable, non-exclusive, paid-up worldwide license under any and all intellectual property (whether domestic or foreign), including patents, copyrights, industrial designs and/or mask works owned or controlled by Seller at any time or licensed to Seller, provided such a sublicense does not conflict with any provisions of the license to the Seller.

- c) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, a perpetual, non-exclusive, paid-up, worldwide license to reproduce, distribute copies of, perform publicly, display publicly, or make derivative works from any software or software documentation included in or provided with Goods or Services under this Contract as reasonably required by Buyer in connection with Buyer's testing or use of the good or service.

21. GOODS WARRANTY:

Unless stated otherwise in the documents accompanying these Terms and Conditions, Seller shall warrant all goods against defects in design and performance for a period of one year following delivery, or for the period provided in the Seller's standard warranty covering the Goods, whichever is longer. If this Contract is for delivery of goods, Seller shall observe, comply with, and afford Buyer all applicable Uniform Commercial Code warranties contained in the Arizona Revised Statutes, and Seller hereby acknowledges that Buyer does not waive or accept any disclaimer of any such warranties.

22. SERVICES WARRANTY:

Unless stated otherwise in the documents accompanying these Terms and Conditions, Seller shall warrant all services against defects in performance for a period of one year following delivery. If this Contract includes the provision of Services, Seller warrants that it has and will maintain sufficient trained personnel to execute the Services promptly and efficiently contemplated under this Contract. Seller further warrants that the services shall be performed to at least the standard of performance reasonably expected of similar service providers in Buyer's geographic area.

23. INTELLECTUAL PROPERTY WARRANTY:

Seller warrants that the sale, offering for sale, use, or incorporation into manufactured goods and Materials (including software) of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not Buyer's design, composition, or manufacture does not and will not infringe and valid patent, copyright, trademark, or other proprietary or intellectual property rights.

24. EXTENSION TO BUYER'S CUSTOMERS:

All warranties furnished pursuant to this Contract extend not only to Buyer but also to Buyer's customers.

25. INDEMNIFICATION:

- b) Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses, and expenses, including attorneys' fees and costs of suit arising out of or in any way connected with the Goods or Services provided in this Agreement, including, without limitation:
- i. the breach of any warranty contained herein;
 - ii. any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated cleanup costs;
 - iii. Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor;
 - iv. any claim based on the negligence, omissions, or willful misconduct of Seller or any of Seller's agents, subcontractors, employees, or anyone acting on behalf of Seller; and
 - v. any claim by a third party against Buyer alleging that the Goods or Services (including but not limited to software), the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software, or processes. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees.
- c) Should Buyer's use, or use by its distributors, subcontractors, or customers, of any Goods or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either:
- i. substitute fully equivalent non-infringing Goods or Services;
 - ii. modify the Goods or Services so that they no longer infringe but they remain fully equivalent in functionality;
 - iii. obtain for Buyer, its distributors, subcontractors, or customers the right to continue using the Goods or Services; or
 - iv. if none of the foregoing is possible, refund all amounts paid for the infringing of Goods or Services, and reimburse Buyer, its distributors, subcontractors, or customers for all damages incurred by them as a result of their inability to use the Goods or Services.
- d) Seller shall without limitation as to time, defend, indemnify, and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising

under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

26. LIMITATION OF LIABILITY:

- a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, OR INDIRECT DAMAGES IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OF ACTUAL OR ANTICIPATED REVENUES OR PROFITS, OR LOSS OF USE OR BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b) NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS, DAMAGE, DELAY, OR FAILURE TO PERFORM (EXCEPT NON-PAYMENT), IN WHOLE OR IN PART, RESULTING FROM ANY CAUSES BEYOND THE REASONABLE CONTROL OF SUCH PARTY, WHICH WAS NOT CAUSED OR CONTRIBUTED TO BY SUCH PARTY, AND WHICH COULD NOT HAVE BEEN PREVENTED THROUGH SUCH PARTY'S EXERCISE OF DUE DILIGENCE.

27. INSURANCE:

Seller shall maintain the following insurance in at least the minimum amounts stated:

- a) Workers Compensation Insurance – Statutory
- b) Whenever performance requires work on or delivery to a Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and main the following insurance coverage in the minimum limits indicated:
 - i. General Liability, Property Damage, Employer's Liability - \$2 million
 - ii. Motor Vehicle Liability - \$1 million

Seller shall arrange a waiver of subrogation, shall name Buyer as an additional insured under each of the above policies and shall provide to Buyer, within fifteen (15) days of Buyer's issuance of this Contract, a Certificate of Insurance evidencing compliance with this section.

28. RELEASE OF INFORMATION:

Seller shall not publish any information developed under this Contract, nor disclose, confirm, or deny any details about the existence or subject matter of this Contract, nor use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval of the Buyer.

29. DISPUTES:

The provisions of this Contract shall be interpreted in accordance with the laws of the State of Arizona without resort to said state's conflict of laws rules, and in accordance with its fair meaning and not strictly against either party. Pending final resolution of a dispute hereunder, Seller shall proceed diligently with the performance of this Contract and in accordance with all the Terms and Conditions contained herein and with the Buyer's direction thereof. If either party brings an action or arbitration to enforce the terms of this Contract or to declare rights hereunder, the prevailing party in any such action or arbitration, on trial or appeal, shall be entitled to its expenses, including but not limited to reasonable attorneys' fees and court costs, to be paid by the losing party as fixed by the court or arbitrator (s).

30. ASSIGNMENTS AND SUBCONTRACTING:

- a) Neither this Contract nor any interest herein nor claim hereunder maybe transferred, novated, assigned or delegated by Seller; nor may all or substantially this entire Contract be further subcontracted by Seller without the prior written consent of Buyer. No consent shall not be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.
- b) All subcontractors utilized in the performance of this order must have Buyer's approval. This Article 26.b.) does not apply to orders for the purchase of Commercial Items and/or Services as defined under FAR 2.101.
- c) Notwithstanding the above, Seller may, without Buyer's consent, assign moneys due or to become due hereunder provided Buyer continues to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to the Contract without notice to or consent of the assignee. Buyer shall be given prompt notice of any assignment. Amounts so assigned shall continue to be subject to any Buyer's rights to set-off or recoupment under this Contract or at law.
- d) Buyer may assign this contract to any successor in interest.

31. ORDER OF PRECEDENCE:

In the event of a conflict between these Terms and Conditions and other portions of the Contract, the order of precedence shall be:

- a) Any typed provisions on the face of Buyer's purchase order specifically modifying the terms of this Contract;
- b) These Terms and Conditions; and,
- c) Any other provisions set forth in the Buyer's Purchase Orders including any terms and conditions stated or referenced therein.

32. INDEPENDENT CONTRACTOR STATUS:

Seller is, and shall remain, an independent contractor during the performance of this Contract.

33. COMMUNICATION WITH BUYER'S CUSTOMER:

Buyer shall be solely responsible for any and all communication with Buyer's customer regarding this or any related contract.

34. SURVIVAL:

All of the provisions of this Contract shall survive the termination (whether for convenience or default), suspension or completion of this Contract unless they are clearly intended to apply only during the term of this Contract.

35. AUDIT RIGHTS:

Buyer reserves the right to audit Seller's records to assure compliance with the terms of this Contract. Seller shall make available all data reasonably requested by Buyer.

36. SELLER AND SUBCONTRACTOR QUALITY CONTROL AND QUALITY SYSTEM:

The Seller or subcontractor shall, in the performance of the Purchase Order, provide and maintain a Quality Management System, which complies with ISO 9001, AS9100 or equivalent. The Seller's/subcontractor's programs shall be subject to review and approval at all times by Buyer, Buyer's customers, and any applicable Regulatory Authorities, to verify the quality of work, review records, audit materials/processes or assist in problem solutions.



BUYER expects the seller to utilize a FOD/FOE prevention program and flow down requirements throughout the procurement chain.

37. CONTROL OF RECORDS:

All Quality records such as Material/Process certifications, Inspection Reports, Test Reports, Micro-Section Reports, First Article Reports, Process Logs, Work Order Travelers/Routers, etc., shall be maintained for a minimum of six years, unless otherwise specified in the purchase order, and shall be made available to Buyer for review upon request. Seller agrees that Buyer must be notified in writing 30 days prior to destruction of any records pertaining to Buyer's purchases.

38. WAIVER

The failure of the Buyer to enforce at any time any of the provisions hereof shall neither be construed to be a waiver of such provisions nor of the right of the Buyer thereafter to enforce each and every such provision.

39. GOVERNMENT CONTRACTS:

For Contracts placed in support of and charged to a U.S. Government Contract:

- a) In the purchase of goods and/or services that carry a DPAS rating, 15 CFR 700 Defense Priorities and Allocations System (DPAS) applies.
 - i. The Seller receiving rated orders must give them preferential treatment as required by this regulation.
 - ii. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders.
 - iii. Seller is required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, Seller must reschedule DO rated orders if they conflict with performance against a DX rated order.
 - iv. All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.
 - v. The Seller who receives rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision flows to all suppliers throughout the procurement chain.
 - vi. Mandatory acceptance. A Seller shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.
 - vii. Mandatory rejection. A Seller shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the Seller must inform the Buyer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.
 - viii. Seller notification requirements. A Seller must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or electronic format, within fifteen (15) working days after receipt of a DO rated

- order and within ten (10) days working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reason(s) in writing (hard copy), or electronic format.
- ix. If the Seller has accepted a rated order and subsequently finds that shipment or performance will be delayed, the Seller must notify the Buyer immediately, give the reason(s) for the delay, and advise of a new shipment or performance date. If notification is given verbally, written, or electronic confirmation must be provided with five (5) working days.
 - x. Compliance with the provisions of this regulation and official actions is required by the Defense Production Act and the Selective Service Act and related statutes. Violators are subject to criminal penalties.
- b) In the purchase of goods and/or services that meet the definition of Commercial-Off-the-Shelf (COTS) items as defined within FAR 2.101, for domestic Sellers the following regulations apply, for international Sellers the equivalent to the following regulations applies:
- i. 52.244-6, Subcontracts for Commercial Items
 - ii. 52.203-13, Contractor Code of Business Ethics and Conduct
 - iii. 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
 - iv. 52.209-6, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
 - v. 52.219-8, Utilization of Small Business Concerns
 - vi. 52.222-26, Equal Opportunity
 - vii. 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
 - viii. 52.222-36, Affirmative Action for Workers with Disabilities
 - ix. 52.222-40, Notification of Employee Rights Under the National Labor Relations Act
 - x. 52.222-41, Service Contract Act of 1965
 - xi. 52.222-50, Combating Trafficking in Persons
 - xii. 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements
 - xiii. 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements
 - xiv. 52.222-54, Employment Eligibility Verification
 - xv. 52.223-6, Drug-Free Workplace
 - xvi. 52.223-18, Contractor Policy to Ban Text Messaging While Driving
 - xvii. 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations
 - xviii. 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels
 - xix. 52.249-2, Termination for Convenience for the Government (Fixed-Price)
 - xx. 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
 - xxi. 252.204-7012, Safeguarding of Unclassified Controlled Technical Information
 - xxii. 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors
 - xxiii. 252.204-7015, Disclosure of Information to Litigation Support Contractors
 - xxiv. 252.223-7008, Prohibition of Hexavalent Chromium
 - xxv. 252.225-7009, Restrictions on Acquisition of Certain Articles Containing Specialty Metals
 - xxvi. 252.225-7039, Contractors Performing Private Security Functions
 - xxvii. 252.227-7015, Technical Data – Commercial Items
 - xxviii. 252.227-7037, Validation of Restrictive Markings on Technical Data
 - xxix. 252.236-7013, Requirements for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers
 - xxx. 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel
 - xxxi. 252.237-7019, Training for Contractor Personnel Interacting with Detainees
 - xxxii. 252.239-7017, Notice of Supply Chain Risk
 - xxxiii. 252.239-7018, Supply Chain Risk
 - xxxiv. 52.245-1, Property management. (1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property
 - xxxv. 252.246-7003, Notification of Potential Safety Issues
 - xxxvi. 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
 - xxxvii. 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer
 - xxxviii. 252.247-7023, Transportation of Supplies by Sea
 - xxxix. 252.247-7024, Notification of Transportation of Supplies by Sea
- c) The appendices to the contract will include a list or lists of clauses set forth in the Federal Acquisition Regulation (FAR) or the Defense Federal Acquisition Regulation Supplement (DFARS); Such appended FAR and DFARS clauses

are incorporated by reference as if set forth at length herein.

40. COMPLETE AGREEMENT

This Contract is the parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Contract supersedes and cancels all prior understands, proposals, communications, whether oral or written, and agreements between the parties, whether such understandings, proposal, communications, and agreements were written or oral, concerning the matters addressed in this Contract. No course of prior dealings between the parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Contract.