



Miltope Corporation
3800 Richardson Road South
Hope Hull, Alabama 36043
www.mymilltope.com

GENERAL TERMS AND CONDITIONS FOR PURCHASE ORDERS SUPPORTING A US GOVERNMENT CONTRACT

1. DEFINITIONS.

- a. **"Buyer"** means Miltope Corporation, who is the issuer of this Order;
- b. **"Buyer's Procurement Representative"** means a Buyer's authorized representative who is named on the face of this Order;
- c. **"Customer"** means Buyer's customer at any tier including, if applicable, the U.S. Government;
- d. **"Order"** means the contractual, ordering document issued by the Buyer, to include a purchase order, change order, subcontract or contract, to include these Purchase Order Terms and Conditions and any other referenced documents;
- e. **"Parties"** means the Buyer and Seller, collectively;
- f. **"Articles"** means the goods, products, materials, supplies, parts, assemblies, technical data, drawings, services, or other items covered by the purchase order.
- g. **"Seller"** means the entity, or person to which this Order is addressed and issued;
- h. **"Supplier"** means Seller, Seller's lower tier vendors, suppliers and/or subcontractors at any tier

2. **ACCEPTANCE OF PURCHASE ORDER.** 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.

3. **SHIPPING AND DELIVERY.** Time is of the essence in the performance of this contract. Seller shall be strictly bound to the delivery schedules as defined in this contract. In the event the cause for a delay is discovered, the Seller shall: a) promptly notify Buyer in writing of the reasons for delay and actions being taken to minimize the delay, b) provide Buyer with a recovery schedule and c) if requested by Buyer, expedite the shipment, at no additional cost to Buyer. The Seller is liable for all their subcontractors and their timely performance. If unexcused, failure to deliver in accordance with the Contract schedule shall be constituted as a material breach of this Contract and the Seller is then obliged to pay a contractual penalty when delay is caused in full or partly by Seller. The penalty shall amount to 0.5%, with a maximum amount of 5.0% of the value of the delayed scope/shipment of the purchase order, per calendar week until remedied. All shipments shall be delivered to the location directed by buyer in this contract.

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) 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. The following forms of packing materials are not allowed when shipping product to the Buyer:

- Styrofoam Packing Peanuts
- Biodegradable Packing Peanuts



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- Cornstarch Packing Peanuts
- Shredded Paper

5. 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.

6. SELLERS NOTICE OF DISCREPANCIES. Seller shall promptly notify Buyer in writing when discrepancies in Seller's process or Goods are discovered, or there are suspected discrepancies regarding Goods delivered or to be delivered under this Contract. The Supplier does not have authority to change any requirement of this purchase order. Only those changes submitted and approved in writing on shall be considered contractually binding. All other forms of requests such as emails shall not be accepted.

a. Supplier will make no changes in the design, materials, manufacturing location, manufacturing equipment, production processes, changes between a manual and automated process, or any other process related to the Goods, without the advance written approval of the organization's Authorized Representative. This requirement applies whether or not the change affects costs and regardless of the type of change, including product improvements.

b. To request approval to change a manufacturing location or subcontracting of process required to manufacture the Goods, supplier must provide the organization with a plan at least 240 days prior to the proposed start date of implementing such change in the manufacturing location or subcontracting of processes required for the Goods. Any such plan is subject to written approval, and shall not result in an increase in the prices charged by supplier to the organization for Goods, and must demonstrate that supplier has taken all necessary actions to avoid negative impacts to the organization, including, but not limited to, maintaining additional inventory, overlapping production schedules, etc.

c. Seller will notify the Buyer of any potential changes to the program, Goods, or schedule promptly as it becomes aware of them.

d. Seller will be responsible for any and all of the organization's costs incurred as a result of changes implemented by supplier including but not limited to all customer charges; all labor costs, including engineering costs, travel and lodging; all costs to transition to an alternative source of supply; redesign and/or recertification; and all corrective action costs (e.g., costs of additional inspection or quality-control systems).

e. Seller will not deliver, ship, or substitute Goods that have had a process change in its manufacturing until all required technical documentation and change approvals have been received from the organization.

f. Seller will flow down this requirement in all its subcontracts and purchase orders for purchased goods or process-related services required for the Goods, whether such Goods are supplied to supplier as an end item, a component part of an end item, or an individual piece part.

g. Seller shall contact the Buyer and receive written permission, from the Buyers Authorized Procurement Representative, to sub out any material or assembly.



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7. 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.

8. 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.

9. INVOICES AND PAYMENT. Seller must promptly submit an itemized invoice to the Buyer's Accounting Department for material delivered or services completed and accepted by the Buyer. Seller shall issue individual invoice(s) for each delivery of Articles that shall include Buyer(s) order numbers and line-item number(s) and any symbols must be plainly marked on all invoices. 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'. Delays in the Seller submitting and the Buyer receiving invoices shall be considered just cause for withholding payment without losing any negotiated discount. Payment terms are net sixty (60) days unless otherwise provided on the face of the Order. Each payment made shall be subject to reduction in the extent of amounts that are found by Buyer not to have been properly payable and shall also be subject to reduction for overpayments. Except as otherwise provided in the Order, no payments shall be made for extras not authorized by the Buyer's Procurement Representative and incorporated into the Order. Except for amounts invoiced under Articles 21 and 22, Seller shall be deemed to have waived all charges and fees that are not invoiced within sixty (60) calendar days after the end of the calendar year in which the charges were incurred.

10. QUALITY. Seller shall establish and maintain a quality control system in accordance with Buyer's Quality Control Requirements Operational Procedure QA-157 and Supplier Quality Manual.

11. COUNTERFEIT PREVENTION. The Seller shall not furnish counterfeit parts to the Buyer. The Seller represents and warrants that only new and authentic materials are being furnished and being used in Articles to be delivered to Buyer under the Order and that Articles delivered contain no counterfeit parts or suspect counterfeit parts. The Seller shall establish and maintain a counterfeit electronics parts control plan in accordance with Buyer's Quality Control Requirements Operational Procedure QA-157 Clauses 43 & 44 and Supplier Quality Manual. If this Order is issued under a U.S. Government contract and Seller is providing electronic parts or assemblies containing electronic parts to Buyer, then DFARS Clauses 252.246-7007, Contractor Counterfeit Electronic Parts Detection and Avoidance System and 252.246-7008, Sources of Electronic Parts, are hereby incorporated into the Order and Seller shall comply with all requirements contained herein.

12. PARTS OBSOLESCENCE. It is the Seller's responsibility to ensure that supplies ordered in support of this contract are obtainable and that any issues of current or potential obsolescence are identified, communicated to Buyer in writing, and addressed in a timely manner. The price of this order shall not be subject to adjustment due to any Seller claim of parts obsolescence. Seller certifies that any part obsolescence known at the time this Order is issued has been considered for the pricing of this Order.



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13. 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. A change pursuant to this Article shall not give rise or authorize any other modification of or amendment to the terms and conditions of this Contract. 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. The Seller has the burden to support the amount of the Seller's claim for equitable adjustment. Seller shall deliver statement showing the effect of any such change in the delivery dates and prices, such statement to be supplemented within ten (10) 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. Failure of the Parties to agree upon adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

14. AUTHORIZATION: Only Miltope Corporations' Authorized Procurement 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 Procurement Representative. Otherwise, supplier shall, without limitation, be liable for all costs, expenses, and/or claims associated with the unauthorized effort.

15. SET OFF. Seller agrees that Buyer shall have the right to set-off against any amount(s), which may become payable by Buyer to Seller under this Order or otherwise, any amount(s) which Seller may owe to Buyer, including any loss, damage, expense, cost or liability, whether arising under this Order, or otherwise.

16. SUSPENSION OF WORK. Buyer may, in writing, suspend all or part of the work to be performed under this contract, not to exceed (100) days. Within the suspension of work period, the Buyer shall: cancel the suspension of work order, terminate this Contract in accordance with Article 21 or Article 22 of this Contract, or extend the stop work period.

Seller shall resume work whenever a suspension is cancelled. The Buyer and Seller shall negotiate an equitable adjustment, as required, if the contract is not terminated. The Seller shall submit a claim for adjustment within fifteen (15) calendar days after the suspension is cancelled.

17. INSPECTION. Buyer and/or its Customer or the Government may inspect, review, or assess progress and performance of Articles under this contract at all times and at any stage of production at no additional charge. The foregoing shall not relieve Seller of its obligation to complete full and adequate tests and inspections. Seller shall maintain an inspection system in accordance with Buyer's Quality Control Requirements Operational Procedure QA-157 and Supplier Quality Manual.

18. ACCEPTANCE AND REJECTION. Buyer shall accept the Goods, or give Seller notice of rejection due to any defect or nonconformance within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer, including revocation of acceptance.

Buyer may base acceptance or rejection of any or all Articles on inspection by sampling. If, upon inspection, parts are found defective or nonconforming on any of the requirements of this order, the Buyer may, in addition



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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 Buyer shall be repaid or credited the full invoice price therefore plus transportation charges, or (d) cancel the contract in whole or in part under Article 21 or 22 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.

Seller shall not redeliver corrected or rejected Goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement, and other correction and redelivery shall be completed as Buyer's Authorized Procurement Representative may reasonably direct.

19. 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.

Goods shall also be free from liens or encumbrances and shall not infringe on any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party.

Goods shall not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back reveal, damage, destroy, or alter any data. Goods should not disable any computer program automatically or permit unauthorized access to any software or hardware, which may restrict or otherwise impair the operation or use of the Goods or any material embodying or compromising Goods which may interfere with the use of the Goods, regardless of whether the Seller or Seller Personnel purposefully placed such code or mechanisms in the Goods. In addition to exercising any of the Buyer's other rights and remedies under this agreement or otherwise at law or in equity, Seller shall provide the Buyer, free of charge, with any and all new versions, upgrades, updates, releases, maintenance releases, and error or bug fixes of the Goods (collectively, "Revised Code") which prevents a breach of any of the warranties provided under this agreement or corrects a breach of such warranties. Revised Code contained in Goods constitutes Goods for purposes of this agreement.

The Goods shall not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer; (b) may require distribution, copying or modification of any software free of charge; (c) may require disclosure, license or redistribution of source code; (d) may require the grant of rights in excess of those granted by Buyer in its standard end user license agreements; (e) may require that others have the right to modify the code; or, (f) may impose additional requirements on redistribution such as inclusion of additional license agreements for specific code modules.

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.

This warranty shall begin upon Buyers payment for the goods. Warranty shall extend for a minimum period of twenty-four (24) months. In the event a nonconformance or defect is found, Buyer may, at its option and at Seller's expense, a) required correction or replacement of goods, or b) return the goods for credit or refund. Return of nonconforming or defective Goods and redelivery to Buyer shall be at Sellers expense.

20. 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.



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21. TERMINATION FOR CONVENIENCE.

- (a) Buyer may terminate, for its convenience, the whole or any part of the work required under this Order by delivering to Seller a written notice of termination specifying the work terminated and the effective date thereof.
- (b) Upon receipt of said notice, Seller must immediately cease work and shall immediately instruct any and all of the Seller's suppliers or subcontractors to cease work. Which shall include, but not limited to the manufacture and procurement of materials for the fulfillment of the terminated portion of the Order, and upon request deliver to the Buyer all completed and partially completed Articles and work in process, as well as any other deliverables described in this clause.
- (c) In the event Seller has a claim for adjustment, the Buyer must be notified in writing of the intent to file a claim within twenty-one (21) days from the effective date of termination. Seller's final termination claim must be submitted to Buyer within sixty (60) calendar days from the date that Seller's intent to file a claim was submitted to Buyer. Seller shall have no other remedies after this period.
- (d) Buyer's only obligation shall be to pay Seller a percentage of the price reflecting the percentage of work performed prior to the issuance of the notice of termination, plus reasonable charges that have resulted from the termination. Seller must demonstrate to the satisfaction of the Buyer using standard record keeping system Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided. If Buyer terminates the Order pursuant to Government direction, Seller's recovery of termination costs shall be limited to the extent that Buyer is able to recover such costs from the Government.
- (e) In no event shall Buyer be liable for lost or anticipated profits/fees, unabsorbed indirect costs or overhead, or any amount more than the total Order price.
- (f) Upon Buyer's request, Seller shall make reasonably available to Buyer, any books, records or documents supporting Seller's termination claim proposal.
- (g) Upon Buyer's payment to Seller, title to all deliverables shall vest in Buyer. Deliverables include, but are not limited to: Articles, work-in-progress, special tooling, special test equipment, plans, drawings, specifications, or other information acquired under this Order. Buyer's right of termination is in addition to and not in derogation of Buyer's rights under Article 22, hereof. Notwithstanding the issuance by Buyer of a notice of termination hereunder, any rights of Buyer based on prior breach of performance by seller shall survive. Upon receipt of notice of termination, Seller shall continue with performance of any work not terminated under this Order. Seller shall also protect and preserve all property related to Order that is in the possession of Seller and in which Buyer has or may acquire an interest.

22. TERMINATION FOR DEFAULT. Buyer may, by written notice to Seller, terminate for default this contract, in whole or 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.(c) if the Seller becomes insolvent or commits an act of bankruptcy.(d) fails to provide proof of adequate assurance of future performance. Seller shall have ten (10) calendar days (or such longer period as Buyer may authorize in writing) to cure any such nonperformance after receipt of notice from Buyer specifying such nonperformance. 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.



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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.

23. 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.

24. INTELLECTUAL PROPERTY RIGHTS. Definitions:

Intellectual Property or ("IP") means inventions, discoveries and improvements; know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information; and computer software.

"IP Rights" means all worldwide common law and statutory rights to the IP, including but not limited to rights under patents, industrial designs, trade secrets, copyrights and mask work registrations.

"Background IP" means all IP and IP Rights owned or controlled by Seller prior to the effective date or outside the scope of this Contract.

"Foreground IP" means IP and IP Rights conceived, developed or created by, for or with Seller either alone or with third parties, in the performance of this Contract, including modifications to any Buyer Specification suggested by Seller.

"Buyer Specifications" means performance specifications, specification control documentation, interface control documents, schematics, definitions, configurations, and certification data, and all IP Rights therein, used or intended to be used by Buyer

- (i) to establish and define
 - a. requirements for the Goods and associated processes, service level, system specification, certification, and configuration; and
 - b. architecture descriptions for the Goods and associated processes, service, and system; and
- (ii) to procure and certify Goods or similar products and to assure integration of the Goods or similar product with a Buyer product or other systems and equipment included in
 - a. Buyer product.



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- b. **Seller-Owned IP.** Seller shall retain ownership of its Background IP and of any Foreground IP not assigned to Buyer pursuant to paragraph e. below (collectively, the "Seller-Owned IP"). Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP Rights in Seller Owned IP solely to the extent that such Seller-Owned IP would otherwise interfere with Buyer's or its suppliers', or Customers' use or enjoyment of the Goods, Buyer Specifications or Buyer-owned IP. In addition, if Buyer cancels all or part of this Contract for Seller default in accordance with the "Termination for Default" Article of this Contract, Seller hereby grants Buyer the right to exercise all IP Rights in Seller-Owned IP for the purpose of preventing interruptions to or stoppage of Buyer's production lines or delivery of Buyer's products to Customers.
- c. **Third Party IP.** If Seller incorporates third-party IP into any contract deliverable, Seller shall obtain for Buyer at least the license rights granted in paragraph b of this Article in such third-party IP, at no additional cost to Buyer and hereby grant such rights to Buyer.
- d. **Foreground IP.** This subparagraph d. shall not apply to unmodified commercial off-the-shelf Goods. If Goods are developed, modified or redesigned pursuant to this Contract then the paragraphs below apply.
 - i. All Foreground IP shall be the exclusive property of Buyer except as set forth in subparagraph (iv) below.
 - ii. Seller hereby irrevocably assigns to Buyer all right, title and interest in the Foreground IP for no additional charge. Seller shall protect Foreground IP as Proprietary Information and Materials under this Contract and shall mark documents or portions of documents containing Foreground IP as "Buyer Proprietary" information or as otherwise directed by Buyer in writing.
 - iii. Seller shall, within two (2) months after conception or first actual reduction to practice of any invention and prior to Contract completion, disclose in writing to Buyer all inventions assigned hereunder, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer's Foreground IP rights. If Seller does not or cannot execute instruments or assist Buyer as described above, Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
 - iv. Subparagraphs ii. and iii. above shall not apply to any Foreground IP to the extent that the development of such Foreground IP was performed with funding received by Buyer under a U.S. Government procurement.
- e. **Buyer-Owned IP.** Buyer shall retain ownership of all Buyer IP provided hereunder, including the Buyer Specifications, and of any Foreground IP assigned to Buyer pursuant to paragraph e. above (collectively, the "Buyer-Owned IP"). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Contract to exercise all IP Rights in the Buyer-Owned IP solely as necessary for Seller to perform its obligations under this Contract. Seller shall not, without Buyer's prior written consent, use Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP in any manner not authorized under this Contract, including, but not limited to, developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Buyer-Owned IP.



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25. REPRODUCTION AND DATA RESTRICTIONS. Buyer and Seller shall keep each other's data (collectively referred to as "Proprietary Information and Materials") confidential and protect it from unauthorized use and disclosure in each case that is obtained, directly or indirectly, from the other Party in connection with this Contract or Buyer's contract with its customer. 'Proprietary Information and Materials' is defined as (i) confidential, proprietary and/or trade secret information of a Party or third party disclosed by a Party; and (ii) tooling identified as subject to this Article.

Buyer and Seller shall use 'Proprietary Information and Materials' disclosed by the other Party under this contract only for the purpose of performance of this Contract, other contracts between the Parties, and Buyer's contract with its customer, and shall not disclose such Proprietary Information and Materials to any third party except as expressly set forth herein.

Buyer may, use, reformat, copy or disclose Seller's Proprietary Information and Materials to:

- (i) fulfill Buyers obligations under this Contract, other contracts with Seller, and Buyer's contract with its customer;
- (ii) test, certify, use, sell or support Goods delivered under this Contract;
- (iii) develop interfaces or parameters for Buyer products;
- (iv) perform or obtain data analysis or risk mitigation; and
- (v) ensure regulatory or legal compliance. Any such disclosure by Buyer shall, when appropriate, include a suitable restrictive legend.

Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required to perform this Contract, if Seller includes a suitable restrictive legend on such disclosures, and if each such subcontractor has agreed in writing to obligations no less restrictive than those imposed upon Seller under this Article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.

A Party may disclose received Proprietary Information and Materials to comply with a subpoena or court order. The receiving Party will use reasonable efforts to give the disclosing Party advance written notice of such order. The receiving Party shall use commercially reasonable efforts to disclose only Proprietary Information and Materials legally required to be disclosed.

Upon Buyer's request, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all derived material, unless Buyer specifically directs otherwise in writing. Seller shall not use, or sell any Goods, parts or materials containing, made in accordance with, or by reference to Proprietary Information and Materials of Buyer except as required to perform this Contract. Prior to disposing of such Goods, parts or other materials as scrap, Seller shall render them unusable.

The provisions of this Article shall survive the completion, termination or cancellation of this Contract. Buyer shall have the right to audit Seller's compliance with this Article.

Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Contract will be free from markings that are not permitted by applicable FAR or other U.S. Government agency FAR supplement clauses incorporated in this Contract. Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, at Seller's expense, correct any such Nonconforming Marking.

26. COMPLIANCE WITH THE LAW, VENUE AND DISPUTES. 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. 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. In the event a dispute arises out of or related to this Order and not otherwise addressed herein, Buyer and Seller agree to timely notification provided to each party, in writing, stating the position and shall negotiate in good faith to resolve any such dispute. Pending final resolution



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of any dispute, the Seller shall proceed diligently with the performance of this Order. Unless explicitly set forth in this order, Seller shall not acquire any direct claim or course of action against Buyer's customer for this Order.

27. EXPORT/IMPORT CONTROL. a) Seller hereby certifies that it understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR") and their authorizing statutes, (hereinafter the "Export Control Laws and Regulations").

b) Seller shall exercise strict control covering the disclosure of and access to export controlled technical data, information and other items received under this Purchase Contract in accordance with the Export Control Laws and Regulations. Seller agrees that no export controlled technical data, information or other items provided by Buyer in connection with this Purchase Contract shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign employee or subsidiary of Seller (including those located in the U.S.) without the express written authorization of Buyer and only after Seller has obtained the appropriate export license, technical assistance agreement or other requisite authorization for the export of controlled technical data or items. Seller will consult with Buyer to determine whether the information provided by Buyer is export controlled prior to any release to a third party. Seller will indemnify buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.

c) Seller will comply with the instructions or requirements of any attachment to this Purchase Order pertaining to import documentation necessary to comply with US Customs regulations.

d) Seller agrees, in addition to the above to place the following legend on all export controlled Technical Data obtained, used, generated, or delivered in performance of this Purchase order: 'WARNING – Information Subject to Export Control Laws. This document, or software, if applicable, contains information subject to the International Traffic in Arms Regulation (ITAR) or Export Administration Regulation (EAR) 1979. This information may not be exported, released, or disclosed to foreign persons, whether within or outside the United States without first complying with the export license requirements of the ITAR and/or EAR.' Include this notice with any reproduced portion of this document.

e) When requested by Buyer's authorized representative or agent, Seller shall, promptly and without additional cost, furnish Buyer with any documentation, including import certificates or end-user statements from Seller or Seller's government, which is reasonably necessary to support Buyer's application for U.S. import or export authorizations.

f) Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked by the United States Government or government of Seller.

g) Seller agrees that no goods, technology, software or services supplied under this contract or purchase order are sourced from or originate with:

- 1) A country or government subject to U.S. economic sanctions administered by the U.S. Department of Treasury or U.S. Department of State (hereinafter "Restricted Country");
- 2) A Specially Designated National Identified on the U.S. Department of Treasury's Specially Designated Nationals List, or any other U.S. Government list restricting the acquisition of items from an entity or person located outside or inside the United States (hereinafter "Restricted National");
- 3) An entity or person that is owned or controlled by any Restricted Country or Restricted National; or
- 4) A Restricted Country or debarred party under the International Traffic in Arms Regulations or U.S. Department of Defense Federal Acquisition Regulations. The U.S. Government requirements and additional background, including lists of restricted or denied persons referenced in this clause are available at the following web links:
www.treasury.gov/ofac



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www.pmdtdc.state.gov
www.state.gov/t/isn/c15231.htm
<https://www.bis.doc.gov/index.php/-policy-guidance/list-of-parties-of-concern/denied-persons-list>
and www.sam.gov/portal/public/SAM/

28. PROPERTY AND INSURANCE.

Seller shall defend, indemnify and hold harmless Buyer, and their employees and agents from and against all actions and damages of any kind or nature whatsoever for property damage, personal injury or death, and expenses, costs of litigation and counsel fees related thereto or incident. The foregoing indemnity shall apply only to the extent of the negligence or willful misconduct of the Seller Parties that occurs while on premises owned or controlled by Buyer. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any subcontractor thereof. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this paragraph. Seller shall maintain, at its own expense:

(i) Comprehensive General Liability. Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain Commercial General Liability insurance, throughout the period of performance when work is performed and until final acceptance by Buyer. \$2 million combined single limit for bodily injury and property damage and \$2 million annual aggregate

(iii) Comprehensive Automobile Liability. If licensed vehicles shall be used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains Automobile Liability insurance, throughout the period when work is performed and until final acceptance by Buyer, . \$2 million combined single limit for bodily injury and property damage and \$2 million annual aggregate

(iv) Workers' Compensation and Employers' Liability. At least \$1 million and a \$2 million annual aggregate Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation with respect to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.

(v) If an aviation product or service, Aviation Liability insurance at least \$2 million limit of liability per occurrence shall include Products and Completed Operations coverage

The required insurance policies shall be endorsed to require the insurance company to provide Buyer with at least thirty (30) days prior written notice of the effective date of cancellation or material change of any insurance policy. Prior to commencing work hereunder, and upon Buyer request, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage as set forth above. Such certificate shall contain the policy number(s) effective date(s), expiration date(s) and a statement noting Buyer as an additional insured. Such insurance will be primary and not contributory nor excess with respect to any other insurance available for the protection of the Buyer. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein shall not constitute a waiver of Seller's or subcontractor's obligations hereunder. All provisions of the insurance coverages referenced above, except the limits of liability, will operate to give each insured or additional insured the same protection as if there was a separate policy issued to each.



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29. PROTECTION OF PROPERTY Seller assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties, whether owned, hired, rented, borrowed or otherwise, brought to a facility owned or controlled by Buyer or Buyer's customer. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries and their respective directors, officers, employees and agents for any such loss, destruction or damage. At all times, Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.

30. GRATUITIES, KICKBACKS, BUSINESS CONDUCT AND ETHICS. 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, immediately terminate this purchase order under Article 22 hereof, without provision to cure. Further expectations from Buyer that Seller will have (or will develop) and adhere to a code of business conduct and ethical standards.

31. 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.

32. SMALL BUSINESS PLAN. Seller agrees to actively seek out opportunities for small businesses, as applicable. Upon request, Seller shall provide to Buyer a copy of Seller's subcontracting plan compliant to FAR 52.219-9 or DFARS 252.219-7004.

33. 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.

34. FAIR LABOR STANDARDS ACT. Seller warrants that the Articles will be produced in compliance with the Fair Labor Standards Act of 1938, as amended.

35. 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.

36. RECORDS RETENTION. For orders funded by US Government contracts, Seller shall refer to FAR Subpart 4.7, Contractor Records Retention for guidance and durations. For non- US Government funded orders, Seller shall, until the expiration of three (3) years after final payment under this purchase order, retain all records involving transactions related to this purchase order without additional charge. These documents shall date back to the time this Order was originally issued.

37. 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



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exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

38. 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 Procurement Representative.

39. CONSTRUCTION. Both parties, Buyer, and Seller, have fully participated in the review and negotiation of this Order. The language in this Order, and the Terms and Conditions herein, shall be interpreted as to its fair meaning and not for or against any party.

40. NONDISCRIMINATION IN EMPLOYMENT. In accordance with Executive Order 11246 and amended by Executive Order 11375 (32 Federal Regulation 14,303, dated October 1968), 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.

41. NONSEGREGATED FACILITIES. Acknowledgment of this order certifies compliance of nonsegregated facilities as stated by 32 Federal Regulation 7439 dated 5/19/67.

42. ENVIRONMENTAL, HEALTH AND SAFETY. Seller accepts and acknowledges that all work performed will be in full compliance with all applicable Federal, State and Local governmental environmental, health and safety laws and regulations and all applicable policies pursuant to Quality Control Requirements Operational Procedure QA-157 and Supplier Quality Manual, or similar policies. All work performed on Buyer's premises shall be performed in accordance with all plant environmental and safety requirements specified by Buyer. Seller shall have all of their personnel and their suppliers personnel that are performing work for this Order fully trained and otherwise qualified and competent to perform work assigned that has actual or potential environmental impacts. Seller shall indemnify, hold Buyer harmless, and at Buyer's election, defend Buyer and it's Customer(s) and their respective officers, directors, employees and agents to the full extent of any loss, damage, or expense, including lost profit, attorney's fees and court costs, that relates to environmental damages, property damage and/or personnel injury, including injury to remediation personnel, and all related liabilities and associated costs relating to or arising from Seller's performance under this Order.

For all work being performed on Buyer's premises, Seller shall immediately notify Buyer, in writing, of any environmental, health or safety related accidents, incidents, damage and/or liability claims by third parties, of which Seller becomes aware during the performance of work by Seller under this Order. Seller must have personnel performing work that are able to read, speak and understand all signage and instructions.

43. FORCE MAJEURE Neither party shall be liable for delays in delivery caused by circumstances beyond their reasonable control and without their fault or negligence, including strikes, lockouts, riots, epidemics, pandemics, quarantine restrictions, Government action or inaction, war, fire, flood, explosion, acts of God, or acts of terrorism. In no event shall shipping delays, product shortages, lack of finances, or cash flow shortages be considered as a cause beyond the control of a party. A party affected by the Force Majeure shall give prompt written notice thereof, and upon cessation of the Force Majeure, take all responsible steps to resume compliance with the parties' obligations. Notwithstanding the above, if such delays extend Sellers delivery or performance date by more than thirty (30) days, Buyer may terminate such part of the Order remaining to be performed. In the



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event of such termination, the rights and obligations of the parties shall be determined in accordance with the provisions of Clause XXX, Termination for Convenience herein.

44. SURVIVAL. This term and the following terms shall survive the completion or termination of this Order:

- Clause 7 – Taxes
- Clause 12 – Parts Obsolescence
- Clause 19 – Warranty
- Clause 24 – Intellectual Property
- Clause 26 – Compliance with the Law, Venue and Disputes
- Clause 27 – Export/Import Control
- Clause 28 – Property and Insurance
- Clause 29 – Protection of Property
- Clause 33 – Advertising
- Clause 36 – Records
- Clause 42 – Environmental, Health and Safety

45. ORDER OF PRECEDENCE. In the event of conflict or inconsistency between documents or provisions of this Contract, the documents or provisions shall prevail in the order listed below. The first item having the highest precedence:

- 1) Customer Contract Requirements, including mandatory flow downs
- 2) Purchase Contract Document, and provisions typed on the face of the Order
- 3) Master or Long Term Agreement between Buyer and Seller (if applicable)
- 4) Buyer General Terms and Conditions
- 5) Statement of Work, or other Requirements Documents
- 6) Specifications and/or Drawings
- 7) Other documents, exhibits, and attachments to the Order
- 8) Buyer Quality Control Operational Procedure QA-157
- 9) Supplier Quality Manual