



US SMaP TERMS & CONDITIONS OF PURCHASE

1. DEFINITIONS

- a) "Buyer" means the entity issuing the Order to the Seller as shown on the face of the Order.
- b) "Change Order" means a written modification to the Order issued by the Buyer and accepted by the Seller
- c) "Customer" means the end user or recipient of the Goods (defined below) or Services (defined below) with which Buyer has a contract to provide the Goods or Services.
- d) "DFARS" means the Defense Federal Acquisition Regulation Supplement.
- e) "FAR" means the Federal Acquisition Regulation.
- f) "Goods" means the products, parts, and/or equipment included on Order.
- g) "Order" means a Purchase Order, Contract or Subcontract issued by Buyer to and accepted by Seller, and to which these US SMaP Terms and Conditions of Purchase apply.
- h) "Seller" means the entity to which Buyer's Order is issued.
- i) "Services" means Services to be rendered by Seller included on Buyer's Order to Seller.
- j) "Work" means the Goods and/or Services provided by Seller.

2. ACCEPTANCE OF ORDER

- a) Seller's acknowledgment, acceptance of payment, or commencement of performance shall constitute Seller's unqualified acceptance of this Order.
- b) By acceptance of this Order, Seller agrees to the terms, conditions and specifications as outlined. If this Order does not state price or delivery, Buyer shall not be bound to any price or delivery to which it has not specifically agreed to in writing.
- c) Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing.
- d) This Order constitutes the entire agreement between the parties and supersedes all prior written or oral communications, representations, offers, negotiations or agreements. Seller agrees that any estimates or forecasts provided by Buyer do not constitute a commitment.

3. NOTICES

Any notices required shall be in writing and shall be deemed to have been received when delivered by hand, facsimile, or email to the receiving party's authorized representative. For Buyer, the authorized representative shall be designated on the face of the Order.

4. DELIVERY

- a) *Transportation*: Unless otherwise provided in this Order, transportation shall be FOB Destination, Freight Prepaid. Buyer shall not be liable for insurance or premium transportation charges unless Buyer authorizes such charges in writing. Seller shall ship in accordance with instructions specified by the Buyer. Absent any specific packing, routing or carrier instruction by Buyer, Seller shall suitably pack and ship all Goods in accordance with standard commercial practices. The prices set forth herein include all charges for packing. Seller shall mark all packages with the Order number. Seller shall be liable for all damages incurred directly or indirectly by Buyer or Buyer's Customer as a result of Seller's failure to comply with these requirements.
- b) *Risk of Loss*: Seller is responsible for any risk of loss or damage to the Goods until they are delivered in conformity with this Order at the FOB destination point stated herein. Seller shall remain responsible for risk of loss of any nonconforming or rejected Goods, unless such loss, destruction or damage results from gross negligence or fault of Buyer.
- c) *Title*: Title shall pass to Buyer upon final acceptance, regardless of when or where Buyer takes physical possession of the Goods.
- d) *Time*: Time is of the essence and failure to deliver in accordance with the delivery schedule under this Order, if unexcused, shall be considered a material breach of this Order. No acts of Buyer, including without limitation modifications of this Order or acceptance of late deliveries, shall constitute waiver of this provision. If delivery or performance of the Work is not made in the quantities and at the time and manner specified, Buyer shall have the right without liability, and in addition to its other rights and remedies under this Order and the law, to take any of the following actions: (i) direct expedited delivery (premium shipping costs) or accelerated Work schedule (premium labor costs) at Seller's expense; (ii) delay payment for a period of time equal to the lateness of such delivery or performance; (iii) backcharge Seller for assessed delay damages; and/or (iv) terminate this Order by written notice under the terms outlined in the "Default" clause of this Order. Seller shall immediately notify Buyer of any delays, or threat of delays, in the delivery and/or performance under this Order.
- e) *Advanced Shipments*: If, without written authorization from Buyer, Seller ships Goods to arrive more than five (5) business days in advance of schedule, Buyer may return the Goods to Seller at Seller's expense or retain such Goods with payment deferred until after the scheduled date of delivery.

- f) *Excess Quantity*: Seller shall not make material or production commitments in advance of such time as Seller reasonably believes is necessary to meet the schedules. Seller may not ship quantities in excess of the Order delivery without prior written permission from the Buyer.
- g) *Obsolescence*: During performance of this Order, Seller shall notify Buyer of any planned obsolescence or recall of the Goods (or any of its components) set out in this Order.

5. INSPECTION AND FINAL ACCEPTANCE

- a) Buyer and its Customer may inspect all Work at reasonable times and places at the Seller's or Seller's supply chain sub-tier premises. Seller shall provide all information, facilities, and assistance necessary for these inspections at no charge. Seller shall flow this requirement down to its sub-tier supply chain. Buyer may charge to Seller any additional cost of inspection and test when Work is not ready at the time Buyer or Buyer's Customer requested inspection and test under this paragraph.
- b) No inspection shall relieve Seller of its obligations to furnish and warrant all Work in accordance with the requirements of this Order. Buyer's final inspection and acceptance shall be at destination. Buyer's acceptance of Goods or Services shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud, or misrepresentation on the part of Seller exists.
- c) If Seller delivers non-conforming Work, Buyer may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work. If Seller fails to promptly replace or correct the non-conforming item in the case of Goods, or re-perform in the case of non-conforming Services, Buyer may replace, correct or re-perform such Work at the sole expense of Seller, including, without limitation, any excess costs Buyer may incur. Seller shall not re-tender rejected Work without disclosing the corrective action taken.
- d) Seller shall maintain an inspection and quality control system acceptable to Buyer. Seller shall keep records of all inspection Work and make such records available to Buyer and Buyer's Customer upon request.
- e) Seller may be required to provide objective evidence (i.e., material certifications, C of C's, etc.) that the provided Goods and materials supply comply with the requirements of the Order.

6. WARRANTY

- a) Seller warrants that unless provided otherwise, all components or Goods provided herein are new and not of such age or so deteriorated as to impair their usefulness or safety. Seller also warrants that all Work furnished under this Order shall comply with the requirements; be free from defects in design (except to the extent that it is to a Buyer design), material, manufacture and Workmanship; shall be free from liens and encumbrance; is merchantable and, is fit for its intended purpose. Any manufacturer's warranties are hereby assigned to Buyer and Buyer's Customer.
- b) Seller warrants that all labor provided hereunder shall be performed by qualified personnel and shall conform with the terms, specifications and description of Work specified by Buyer.
- c) The warranty outlined in paragraphs (a) and (b) above shall run for twelve (12) months from date of final acceptance by Buyer or longer period as may be defined in Customer's specifications.
- d) Buyer shall not be deemed to waive any defects or nonconformities by reason of approval of samples or payment for the Goods.
- e) Seller shall provide six (6) months prior notification of any Goods, or components of Goods, that shall become obsolete and offer the Buyer an end-of-life buy opportunity.
- f) Seller warrants that the prices, warranties and Work under this Order are no less favorable to Buyer than those extended to any other Seller's customer as of the effective date of this Order, for substantially similar Goods/Services and quantities. Buyer shall have the right to examine all Seller records to confirm that Seller's representations and warranties are accurate.

7. CHANGES

- a) Buyer may at any time, by written notice, make changes within the general scope of this Order including, but not limited to: (i) description or time of Services; (ii) drawings, designs, specifications or other technical documents; (iii) place of inspection, acceptance, or point of delivery; (iv) method of delivery, packaging or packing; (v) reasonable adjustments in quantities, delivery schedules or both; (vi) time of performance; (vi) place of performance; and (vii) terms and conditions of this Order.
- b) If any such change causes an increase or decrease in the cost or delivery schedule of this Order, Buyer shall make an equitable adjustment to the Order price and/or delivery schedule. Any claim by Seller for an equitable adjustment must be in writing and submitted within ten (10) calendar days from the date of Buyer's written notification of the change or such further time as Buyer may allow in writing. Changes shall not be binding upon Buyer except when specifically confirmed in a written Change Order from Buyer's authorized buying representative.
- c) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Order. Nothing contained in this "Changes" clause shall excuse the Seller from proceeding without delay in the performance of the Order as changed.
- d) Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in an executed Change Order.

8. SUSPENSION

Buyer shall have the right by written notice to suspend all or any part of the Work for up to ninety (90) calendar days. Seller shall immediately comply with the terms of the notice and shall take all reasonable measures to mitigate the costs allocable to the suspended portion of the work. At the end of the suspension period, Buyer shall either: 1) cancel the suspension and instruct the Seller to continue the Work, 2) terminate the entire Order or only the portion covered by the suspension as applicable, pursuant to the Termination of Convenience clause of this Order, or 3) extend the suspension. If Buyer cancels the suspension, Seller shall immediately commence performance, notwithstanding the fact that there is no agreement as to a revised schedule or the cost of completing the Order. In the event of a suspension, or continuation of suspension, Buyer shall make an equitable adjustment to the Seller to cover any increase in schedule or cost in accordance with the "Changes" clause herein, provided the claim for equitable adjustment is made by Seller within ten (10) calendar days after date of notice. Nothing in this clause shall excuse Seller from diligently continuing with performance of work not suspended.

9. TERMINATION FOR DEFAULT

- a) Buyer, by written notice, may terminate this Order, in whole or in part, for default without liability if Seller (i) fails to make delivery of the Work within the time specified in the Order; (ii) fails to comply with any of the other terms of this Order; (iii) Fails to make progress and endangers performance of this Order; (iv) fails to provide adequate assurance of future performance; (v) files or has filed against it a petition in bankruptcy; or (vi) becomes insolvent or suffers a material adverse change in financial condition.
- b) In the event of partial termination, Seller is not excused from performance of the non-terminated balance of Work under the Order.
- c) If this Order is terminated for default, Buyer may require Seller to transfer title to, and deliver to Buyer, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.
- d) Following a termination for default, Seller shall be reimbursed only for Work actually delivered and accepted.
- e) In the event this Order is terminated for default due to late delivery, Buyer may procure substitute Work elsewhere at Seller's sole expense.
- f) If after termination for default under this Order, it is determined that Seller was not in default, such termination shall be deemed a termination for convenience pursuant to the Termination for Convenience clause of these terms and conditions.
- g) Seller shall continue all Work not terminated or cancelled.

10. TERMINATION FOR CONVENIENCE

- a) Buyer may, by written notice, terminate this Order for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of Work under the Order.
- b) In the event of a termination for convenience, Seller shall immediately stop all Work, or portion of Work as detailed in the termination notice, and immediately ensure that their suppliers and subcontractors stop associated Work.
- c) Buyer may take immediate possession of all Goods, complete or incomplete, and all Goods resulting from Services upon written notice of termination to Seller. Payment for completed Goods delivered and accepted by Buyer shall be at the price set forth in the Order.
- d) In the event of termination for convenience by Buyer, Seller shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit for Work performed to date of termination. Any termination settlement proposal shall be submitted to Buyer promptly, but no later than thirty (30) calendar days from the effective date of the termination. In no event shall the amount of any settlement be in excess of the Order value. Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer all books and records related thereto upon Buyer's request.
- e) Buyer is not liable for lost or anticipated profits, unabsorbed or under-absorbed indirect costs or overhead, or any amount in excess of the total Order price.

11. FORCE MAJEURE

- a) An event of Force Majeure is defined as an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent.
- b) Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform provided that the event or circumstance is included, but not limited to the following: acts of God or of the public enemy; acts of the government in its sovereign or contractual capacity (including material actions deemed illegal after the creation of this Order); chemical, biological, or nuclear accidents; epidemics or pandemics; terrorism; quarantine restrictions; strikes; freight embargoes; and unusually severe weather (fires, floods, earthquakes, high wind damage, tornadoes/cyclones, and hurricanes/typhoons). Monetary and exchange rate fluctuations are not considered a Force Majeure event or circumstance.

- c) In the event that performance of this Order is hindered, delayed or adversely affected by a Force Majeure event, then the Party whose performance is so affected shall: i) notify the other Party's authorized representative in writing; ii) take commercially reasonable steps to resume performance as soon as possible and iii) not be considered in breach during the duration of and to the extent its performance is prevented by the Force Majeure event. If the Force Majeure event continues for a period of 14 calendar days or threatens Buyer's delivery commitments under its customer contract, Buyer, at its discretion, may terminate any remaining part of this Order for convenience or make such adjustments to the delivery schedule of the Order as are reasonably required by the existence of Force Majeure.
- d) An event of Force Majeure does not relieve a Party from liability for an obligation which arose before the occurrence of that event, not does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.
- e) The Seller shall notify the Buyer in writing of any Force Majeure claim within five (5) business days of first becoming aware of a Force Majeure event.

12. DISPUTES UNDER THIS ORDER

- a) If a dispute cannot be resolved by the parties through good faith negotiations within thirty (30) calendar days or any such longer period as agreed by the parties, either party may bring suit in a court of competent jurisdiction. The parties waive any objection against and agree to submit to the personal jurisdiction of such state and federal courts. THE PARTIES VOLUNTARILY AND IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL IN ANY CLAIM OR ACTION ARISING OUT OF OR RELATED TO THIS ORDER.
- b) Pending resolution or settlement of any dispute arising under this Order, Seller shall proceed diligently with the performance of this Order.
- c) Any portion of the Work that is not in dispute shall continue unhindered.

13. DISPUTES UNDER U.S. GOVERNMENT CONTRACTS

- a) Seller or its suppliers and/or subcontractors of any tier are prohibited from directly suing the federal government.
- b) Any dispute arising under this Order relating to any decision of the Contracting Officer under the prime contract shall be resolved in accordance with this clause.
- c) Notwithstanding any other provisions in this Order, any decision of the Contracting Officer under the prime contract that binds Buyer shall bind both Buyer and Seller to the extent that it relates to this Order, provided that:
 - i. The Buyer notifies with reasonable promptness the Seller of such decision, and
 - ii. The Buyer, at its sole discretion, authorizes in writing the Seller to appeal in the name of the Buyer such decision at its own expense, or
 - iii. If Buyer should appeal such decision, Buyer at its sole discretion offers to the Seller the opportunity at its own expense to join Buyer in such appeal.
- d) Any decision upon such appeal, when final, shall be binding upon the Seller and Seller shall have no recourse against Buyer for any damages that allegedly resulted from the decision of the Contracting Officer.
- e) The Seller shall keep Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer.
- f) The Seller shall indemnify and save harmless Buyer from any and all liability of any kind incurred by or imputed to Buyer under Fraudulent Claims of the Contract Disputes Act of 1978, as amended, if Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of Seller.
- g) Pending any prosecution, appeal, or final decision or settlement of any dispute arising under this Order, the Seller shall proceed diligently with the performance of this Order.
- h) Nothing in the Act nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

14. REMEDIES

Except as otherwise provided herein, the rights and remedies of both Parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either Party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

15. PAYMENTS AND TAXES

- a) Terms of payment are net 45 from the latest of the following: (i) receipt of proper invoice; (ii) scheduled completion or performance date of the Work; or (iii) actual completion of the Work. Payment shall be deemed to have been made as of the date of mailing payment, or in the case of Buyer electronically depositing payment into Seller's account, on the date of deposit.
- b) Payment may be reduced to the extent that Buyer finds Goods not properly payable or for overpayments.
- c) Buyer shall have the right to setoff against payments due or at issue for this or any other Orders between the parties.

d) Unless this Order specifies otherwise, the price of this Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges, customs duties or tariffs and exactions imposed on or measured by this Order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption. To the extent that Buyer is required to do so under applicable law or tax regulations, Buyer may deduct from any payments due to Seller pursuant to this Order such taxes as Buyer is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that Buyer provides Seller with relevant tax receipts or other suitable documentation evidencing the payment of such taxes promptly after such taxes are paid.

16. COMMUNICATION WITH BUYER'S CUSTOMER

Buyer shall have sole responsibility for all communication with Buyer's Customer. Seller shall not communicate with Buyer's Customer or higher tier customer in connection with this Order, except as expressly permitted by Buyer. This clause does not, however, prohibit Seller from communicating with the Government regarding (i) matters Seller is required by law or regulation to communicate to the Government; (ii) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information; (iii) matters relating to Seller's business systems as defined in DFARS 252.242-7005; or (iv) any matter for which the Order provides for direct communication by Seller to the Government.

17. FURNISHED PROPERTY

- a) Buyer may provide to Seller property owned by Buyer or its Customer ("Furnished Property"). Furnished Property shall only be used for the performance of this Contract.
- b) Title to Furnished Property shall remain with Buyer or its Customer. Seller shall clearly mark, maintain in inventory, and keep segregated or identifiable all Furnished Property
- c) Except for reasonable wear and tear, Seller shall be responsible for any loss or damage to Furnished Property.
- d) Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss or damage.
- e) All drawings, tools, jigs, dies, fixtures, materials, and other property supplied or paid for by Buyer shall be and remain the property of Buyer; and if Seller fails to return such property upon Buyer's demand, Buyer shall have the right, upon reasonable notice, to enter Seller's premises and remove any such property at any time without being liable for trespass or damages of any sort.
- f) With respect to U.S. Government Furnished Property or property under this Order to which the Government may take title: (i) FAR 52.245-1 shall apply and is incorporated by reference; and (ii) Seller shall provide to Buyer immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of Seller's property control system. Seller shall include this Furnished Property clause in all of its lower tier subcontracts and notify Buyer and obtain approval prior to passing Furnished Property to any lower tier subcontractor.

18. INTELLECTUAL PROPERTY

- a) Seller warrants that the Work delivered under this Order shall not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller shall indemnify, defend and hold harmless, Buyer, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and Buyer's Customers from and against any and all liability, claims, causes of action, damages and loss including, without limitation, cost of suit (litigation and settlement) and attorneys' fees, for the actual or alleged infringement or misappropriation of a third party's U.S. or foreign patent, copyright, trademark, or other intellectual property right arising out of this Order. Seller shall, at its own expense, either procure for Buyer the right to continue using the alleged infringing Work, replace it with non-infringing Work, or modify it so it becomes non-infringing. Seller's infringement indemnification obligation shall be excluded from any limitation of liability.
- b) Seller assigns and transfers to Buyer all inventions, discoveries, improvements, mask work and patents relating to the Work, conceived, developed or generated in performance of this Order. Upon request, Seller shall execute all papers and furnish all reasonable assistance to vest all right title and interest in any such inventions, discoveries, etc. to the Buyer.
- c) All data, copyrights, reports, and works of authorship developed in the performance of this Order shall be the sole property of Buyer.
- d) All information provided by Buyer to Seller is confidential and proprietary. Seller shall use Buyer-provided information only as necessary for Seller's performance under this Order.
- e) To the extent Seller produces Goods in accordance with Buyer proprietary drawings or specifications, Seller shall not use or sell any surplus of Goods produced to these drawings or specifications to a third party.
- f) Seller shall not publish, distribute, or use any information developed under or about the existence, nature, terms, or conditions of this Order, or use the Buyer's Company name (or the name of any division, affiliate or subsidiary thereof), logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a business reference, creating a website content or for Goods or Services endorsement without prior written approval of Buyer.
- g) Applicable U.S. Government Procurement Regulations incorporated into this Order shall, when applicable, take precedence over any conflicting provision of this clause to the extent that such regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with subcontractor rights in technical data, subject inventions, copyrights, software and similar

intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

19. INDEPENDENT CONTRACTOR

This Order does not create, and should not be interpreted or construed as creating, any agency, partnership, joint venture, franchise, or employment relationship between the Parties. Seller assumes full and sole responsibility for its employees, agents and/or representatives for all matters related to compensation, benefits, insurance and other applicable withholdings or taxes.

20. INSURANCE

a) In the event Seller, its employees, agents, suppliers or subcontractors enter Buyer's or its Customer's property for any reason in connection with this Order, Seller and its suppliers and subcontractors shall procure and maintain the following minimum insurance coverage and limits: (i) Statutory Workers' Compensation coverage as required by the laws of the state where the work is performed with such insurance providing a waiver of subrogation against Buyer, (ii) Employers' Liability with a limit of \$1,000,000; (iii) Commercial General Liability (including bodily injury and property damage, Goods / completed operations coverage and contractual liability coverage) with a limit of \$1,000,000 per occurrence; (iv) Automobile Liability coverage with a limit of \$1,000,000 per accident; (v) Professional Liability with a minimum limit of \$1,000,000 covering the Services provided by Seller under this Order and (vi) any other insurance as Buyer may require. If requested, Seller shall provide a Certificate of Insurance to evidence such coverage.

b) Seller shall name Buyer as an additional insured on all liability policies.

c) Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any

c) cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to maintain the required insurance. Seller's employees and subcontractors shall comply with Buyer's security, safety and related requirements while on Buyer's or its Customer's property. Buyer may, at its sole discretion, have Seller remove any specified employee or subcontractor.

21. INDEMNIFICATION

Seller shall, without limitation, indemnify, hold harmless, and at Buyer's request defend Buyer, its officers, directors, Customers, employees, agents and parent companies, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this Order, including, without limitation: (i) the breach of any warranty contained herein; (ii) any claim based on the death, illness or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up 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 infringe a patent, copyright, trademark, trade secret or any other proprietary right of a third party. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorney's fees.

22. ELECTRONIC TRANSMISSIONS

The Parties agree that if this Order or any amendment is transmitted electronically, neither Party shall contest its validity, or any acknowledgment thereof, on the basis that this Order, amendment, or acknowledgment contains an electronic signature or that it constitutes a writing.

23. ASSIGNMENT

a) Seller may not assign any rights, delegate any of its obligations due or to become due under this Order, or subcontract all or substantially all of its obligations under this Order, without the prior written consent of Buyer. Any purported assignment, delegation, or subcontracting by Seller without such consent shall be void. Buyer may assign this Order to (i) any affiliated company, (ii) any successor in interest, or (iii) Buyer's Customer. All claims by Seller for payment due or to become due from Buyer shall be subject to setoff whether such setoff arose before or after an assignment by the Seller.

b) Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name or ownership changes, mergers or acquisitions.

c) Seller shall not change the location of manufacture of the Goods to be provided to Buyer under this Order without Buyer's prior written consent.

24. APPLICABLE LAWS & COMPLIANCE

a) This Order shall be governed by the laws of the state of Order issuance, without regard to its conflicts of law provisions except that the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, and its amendments, shall not apply.

b) *General.* Seller, in the performance of this Order, agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges, and shall comply with all

guidelines and directives of any local, state, and/or federal governmental authority. If Buyer determines that Seller has violated any of the obligations, including but not limited to any obligations set forth in this clause, Buyer may, in its discretion, either terminate the Order and/or require Seller to implement a corrective action plan as a condition of continued or future business. The violation of any applicable law, rule, or regulation shall be deemed a material breach of the Order.

c) *Employment.* Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal laws, executive orders, rules and regulations including but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of race, color, religion, sex/gender, gender identity, gender expression, sexual orientation, marital status, medical condition, military or veteran status, national origin, ancestry, disability, genetic information, or age; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; Worker's compensation; veteran's rights; and other employment, labor or benefits related laws. Seller certifies by acceptance of this agreement that it complies with the equal opportunity, affirmative action, and employee notice requirements specified in the Equal Opportunity Clauses at CFR 60-1.4, 41 CFR 60-250.5(a), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a) and the Employee Notice Clause at 29 CFR 471 Appendix A to Subpart A, where applicable.

d) *OSHA.* Seller shall be responsible for compliance with all laws, regulations and rules related to the safety and conditions of each job site, including but not limited to the Occupational Safety and Health Act of 1970, and any amendment thereto.

e) *FCPA.* Seller shall abide by the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.

f) *No Child Labor.* Seller shall comply with all local, state, and federal laws relating to the prohibition on child labor and indentured, prison, or compulsory labor. Seller shall comply with all applicable laws and industry standard relating to working hours, working conditions, and any collective bargaining agreements.

g) *No Human Trafficking.* Seller shall comply with all applicable local, state, and national laws in the countries where Seller does business relating to the prohibition of slavery and human trafficking.

h) *Gratuities/Kickbacks.* Seller certifies that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and shall not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

i) *Hazardous Materials.* Seller warrants that in the performance of this Order, it shall comply with all applicable U.S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations; and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this warranty. The foregoing is in addition to and not in mitigation of any other requirements of this Order.

j) *Seller's Business Systems.* "Business Systems" as used in this clause means material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system. When Seller's Business Systems are reviewed and audited by the Government, Seller shall provide prompt notice to Buyer whenever there is a material change in the status of the Government's audit findings or determination of adequacy of any of Seller's Business Systems. If the Government observes a deficiency in Seller's Business Systems that may result in Seller's Business Systems and/or Buyer's Business Systems being deemed not adequate and if any of the deficient Business Systems produce data integral to the output of Buyer acting in its role as a contractor to the Government or to another prime contractor, then Seller shall be liable for and hold harmless Buyer from any loss, damage, or expense related to Seller's Business Systems under this clause that Buyer may suffer.

25. TOXIC ENFORCEMENT ACT OF 1986

Seller represents that each and every chemical substance constituting or contained in the Goods sold or otherwise transferred to Buyer under this Order is on the list of chemical substances compiled and published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act of 1986 as amended.

26. EXPORT CONTROL

a) Seller agrees to comply with all applicable U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR") 22 C.F.R. §§120 et seq), the Export Administration Regulations, 15 C.F.R. §§730-774), and the Foreign Assets Control Regulations, 31 C.F.R. §§500-598. Seller agrees that it shall not transfer any export item, technical data, or Services to foreign persons without the appropriate export license or applicable exemption.

b) If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls in accordance with 22 C.F.R. §122.

- c) Seller shall immediately notify Buyer if Seller becomes listed in any Denied Parties List or if Seller's export privileges are otherwise denied or suspended by any U.S. Government agency. Denial of export privileges of Seller shall result in an immediate termination for default of this Order.
- d) Should Seller's Goods or Services originate from a location outside the United States, those Goods may also be subject to the export control laws and regulations of the country in which the articles or Services originate. Seller agrees to abide by all applicable export control laws and regulations of that originating country.
- e) If applicable, Buyer shall be responsible for complying with any laws or regulations governing the Buyer's importation of the Goods into the United States of America.
- f) Buyer may be required to obtain information concerning citizenship or export status of Seller's personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct.
- g) Seller shall be responsible for any costs, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, Sellers, or subcontractors in the performance of any obligations under this clause.

27. STANDARDS OF BUSINESS ETHICS AND CONDUCT

By the acceptance of this Order, Seller represents that it has not participated in any conduct in connection with this Order that violates the business ethics and conduct standards of Buyer or, alternatively, equivalent business ethics and conduct standards of Seller. If, at any time, Buyer determines that Seller is in violation of the applicable standards, Buyer may terminate this Order for default upon written notice to Seller and Buyer shall have no further obligation to Seller.

28. QUALITY MANAGEMENT SYSTEM

Seller shall establish and maintain a quality management, inspection and counterfeit parts program acceptable to Buyer and consistent with current industry standards (e.g., ISO9001, AS9100, etc.). Seller shall permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods or Services provided to Buyer during the period of any such violation or deviation. If Seller learns of any violations of its obligations under this clause, Seller shall promptly notify Buyer and within a mutually agreed upon time period, must rectify the non-compliance issues. If the violation is not corrected and certification has not taken place within this time frame, then Buyer, at its sole discretion, may terminate the Order. Seller shall promptly, but in no event, later than three (3) business days, notify Buyer of any changes that affect the quality control of the Work under this Order.

29. COUNTERFEIT PARTS

For the purposes of this clause:

"Counterfeit Parts" means (1) an unauthorized copy, imitation, substitute, or modified part, which is knowingly misrepresented as a specified genuine part of the original manufacturer, or (2) a previously used Electrical, Electronic, and Electromechanical Part which has been modified and is knowingly misrepresented as new.

"Electrical, Electronic or Electromechanical (EEE) Part" means a component designed and built to perform specific functions using electricity and is not subject to disassembly without destruction or impairment of its design use.

(a) Seller shall not furnish Counterfeit Parts or suspect Counterfeit Parts to Buyer under an Order. Seller shall provide to Buyer or use in Goods delivered to Buyer only new and authentic Parts, traceable to the Original Manufacturer. For all purchases, Seller shall ensure the part remains unchanged from the part sold by or acquired from the Original Manufacturer and the certifications show the chain of custody from the Original Manufacturer. Upon request, Seller shall provide authenticity and traceability records to Buyer. Seller shall immediately notify Buyer in writing if Seller cannot provide a part traceable to the Original Manufacturer. Upon receipt of such notification, Buyer reserves the right to terminate the Order at no cost to Buyer and/or require Seller, at Seller's cost, to assist Buyer with material validation testing and inspection at an independent test facility of Buyer's choice.

(b) If Seller becomes aware or suspects that it has furnished a Counterfeit Part to Buyer under the Order, Seller shall promptly, but in no event later than three (3) business days, notify Buyer after discovery. Seller shall not invoice any Counterfeit Part or suspected Counterfeit Part. Any Counterfeit Part or suspected Counterfeit Part that has already been invoiced shall be deducted from the value of the Order. Buyer may, at Buyer's sole option, elect not to return the Counterfeit Part or suspected Counterfeit Part to Seller. If Buyer chooses to return the Item or Part to Seller for Seller to remove the Counterfeit Part or suspected Counterfeit Part, Buyer requires Seller provide a certification of destruction through an independent third party chosen by Buyer to prove Seller's destruction of the Counterfeit Part or suspected Counterfeit Part. Seller shall replace, at Seller's own expense, such Counterfeit Part with a part from an Original Manufacturer or a Buyer-approved part that conforms to the requirements of the Order. Seller shall be liable for all

costs related to (i) the investigation and traceability of any Counterfeit Part or suspected Counterfeit Part, (ii) the replacement of any Counterfeit Part, and (iii) any testing or validation necessitated by the installation of authentic parts or components after a Counterfeit Part has been replaced. Buyer's remedies shall not be limited by the Warranty clause in the Order and are in addition to any remedies Buyer may have at law, equity, or otherwise under the Order.

(d) Seller shall maintain counterfeit parts risk mitigation program in accordance with industry recognized standards and with any other specific requirements identified in the Order.

(e) Seller shall include this Counterfeit Parts clause in all of its lower tier subcontracts.

30. RECORD RETENTION

a) Unless a longer period is specified in this Order or by law or regulation, Seller shall retain all records related to this Order for a period of no less than three (3) years from final payment. If this Order falls under a Government prime contract, the period defined by FAR subpart 4.7 shall apply. Records related to this Order include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, quality processes and procedures, shipping and export, certifications, and receipt records.

b) Buyer and its Customers shall have access to such records, and any other records Seller is required to maintain under this Order, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit rights shall be available to Buyer on all performance related reports and other records, except records pertaining to proprietary indirect cost data.

31. EXECUTION AUTHORITY AND REPRESENTATIONS

Each Party mutually warrants to the other that it has the full power and authority to enter into this Order and to perform its obligations hereunder, and that the entering into of this Order and the performance of its obligations does not violate, and shall not be in conflict with, any provision of its articles of incorporation, bylaws, or other governing documents, or any agreement with a third party.

32. LANGUAGE

The Parties mutually agree that this Order and all correspondence herein shall be written and communicated verbally in the English language and each Party warrants that they or their designated agents are fluent in the English language and fully understand the contents of these US SMaP Terms and Conditions of Purchase.

33. INTERNATIONAL OFFSET

a. Seller grants to Buyer exclusive rights to all offset and industrial participation credits and benefits generated by Seller, its suppliers, and subcontractors arising out of the Order. Buyer may use all or any part of the value of the Order, including the value of any subcontracts placed by Seller for the Order to satisfy international offset or industrial participation obligations of Buyer, Buyer's Affiliates, or any entity to which Buyer transfers such value.

b. Upon Buyer's request, Seller shall (i) report all subcontract sources outside the United States utilized in the fulfillment of the Order, including the name and location of each such source, amounts paid and committed thereto, and identification of the Goods or Services procured; (ii) provide copies of all purchase orders; and (iii) execute all necessary documents to evidence Buyer's right to use, claim, or assign any offset credits or industrial participation. Seller shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to the Order.

34. HEADINGS

The headings used in these US SMaP Terms and Conditions of Purchase are for convenience only and not relevant to the interpretation of the provisions contained therein.

35. ORDER OF PRECEDENCE

a) In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following descending Order of preference: (1) Face of the Order and any continuation sheets; (2) these US SMaP Terms and Conditions of Purchase; (3) the Statement of Work; and 4) Specifications.

b) In all cases, Buyer's specifications shall prevail. In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final.

36. SEVERABILITY

If any provision of this Order or application thereof is found invalid, illegal or unenforceable by law, the remainder of this Order shall remain valid, enforceable and in full force and effect, and the Parties shall negotiate in good faith to substitute a provision of like economic intent and effect.

37. SURVIVABILITY

Seller's obligations that, by their very nature, must survive expiration, termination or completion of this Order, include but are not limited to obligations under the Termination for Convenience, Termination for Default, Intellectual Property, Warranty, Applicable Laws, Insurance, Indemnification, Export Controls, and Electronic Transmissions provisions of this Order, shall survive expiration, termination or completion of this Order.

38. WAIVER

Failure of either party to enforce any of the provisions of this Order or applicable law shall not constitute a waiver of the requirements of such provisions or laws.

39. CHANGE OF CONTROL

For the purposes of this clause, "Change of Control" means (i) the sale, conveyance, transfer, distribution, lease, assignment, license, or other disposition of all or substantially all of the assets of Seller, (ii) any consolidation or merger of Seller or its controlling affiliates, any dissolution of Seller or its controlling affiliates, or any reorganization of one or more of Seller or its controlling affiliates, or (iii) any sale, transfer, issuance, or disposition of any equity securities or securities or instruments convertible or exchangeable for equity securities (collectively, "securities") of Seller or its controlling affiliates in which the holders of all of the securities that may be entitled to vote for the election of any member of a board of directors or similar governing body of Seller or such controlling affiliate immediately prior to such transaction(s) hold less than fifty percent (50%) of the securities that may be entitled to vote for the election of any such member in such entity immediately following such transaction(s). Seller shall provide Buyer written notice within fifteen (15) days following any Change of Control. Buyer shall have sixty (60) calendar days from the date that Buyer receives written notice to notify Seller of its decision to terminate the Order for Buyer's convenience. The effective date of the termination shall be no sooner than thirty (30) calendar days after the effective date of the written notice of termination.

U.S. GOVERNMENT ORDERS ONLY

If Buyer has noted the scope of supply is in support of a U.S. Government contract on the face of this Order, the Ultra FAR/DFARS Flow Downs document is hereby incorporated by reference.