

INSTRUCTIONS

Any form used by the Seller to submit a quotation or to acknowledge any order containing any terms or condition which would otherwise modify or conflict or contradict any term or condition noted below shall be deemed to be inapplicable and not binding on Buyer.

TERMS AND CONDITIONS

- 1. DEFINITIONS.** Miltope Corporation is herein called the “Buyer” and the recipient of this order is herein called the “Seller”. The word ‘Articles’ means the goods, products, materials, supplies, parts, assemblies, technical data, drawings, services, or other items covered by the purchase order.
- 2. DATA AND FACILITIES.** Seller acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are attached hereto, and that such data are adequate to enable Seller fairly to determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth. All such data shall be deemed to be a part of this purchase order. Seller represents that it now has or can readily procure without assistance of Buyer or the Government all facilities, machinery, and equipment necessary for the performance of the purchase order. All specifications, drawings, notes, instructions, or technical information referred to in this order shall be deemed to be incorporated herein by reference as if fully set forth. Any discrepancies or questions shall be referred to Buyer for decision or interpretation.
- 3. ASSIGNMENT AND SUBCONTRACT.** None of the sums due to or become due nor any of the work to be performed under this contract shall be assigned nor shall Seller subcontract for completed or substantially completed Articles or major components thereof without Buyer(s) prior written consent. Any assignment to which Buyer consents shall be subject to set off or recoupment for any present or future claim which Buyer may have against Seller.
- 4. PACKING AND SHIPPING.** Deliveries shall be made as specified without charge for boxing, crating, carting, or storage unless otherwise specified, and Articles shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such manner as to assure against damage from weather or transportation. Articles shall be described on bills of lading in accordance with Uniform Freight Classification. Buyer(s) order numbers and symbols must be plainly marked on all invoices. Buyer(s) count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by Buyer shall be shipped in separate boxes or containers for each destination, at no extra charge.
- 5. ACCEPTANCE OF PURCHASE ORDER RELEASE.** This purchase order/release constitutes Buyer’s offer to Seller and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Seller either by acknowledgment or commencement of performance. Any terms or conditions (including prices and delivery dates) proposed by Seller in accepting Buyer’s offer, which are inconsistent with or in addition to the terms and conditions herein set forth, shall be void and of no effect unless and to the extent expressly accepted by Buyer in writing. Shipment against this Purchase Order constitutes acceptance of terms and conditions as stated herein.
- 6. TAXES.** Except as may be otherwise provided in this order, the price includes all applicable Federal, State and Local taxes in effect on the date of shipment and will be indicated on all invoices. No tax shall be included from which an exemption is available. In case of new taxes, or the repeat of taxes, the price shall be adjusted accordingly. In the event it shall ever be determined that any tax included in the prices herein was not required to be paid. Seller agrees to notify Buyer and to make prompt application for the refund thereof, to take all proper steps to procure the same, and when received to pay the same to buyer.
- 7. PRICES.** Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for items which are the same or substantially similar to the Articles, taking into account the quantity under consideration, and Seller will forthwith refund any amounts paid by Buyer in excess of such price.

8. WARRANTY. Seller warrants that all Articles will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured pursuant to detailed design furnished by Buyer, Seller assumes design responsibility and warrants the Articles to be free from design defect and suitable for the purpose intended by Buyer. Seller warranties, together with its service guarantees shall run to Buyer and its customers or users of the Articles and shall not be deemed to be exclusive. Buyer inspection, approval, acceptance, use of or payment for all or any part of the Articles shall in no way effect its warranty rights whether or not a breach of warranty had become evident at the time.

9. INSPECTION. The Articles may be inspected by Buyer and/or the Government at all times and at any stage of production, and if at the premises of Seller, Seller without additional charge shall provide all reasonable facilities and assistance required for sale and convenient test and inspection. The foregoing shall not relieve Seller of its obligation to make full and adequate test and inspection. Buyer may base acceptance or rejection of any or all Articles on inspection by sampling. If, upon inspection, any of the requirements of this order, Buyer may, in addition to its other rights, (a) require prompt correction or replacement thereof at Seller's expense, including transportation charges. or (b) rework, or have reworked, any such Articles at Seller's expense for the purpose of conforming the Articles to contractual requirements, or (c) reject any such Articles and require the immediate removal thereof, Buyer to be repaid or credited the full invoice price therefor plus transportation charges, or (d) cancel the contract in whole or in part under Section 10 hereof. From the time of notice of rejection of defective Articles upon inspection, or for a breach of warranty, risk of loss thereof shall be upon Seller until redelivery, if any, to Buyer.

10. DEFAULT. Buyer may, by written notice to Seller, cancel for default this contract, in whole or from time to time in part. (a) if the Seller fails to deliver the Articles or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time. (b) if the Articles delivered do not conform to contractual requirements or if Seller fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of the contract in accordance with its terms, or (c) if the Seller becomes insolvent or commits an act of bankruptcy. If this contract is canceled for default, Buyer in addition to all other rights afforded by law for Seller's breach of contract, shall have the right to charge Seller the amount by which the costs of fabricating or procuring the Articles canceled from another source become payable to Seller under the contract or otherwise. In the event any bankruptcy, arrangement or insolvency proceedings are commenced by or against the Seller or, in the event of the appointment of any assignee for the benefit of creditors or of a receiver of the Seller or its properties, then the Buyer, at its option, shall be entitled to cancel any unfilled portion of this order without any liability whatsoever. Upon such cancellation Seller will deliver to Buyer any of the Articles, parts or materials, for which Buyer shall make written request at or after cancellation and Buyer will pay Seller the fair value of any such property so requested and delivered. Notwithstanding Buyer's right to cancel the contract for delay in delivery, Seller shall not be liable to Buyer for any damages therefore if Seller's delay is due to causes beyond its control and without its fault or negligence, provided Seller exercises due diligence in promptly notifying Buyer of conditions causing delay or if Seller's delay is caused by the default of a subcontractor or supplier and without the fault or negligence of either of them, and the supplies or services to be furnished by them were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

11. CHANGES. Buyer shall have the right by written notice to change the extent of the work covered by the contract, the drawings, specifications, or other description herein, the time, method or place of delivery or the method of shipment or packaging or to suspend work. Upon receipt of any such notice, Seller shall proceed promptly to make the changes in accordance with the terms of the notice. If any such change causes an increase or decrease in the cost or performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and the contract modified in writing accordingly. Seller shall deliver statement showing the effect of any such change in the delivery dates and prices, such statement to be supplemented within thirty (30) days from the date thereof by detailed specification of the amount of the price adjustment and supporting cost figures. Failure of Seller to submit the statements within the time limits stated shall constitute its consent to perform the change without increase in price, without claim for material rendered obsolete and without change in delivery schedule.

12. TOOLS AND MATERIALS. Title to and the right of immediate possession of all tooling, equipment, or materials furnished or paid for by Buyer directly or indirectly for use thereunder shall be and remain in Buyer. Buyer does not guarantee or warrant the accuracy of any tooling furnished by it. Seller shall (a) be responsible for all loss or damage to such tooling, equipment or materials while in its possession and insure its risk in this respect with adequate fire and extended coverage insurance. (b) clearly mark the same as belonging to Buyer, keep it segregated in Seller's plant and treat it confidentially. (c) keep the same in good operating condition, and (d) use the same exclusively for the performance of work for Buyer and not for production of larger quantities than specified or in advance of normal production schedules, except with Buyer's written

consent, provided however. Seller may use the same when required to produce items for direct sale to the Government where the Government has the right of such use. Seller shall advise Buyer, in writing of each instance of such direct use. All taxes, assessments, and similar charges levied with respect to or upon any such items owned by Buyer while in Seller's possession or control, and for which no exemption is available, shall be borne by Seller. Upon completion of this order, all such items shall be disposed of as Buyer directs.

13. PATENTS. If payment is made hereunder for experimental, developmental, or research work, including engineering amounting thereto. Seller agrees to grant and does hereby grant to Buyer, all right, title and interest in and to any invention, whether or not patentable, conceived or first reduced to practice in the performance of such work, and all drawings, reports, specifications or other data related to such work shall be the property of Buyer and shall be delivered to Buyer at its request except where the face of this order contains a government prime or subcontract number in which case rights in date and the disposition of patent rights shall be in accordance with the terms of the Government contract. If the Articles are to be manufactured or supplied in accordance with drawings and specifications which are furnished by Buyer and which are not based upon drawings or specifications of Seller or upon Seller's design, Seller agrees to grant and hereby does grant to Buyer a nonexclusive fully paid-up and irrevocable license to make, have made, use and sell any improvement in the Articles which is made or introduced by Seller in its work hereunder. Seller shall save Buyer, its customers and users of the Articles, harmless from liability or suit of any nature, including costs and expenses, arising from the manufacture, use or sale of any invention in the Articles, except to the extent that any such liability or suit shall have arisen because of have arisen because of Seller's manufacture of Articles of original design of the Buyer and made by Seller in accordance with specifications and drawings which are furnished by Buyer. Seller agrees to grant and hereby does grant to Buyer a royalty free, non-exclusive and irrevocable license to reproduce, translate, publish, use and dispose of and to authorize others so to do, any copyrighted or copyrightable material incorporated in or supplied as a supplement with the Articles.

14. REPRODUCTION AND DATA RESTRICTIONS. Seller agrees not to make any use of any of the drawings, reports, specifications or other data furnished to it by Buyer except for the performance of this contract, and Seller further agrees not to disclose the same to others except to facilitate the performance of the contract under similar restrictions against use and disclosure provided, however, the Seller may produce items for direct sale to the U.S. Government where the U.S. Government has the right of such use. Seller shall advise Buyer, in writing, of each instance of such direct use. Rights to all ideas and features of novelty or invention described in the data furnished, to the extent originating with Buyer, and design, manufacturing, reproduction, use and sales rights regarding the same shall be deemed exclusively the property of and reserved to Buyer. Upon completion, cancellation or termination of this contract. Seller shall return to Buyer on demand all such data, drawings, specifications and other information, including copies made by Seller.

15. TERMINATION. The performance of work under this contract may be terminated in whole or from time to time in part by Buyer. Any such termination shall be governed by the provisions of FAR 52-249.2 is made a part hereof, except that in paragraph (C) the reference to a "year" period for submission of a final termination proposal is changed to "three months" and where used therein, the term "Contractor" shall mean "Seller", the term "Contract" shall mean "Purchase Order", and the term Government Contracting officer shall mean MILTOPE.

16. COMPLIANCE WITH THE LAW. Seller shall in the performance of the contract comply with all applicable laws, regulations, ordinances, proclamations, demands and requisitions of the Government or of any state or local governmental authority which may now or hereafter govern performance hereunder.

17. GRATUITIES. Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to any of Buyer's employees, agents, or representatives. If it is found that Seller or any of its employees, agents or representatives has offered or given any gratuities to Buyer's employees, agents or representatives with, in Buyer's opinion, a view toward securing purchase orders or contracts from Buyer, or securing favorable treatment with respect thereto, Buyer may, by written notice to Seller, cancel this purchase order under Section 10 hereof.

18. NOTICE OF LABOR DISPUTES. Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order. Seller will immediately give notice thereof, including all relevant information with respect thereto, to Buyer.

19. ADVERTISING. Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Articles.

20. **FAIR LABOR STANDARDS ACT.** Seller warrants that the Articles will be produced in compliance with the Fair Labor Standards Act of 1938, as amended. All invoices must carry the following certificate in order to be passed for payment: "Seller represents that, with respect to the production of the Articles and or the performance of the services covered by this invoice, it has fully complied with all applicable provisions of the Fair Labor Standards Act of 1938".
21. **INDEMNITY.** Seller agrees to indemnify and hold Buyer harmless from any and all claims and liability, including expenses, for injuries or death to persons or damage to or destruction of property caused by or resulting from the acts or commissions of Seller, its agents, suppliers or employees in the performance of this order.
22. **RECORDS.** If this order is on a fixed-price basis subject to price re-determination, or on a cost, cost-plus-a-fixed fee, time and materials or labor hour basis. Buyer shall, until the expiration of three (3) years after final payment under this purchase order have access to and the right to examine any directly pertinent books, documents, paper and records of Seller involving transactions related to this purchase order.
23. **WAIVERS.** The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this contract, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.
24. **MODIFICATION.** The terms and conditions of the purchase and sale contract arising herefrom constitutes the entire agreement between Buyer and Seller and supersede all previous communications, representations or agreements between the parties. The contract may be modified only in writing making specific reference thereto and signed by Buyer's Purchasing Manager or other authorized representative.
25. **CONSTRUCTION.** The contract shall be deemed to have been entered into and shall be construed and interpreted in accordance with the laws of the State of Alabama.
26. **NONDISCRIMINATION IN EMPLOYMENT.** In accordance with Executive Order 11246 amended, the Seller agrees not to discriminate against any employee or applicant for employment because of race, creed, color or national origin. All other applicable provisions of the Rules and Regulations of the President's Committee on Equal Employment Opportunity are herein incorporated by reference.
27. **NONSEGREGATED FACILITIES.** Acknowledgment of this order certifies compliance of nonsegregated facilities as stated by 32 Federal Regulation 7439 dated 5/19/67.
28. **AUTHORIZATION: ONLY** Miltope Corporations' Authorized Purchasing Representative shall have the authority to direct or authorize changes or modifications to this Purchase Order. Miltope Corporations' Program Management and Engineering personnel **DO NOT** have the authority to modify this purchase order or otherwise to direct or authorize any changes. Supplier shall not implement any changes or modifications to this purchase order without first receiving written authorization from Miltope Corporations' Authorized Purchasing Representative. Otherwise, supplier shall, without limitation, be liable for all costs, expenses, and/or claims associated with the unauthorized effort.