 

**GENERAL PURCHASE ORDER TERMS AND CONDITIONS**

# Definitions

The following definitions apply to this Order and to any supplemental terms and conditions attached to this Order unless otherwise specifically stated:

* 1. Buyer: The legal entity issuing this Order.
  2. Buyer’s Purchasing Representative: Buyer’s designated purchasing representative responsible for issuing this Order and any amendments or changes thereto.
  3. Seller: The legal entity that contracts with Buyer under this Order.
  4. This Order: The contractual instrument of which these terms and conditions are a part.
  5. Government: The United States of America, acting in its contractual capacity.
  6. Prime Contract: The contract under which this Order is issued.
  7. FAR: The Federal Acquisition Regulation (Title 48 Code of Federal Regulations Chapter 1).
  8. DFARS: The Department of Defense Federal Acquisition Regulation Supplement.
  9. Contracting Officer: The Government official(s) authorized to commit the Government contractually under a Government Prime Contract, or the authorized representatives of these officials acting within the scope of their authority.
  10. Days: Calendar days (unless specified otherwise).

# Acceptance of This Order

Agreement by Seller to furnish the materials or services hereby ordered by written acknowledgement of the Order, or its commencement of such performance, shall constitute acceptance by Seller of this Order subject to these terms and conditions. In the event that this Order does not state price or delivery terms, Buyer will not be bound to any prices or delivery terms to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions contained in this Order shall be void and of no effect unless specifically agreed to in writing by Buyer, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.

# Independent Contractor

Seller is an independent contractor and the employees, agents, or representatives of Seller are not employees, agents, or representatives of Buyer for any purpose including, but not limited to, federal, state, and local tax obligations, unemployment and worker’s compensation obligations, social security, and any and all other benefits. The price for all goods or services provided by Seller is all inclusive and encompasses any and all federal, state, local or foreign taxes and duties that may be applicable, and all installation, testing, debugging, warranty charges, any and all license or use fees, and any other cost of every kind and description associated with Seller’s work.

# Invoices and Payment

Seller’s invoices or vouchers shall be in the form and contain all certifications required by Buyer and shall include the invoice date, as well as a complete breakout of the prices by line item for the goods or services encompassed by the invoice or voucher. Buyer shall pay Seller after receipt of Seller’s proper invoices or vouchers for supplies and services delivered and accepted, less any deductions provided for in this Order. Unless otherwise mutually agreed in writing and stated on the face of the Order, payment terms are net 60 days from receipt of invoice.

# Shipping, Packing and Marking

* 1. Except as otherwise provided on the face of this Order, transportation charges on goods sold

F.O.B. shipping point must be prepaid and invoiced to Seller. Transportation charges on goods sold f.o.b. destination must be prepaid in all cases. No insurance or premium transportation costs will be allowed unless authorized in writing by Buyer’s Purchasing Representative. Risk of loss from any casualty to goods ordered hereunder, regardless of cause, shall be Seller’s responsibility until the goods have been delivered in compliance with terms of transportation required by this Order. If Seller does not comply with the stated delivery schedule, Buyer may, in addition to any other rights which it may have, require delivery by the most expeditious way, and any charges resulting from the premium transportation must be fully prepaid and absorbed by Seller. Title to all goods passes at Buyer’s dock unless otherwise specified in this Order.

* 1. Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of this Order and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection against damage from weather and shipment, including any applicable federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge is payable by Buyer for containers, crating, boxing, handling, storage or any other services unless specifically stated in this Order or otherwise agreed to by Buyer in writing. Seller shall mark each container with the number of this Order and shall enclose a packing slip with this Order number in an envelope attached to each container. Damage resulting from improper packing or shipping will be charged to Seller.
  2. Acceleration of delivery is not authorized unless specified in writing by the Buyer’s Purchasing Representative. If goods are received ahead of schedule, Buyer reserves the right to keep the goods and make payment as if the delivery was made per the delivery schedule.

# Time of the Essence

1. Time is and shall remain a material element of this Order, and no acts of Buyer, including without limitation modifications of this Order or acceptance of late deliveries, shall constitute a waiver of this provision. Buyer also reserves the right to refuse or return at Seller’s risk and expense shipments made in excess of Buyer’s orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Order and such notice shall include a revised schedule and shall not constitute a waiver to Buyer’s rights and remedies.
2. Buyer reserves the right to cancel this Order without liability and without waiver of any other remedies if delivery is not affected as specified herein or on written shipping authorizations that may be furnished by the Buyer.

# Inspection

Buyer and Buyer’s customer, through any authorized representatives, each has the right at all reasonable times and places to inspect and test the goods and services being supplied under this Order, including by Seller’s suppliers. Buyer assumes no contractual obligation to perform any inspection or test unless otherwise specifically set forth in this Order. Buyer’s failure to inspect or test any goods or services shall not relieve Seller from responsibility for any defective or nonconforming goods or services. If any inspection or evaluation is made by Buyer or its customer on the premises of Seller or any of Seller’s suppliers, Seller or its suppliers shall provide at no additional charge all reasonable facilities and assistance for the safety and convenience of the personnel conducting the inspection or test.

# Acceptance of Goods and Services

1. All goods and services provided by Seller under this Order shall be in accordance with the requirements of this Order, including all exhibits and attachments, and shall be subject to rejection if such goods or services are nonconforming. No inspection or evaluation performed by Buyer or Buyer’s customer shall in any way relieve Seller or its suppliers of their obligation to furnish all required goods and services in strict accordance with the requirements of this Order. If any of the goods or services provided hereunder do not conform with the requirements of this Order, Buyer may require Seller to replace the goods or perform the work or services again in conformity with the applicable requirements at no cost to Buyer.
2. Any rejected items may be returned for credit or replacement at Seller’s risk, and all handling and transportation expenses, both ways, shall be assumed by Seller. No items returned as defective shall be replaced without written authorization from Buyer.
3. It is expressly agreed that payment by Buyer to Seller for goods and services provided under this Order shall not constitute acceptance. It is further agreed that nothing in this Order shall require Buyer to accept any goods or services prior to acceptance thereof by Buyer’s customer.
4. Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

# Warranty

* 1. Seller warrants to Buyer, its successors and assigns, that all goods provided hereunder shall be

(i) merchantable, (ii) free from defects in material and workmanship, (iii) with regard to goods designed by Seller, free from defects in design, (iv) suitable for the purposes intended whether expressed or reasonably implied, and (v) in compliance with all applicable specifications, drawings, and performance requirements; and that all services provided hereunder shall be (i) free from defects in workmanship, (ii) suitable for the purposes intended whether expressed or reasonably implied, and (iii) in compliance with all applicable specifications, drawings, and performance requirements.

* 1. If any nonconformity with this warranty appears within one (1) year after final acceptance of the goods or services, Seller shall promptly correct such nonconformity at no cost to Buyer. This remedy is not exclusive and shall be in addition to any other remedies available to Buyer at law or in equity.

# Proprietary Information

1. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non- proprietary basis and may be used and/or disclosed by Buyer without restriction. Any restrictive, proprietary, or confidential markings affixed upon any such information furnished to Buyer shall be of no force or effect, may be modified, removed or ignored by Buyer without any liability to Seller and the information may be used by Buyer in any way in the conduct of its business. Seller’s sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents shall be determined only by valid pre-existing patent rights of Seller as related to the manufacture, use, or sale of goods or services covered by this purchase order. Seller agrees to promptly notify Buyer of any pre-existing patents or any other form of protection which Seller may hold or know of which relates to the goods or services to be provided under this Order.
2. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained by Seller and paid for by Buyer in the performance of this Order shall be maintained as proprietary to Buyer by Seller, shall be used only for purposes of providing goods or services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer’s express written consent. All such items supplied by Buyer shall be promptly returned to it on request or upon completion of this Order.

# Buyer’s Property

* 1. All information as well as all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer shall be and remain the property of Buyer, and Buyer shall have the right to enter Seller’s premises and remove any such property and Seller’s records with respect thereto at any time without being liable for trespass or for damages of any sort.
  2. All such items shall be used only in the performance of work under this Order unless Buyer consents otherwise in writing.
  3. Material made in accordance with Buyer’s specifications and drawings shall not be furnished or quoted by Seller to any other person or concern with Buyer’s prior written consent.
  4. Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be responsible for all loss or damage to the property except for normal wear and tear.

# Release of Information

Seller shall not publish any information developed under this Order nor distribute it nor make any news release about the existence or subject matter of this Order without Buyer’s prior written consent.

# Intellectual Property

1. Seller warrants that the sale, use or incorporation into manufactured products of all machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder (collectively “goods”) which are not of Buyer’s design, composition or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark or other proprietary rights. Seller shall indemnify and save Buyer and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys’ fees) arising out of claims, suits or actions alleging such infringement, including proceedings under 28 U.S.C. § 1498, which claims, suits or actions Seller agrees to defend with counsel acceptable to Buyer. The Buyer agrees to give the Seller notice of any such suit or action promptly after notice is received by the Buyer and the Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, that the Buyer may, at its own election and expense, at any time supersede the Seller in any such defense in which event the Seller shall thereby be released from its obligation under this Article with respect to the particular suit or action involved.
2. Seller further agrees to indemnify, hold harmless and defend, at Seller’s own expense, Buyer against all liens, security interests, and/or encumbrances whatsoever asserted against such goods, including claims to said merchandise, asserted by others. To the extent that the goods delivered hereunder are manufactured pursuant to the designs originated by Buyer, the Seller hereby assigns to Buyer, without reservation, all patent rights, copyrights and trademark rights relating to the goods and all related documents, models, computer drawings and other electronic expression, photographs, related documents, models, computer drawings and other electronic expression, photographs, drawings, specifications or other materials (“Protected Materials”). Buyer, in turn, grants to Seller a non-exclusive license to reproduce the Protected Materials for purposes related directly to the Seller’s performance of its obligations to Buyer and for Seller’s archival records. No other Protected Materials may be reproduced for any other purpose without the express written permission of Buyer. This non-exclusive license shall terminate immediately upon termination of the order and shall be strictly limited to use with this order.
3. Seller may replace or modify infringing goods with comparable goods acceptable to Buyer of substantially the same form, fit and function so as to remove the source of infringement, and shall extend this provision to such comparable goods. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and Buyer’s customers the right to use and sell the items.
4. Any invention or intellectual property first made or conceived by Seller in the performance of this Order or which is derived from or based on the use of information supplied by Buyer shall be the property of Buyer, and Seller hereby conveys, transfers and assigns to Buyer all rights, title and interest in and to any such invention or intellectual property. This Order shall operate as an irrevocable assignment from Seller to Buyer of all rights to such inventions or intellectual property including all rights, title and interest throughout the world.

# Changes

1. Buyer shall have the right at any time to (i) suspend all or any portion of Seller’s work or (ii) to make changes within the general scope of this Order that affect any one or more of the following:
   1. drawings, designs, specifications, or quantities of materials or services to be provided hereunder;
   2. the statement of work or description of services;
   3. method of shipment or packing;
   4. the time or place of performance, inspection, delivery, or acceptance of materials or of services; and
   5. The amount of Buyer-furnished or customer-furnished property or facilities.
2. If any such suspension or change causes a change in the cost of, or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both and this Order shall be modified in writing accordingly. Any claim by Seller for such an adjustment must be made in writing within twenty-one days from the date of receipt of a written order from Buyer’s Purchasing Representative directing such a suspension or change.
3. Nothing in this clause, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with this Order as changed. Any disagreement between the parties arising out of this clause shall be resolved in accordance with the article of this Order entitled “Disputes Under This Order.”
4. If this Order is placed under a Government Prime Contract, the pricing of any equitable adjustment hereunder, or of any other adjustment under this Order, shall be in accordance with the cost principles enunciated in Part 31 of the Federal Acquisition Regulation in effect on the date of this Order.
5. No constructive changes: 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 a writing which is signed by Buyer’s Purchasing Representative and which states that it constitutes an amendment or change in this Order.

# Access to Records

Buyer shall have access to all records of Seller’s performance hereunder.

# Termination for Convenience

1. Buyer, by written notice, may terminate this Order at any time, in whole or in part, for Buyer’s convenience and such termination shall not constitute a default. In such event, unless Seller shall have defaulted or been in default in performance, Buyer and Seller shall have all rights and obligations accruing both at law and in equity, including Buyer’s rights to title and possession of goods paid for. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.
2. If this Order is terminated as a result of the termination for convenience of Buyer’s Government Prime Contract, then the rights, duties, and obligations of the parties shall be determined in accordance with the applicable termination for convenience clause incorporated into this Order by the Supplemental Terms and Conditions.
3. Seller’s obligations under the warranty, intellectual property, and proprietary information provisions of this Order shall survive any termination for convenience.

# Termination for Default

1. Buyer may, by written notice of default to Seller, terminate this Order in whole or in part if Seller fails (i) to deliver the goods or perform the services within the time specified in this Order or any extension thereof, (ii) to perform any of the other provisions or meet any of the requirements of this Order, or (iii) to make progress so as to endanger performance of this Order in accordance with its terms and, in either of the second or third circumstances, does not cure such failure within ten days after receipt of notice from Buyer specifying such failure.
2. If Buyer terminates this Order in whole or in part it may acquire, upon such terms as it deems appropriate, goods or services similar to those terminated. Seller shall be liable to Buyer for any excess cost for such similar goods or services, provided, however, that Seller shall continue performance of this Order to the extent not terminated under the provisions of this Article and, provided, further, that Buyer shall pay the price set forth in this Order for completed goods or services delivered and accepted.
3. The rights and remedies of Buyer in this Article are in addition to any other rights and remedies provided by law, including Article 2 of the Uniform Commercial Code, or in equity, or under this Order.

# Set-Off

Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer, or to any of Buyer’s affiliated companies, against any amount payable at any time by Buyer, or by any of its affiliated companies, to Seller.

# Disputes Under This Order

The parties shall attempt amicably to resolve all disputes arising from or related to this Order. If the parties are unable to resolve amicably such a dispute within a reasonable time, the dispute shall be adjudicated in a court of competent jurisdiction in the State of Pennsylvania, applying the law of the State of Pennsylvania, as well as, when applicable, the law of federal contracts as enunciated in decisions of administrative boards of contract appeals and the federal courts. Pending resolution or settlement of any dispute arising under this Order, Seller will proceed diligently as directed by Buyer with the performance of this Order.

# Disputes Under A Government Prime Contract

1. If the Contracting Officer of Buyer’s Government Prime Contract by a final decision interprets any provision or requirement of Buyer’s Prime Contract (including exhibits, appendices, and attachments thereto and documents referred to therein), and the same or substantially similar provision or requirement is contained in this Order (including exhibits, appendices, and attachments thereto and documents referred to therein), such interpretation shall be binding between Buyer and Seller, provided that Buyer affords Seller the opportunity to appeal such decision in Buyer’s name, and provided further that Seller provides to Buyer any and all information requested by Buyer to justify Buyer’s verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. If Seller so appeals, Seller shall, upon Buyer’s written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. As used in this provision, the term “appeal” shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts.
2. If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer’s customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer’s name and at Seller’s cost against Buyer’s customer.
3. Any reference to the “Disputes” clause in any applicable FAR or DFARS clause incorporated into this Order shall mean this Article 20 “Disputes Under A Government Prime Contract.”

# Indemnification

1. In addition to any other indemnification provision of this Order, Seller shall indemnify and hold harmless Buyer, its officers, directors, and employees, from any and all claims, liabilities, losses, damages, costs, and expenses, including attorney’s fees
   1. for actual or alleged (a) injury to any person, (b) damage to any property, or (c) violation of any law, ordinance, or regulation, arising from or related to Seller’s (or Seller’s subcontractors’) performance of work in connection with this Order; or
   2. "arising from the Buyer's use of any of the Seller's technology applied in connection with this Order including, but not limited to, making, using, selling, or exporting products, processes or services derived from such technology" or
   3. arising from any assertion by the Government that any cost, price, profit, or fee included in this Order or in Buyer’s Prime Contract should be, will be, or has been reduced as a result of, or arising out of facts attributable to, cost or pricing data furnished or required to be furnished by Seller or one of its subcontractors or prospective subcontractors that were not complete, accurate, or current as required by the Truth in Negotiations Act or any implementing or comparable regulation, including FAR Part 15; or
   4. for actual or alleged infringement, misuse, or misappropriation of any third party intellectual property by Seller; or
   5. any civil or criminal penalty or fine incurred by Buyer which is caused to any degree or any extent by Seller, its employees, agents, representatives, suppliers, or subcontractors.

# Design Changes

During performance of this Order, Seller shall not make any changes in the design of articles to be furnished by Seller under this Order without advance written notification to and written approval of Buyer. This requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

# Export Control

Seller agrees to comply fully with all applicable U.S. laws and regulations pertaining to the export of any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer in the performance of this Order, whether in the United States or abroad.

Seller further agrees that it will not export or re-export, directly or indirectly, any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer to any foreign person, including persons employed by or associated with, or under contract with the Seller or Seller’s lower-tier suppliers without the prior written consent of the Buyer and without first obtaining any required export license or other approval. In addition, should Seller participate in the performance of this Order at Buyer’s facilities, Seller shall inform Buyer in advance in writing of the country of citizenship (or countries, in the case of dual citizenship) of each foreign person employee, agent, or representative of Seller or of Seller’s suppliers prior to such person being allowed access to Buyer’s facilities. Seller's and Seller's suppliers' foreign person employees, agents, or representatives shall not participate in the performance of this Order at Buyer's facilities without Buyer's written consent.

Seller shall comply with the registration requirements of the International Traffic in Arms Regulations at 22 CFR §122.1, as applicable. Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorney’s fees and other expenses arising from Seller’s failure to comply with this clause.

# Compliance with Laws

Seller shall comply with the applicable provisions of all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder, and such compliance shall be a material requirement of this Order.

# Duty to Proceed

Except as expressly authorized in writing by Buyer, no failure of Buyer and Seller to reach any agreement provided for by the terms of this Order or with respect to any dispute relating to this Order shall excuse Seller from proceeding diligently with the performance of the work required by this Order.

# Certificates

Seller shall furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to Seller’s compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Article, the word “certificate” shall include any plan or course of action or recordkeeping function.

# Incorporation of Prime Contract Clauses

If this Order is placed under a Government Prime Contract, then the clauses set forth by citation in the Supplemental Terms and Conditions, attached as Schedule A, are incorporated by reference into this Order with the same force and effect as though set out in full text herein.

# Order of Precedence

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 and binding on the parties.

# Construction

The construction of this Order shall be governed by the law specified in the article entitled “Disputes Under This Order.” The title designations of the numbered articles and provisions to this Order are for convenience only and shall not affect the interpretation or construction of this Order.

# Assignment

Seller shall not sell, assign, or in any manner transfer this Order or its rights, duties, and obligations under this Order without first obtaining the written consent of Buyer. Any attempted assignment without such consent shall be void. The foregoing shall not apply to assignment to any successor corporation in the event Seller shall change its name or merge with another corporation or in the event of a sale or divestiture by Seller of a subsidiary, division, or operating unit that is performing Seller’s work under this Order. Notwithstanding the foregoing, in the event of the sale or divestiture of a subsidiary, division, or operating unit, Seller shall remain liable, jointly and severally, to Buyer for all obligations arising from this Agreement.

# Notices

All notices required or permitted to be sent by either party shall be deemed sufficiently given when delivered by hand delivery or sent by email (which is confirmed), recognized overnight courier service or certified mail, return receipt requested, to the parties at the addresses shown on the first page of this Order for each party and to the attention of the individual who executes this Order on behalf of the party to whom the notice is sent. All notices shall be deemed given (i) on the date of delivery if delivered by hand or sent by email, (ii) on the next business day if sent by recognized overnight courier service and (iii) on the third business day following the date sent by certified mail, return receipt requested. Either party may designate, in writing, a different manner of address for notices under this Order.

# Waiver, Remedies, and Severability

* 1. The failure or delay of Buyer to insist on performance of any provision of this Order, or to exercise any right or remedy available under this Order, shall not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this Order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.
  2. The rights and remedies of both parties under this Order shall be in addition to their rights and remedies at law or in equity; provided, however, that in no event shall Seller be entitled to anticipatory profits or to special (including multiple or punitive), indirect, incidental, or consequential damages.

# Entire Agreement

This Order, including attachments and documents incorporated by reference, constitutes the entire agreement between Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order. No amendment or modification of this Order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller.

**General Terms and Conditions of Purchase**

**Supplement 1 – Federal Acquisition Regulation (FAR) Government Contract Provisions**

1. When the materials or products furnished are for use in connection with a U.S. Government prime contract or subcontract, in addition to the JWF DEFENSE General Purchase Order Terms and Conditions, the following provisions shall apply. The effective version of each Federal Acquisition Regulation (hereinafter “FAR”) provision shall be the same version as that which appears in Buyer’s prime contract or higher tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these FAR provisions and the General Terms and Conditions of Purchase, the FAR provisions shall control.
2. The following clauses set forth in the FAR in effect as of the date of JWF DEFENSE’S prime contract or higher tier subcontract are incorporated herein by reference. In all clauses listed herein, the terms “Government.” “Contracting Officer” and “Contractor” shall be deemed revised to suitably identify the contracting parties herein and effect the proper intent of the provision except where further clarified or modified below. “Subcontractor,” however, shall mean “Seller’s Subcontractor” under the Purchase Order.
   1. ***Applicable to all Purchase Orders:***
      1. Gratuities 52.203-3
      2. Covenant Against Contingent Fees 52.203-5
      3. Price or Fee Adjustment for Illegal or Improper Activity 52.203-10
      4. Security Requirements 52.204-2
      5. Material Requirements 52.211-5
      6. Defense Priority and Allocation Requirements 52.211-15
      7. Utilization of Small Business Concerns 52.219-8
      8. Notice to Government of Labor Disputes 52.222-1
      9. Service Contract Act 52.222-41
      10. Hazardous Material Identification and Material Safety Data 52.223-3
      11. “Government” means “Government and Buyer” Notice of Radioactive Materials 52.223-7
      12. Ozone-depleting Substances 52.223-11
      13. Privacy Act 52.224-1
      14. Buy-America Act-Supplies 52.225-1
      15. Duty-free Entry 52.225-8
      16. Restrictions on Certain Foreign Purchases 52.225-13
      17. Authorization and Consent – Alternate 1 52.227-1
      18. Refund of Royalties 52.227-9
      19. Filing of Patent Applications – Classified Subject Matter 52.227-10
      20. Patent Rights-Retention by the Contractor (Short Form) 52.227-11
      21. Patent Rights –Retention by the Contractor (Long Form) 52.227-12
      22. Rights in Data – General (Not applicable under Department of Defense 52.227-14 procurements)
      23. Commercial Computer Software – Restricted Rights (Not applicable under 52.227-19 Department of Defense procurements)
      24. Worker’s Compensation Insurance (Defense Base Act) 52.228-3
      25. Insurance – Work on a Government Installation 52.228-5
      26. Industrial Resources Developed Under Defense Production Act Title III 52.234-1
      27. Accident Prevention 52.236-13
      28. Protection of Government Buildings, Equipment, and Vegetation 52.237-2
      29. Competition in Subcontracting 52.244-5
      30. Subcontracts for Commercial Items 52.244-6
      31. Government Property (Fixed - Price Contracts) 52.245-2 “Government” means “Government” and/or “Buyer”. The fourth sentence of paragraph (h) is revised to read: “Neither the Government nor Buyer shall be liable…”
      32. Special Tooling – In paragraph (c) “Government” means “Government or 52.245-17 Buyer.”
      33. Special Test Equipment – In paragraph (b)(4) “Government” means 52.245-18 “Government or Buyer.”
      34. Government Property Furnished “As Is” 52.245-19
      35. Inspection of Supplies – Fixed Price 52.246-2
      36. Responsibility for Supplies 52.246-16
      37. Preference for U.S. Flag Air Carriers 52.247-63
      38. Preference for Privately Owned U.S. Flag Commercial Vessels 52.247-64
      39. Termination for Convenience of the Government (Fixed Price) “Government” 52.249-2 shall mean “Buyer.”
   2. ***Orders Over $10,000 Shall Also Include the Following:***
      1. Walsh-Healy Public Contracts Act 52.222-20
      2. Prohibition of Segregated Facilities 52.222-21
      3. Equal Opportunity 52.222-26
      4. Affirmative Action for Workers with Disabilities 52.222-36
   3. ***Orders Over $25,000 Shall Also Include the Following:***
      1. Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, 52.222-35 and Other Eligible Veterans
      2. Employment Reports on Disabled Veterans and Veterans of the Vietnam Era 52.222-37
   4. ***Orders Over $100,000 Shall Also Include the Following:***
      1. Restrictions on Subcontractor Sales to the Government 52.203-6
      2. Anti-Kickback Procedures (less paragraph (c) (1)) 52.203-7
      3. Limitation on Payments to Influence Certain Federal Transactions 52.203-12
      4. Audit and Records – Negotiation 52.215-2
      5. Integrity of Unit Prices (less paragraph b) 52.215-14
      6. Contract Work Hours and Safety Standards Act – Overtime Compensation 52.222-4
      7. Toxic Chemical Release Reporting (less paragraph (e)) 52.223-14
      8. Notice and Assistance Regarding Patent and Copyright Infringement 52.227-2
      9. Value Engineering 52.248-1
   5. ***Orders Over $500,000 and/or the Applicable Cost or Pricing Data Threshold:***
      1. Pension Adjustments and Asset Reversions 52.215-15
      2. Reversion or Adjustment of Plans for Post-Retirement Benefits Other Than Pensions 52.215-18
      3. Notification of Ownership Changes 52.215-19
      4. Small Business Subcontracting Plan 52.219-9
   6. ***Unless Otherwise Exempt Also Include the Following:***
      1. Price Reduction for Defective Cost or Pricing Data 52.215-10
      2. Price Reduction for Defective Cost or Pricing Data Modifications 52.215-11
      3. Subcontractor Cost or Pricing Data 52.215-12
      4. Subcontractor Cost or Pricing Data Modifications 52.215-13
      5. Requirements for Cost or Pricing Data or Information other than Cost or Pricing 52.215-20 Data
      6. Requirements for Cost or Pricing Data or Information other than Cost or Pricing 52.215-21 Data -- Modifications
   7. ***Applicable to Cost Reimbursement, Time & Material or Labor Hour Purchase Orders:***
3. Facilities Capital Cost of Money 52.215-16
4. Allowable Cost and Payment (cost reimbursement) Seller agrees to execute 52.216-7 assignment documents in order to comply with subsection (h)
5. Fixed Fee – applicable to cost plus fixed fee Purchase Orders 52.216-8
6. Incentive Fee – applicable to cost plus incentive fee Purchase Orders 52.216-10
7. Cost Contract – No Fee – applicable to cost no fee Purchase Orders 52.216-11
8. Cost Sharing Contract – No Fee – applicable to cost sharing no fee Purchase Orders 52.216-12
9. Payment for Overtime Premiums – insert “0%” in paragraph (a) 52.222-2
10. Payments under Time and Materials and Labor Hour Contracts, in which 52.232-7 “schedule ”means this Purchase Order, “voucher(s)” means invoice(s), “Government “ means JWF DEFENSE and “Contracting Officer” means Buyer’s Purchasing Representative.
11. Limitation of Cost (if fully funded) 52.232-20
12. Limitation of Funds (if incrementally funded) 52.232-22
13. Changes – Cost Reimbursement – applicable to such Purchase Orders 52.243-2
14. Changes – Time and Material or Labor Hours – applicable to such Purchase 52.243-3 Orders
15. Subcontracts (paragraphs (h) and (i) only apply) 52.244-2
16. Government Property (Cost Reimbursement, Time and Material or Labor Hour 52.245-5 Contracts) – “Government” means “Government and Buyer”. Substitute the following for Paragraph (g) in cost reimbursement orders only. “Seller shall return all Government Furnished property in as good condition as when received, except for reasonable wear and tear for use of property in accordance with the provisions hereof.”
17. Inspection of supplies (Cost Reimbursement) – “Contracting Officer” means 52.246-3 “Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government “ first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.
18. Inspection of Services (Cost Reimbursement) - “Contracting Officer” means 52.246-5 “Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government “ first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.
19. Inspection of Time and Material and Labor Hour - “Contracting Officer” means 52.246-6 “Buyer’s Purchasing Representative” and “government” means “Buyer and Government” (an inspection system accepted by the Government will be deemed accepted by Buyer) and where “Government “ first appears in paragraph (k) it shall mean “Government or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.
20. Termination (Cost Reimbursement) – “Government” means “Buyer” and 52.249-6 Alt IV “Contracting Officer” means “Buyer’s Purchasing Representative”. Alternative IV is applicable to time and material or labor hour Purchase Orders only.
21. Excusable Delay 52.249-14
22. **Certifications**

The Offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore eligible for award.

1. Certification and Disclosure Regarding Payments to Influence Certain Federal 52.203-11 Transactions (over

$100,000)

1. Certification Regarding Debarment, Suspension, Proposed Debarment and Other 52.209-5 Responsibility Matters (over $100,000)
2. Previous Contracts and Compliance Reports (over $10,000) 52.222-22
3. Certification of Toxic Chemical Release Reporting (over $100,000) 52.223-13
4. **Additional Clauses:**
   1. Cost Accounting Standards (Applicable unless otherwise exempt)
5. Cost Accounting Standards 52.230-2
6. Disclosure and Consistency of Cost Accounting Standards 52.230-3
7. Administration of Cost Accounting Standards 52.230-6

Seller shall communicate and otherwise deal directly with the Contracting officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the contracting Officer respecting Cost Accounting Standards FAR 52.230-2 and Administration of Cost Accounting Standards FAR 52.230-6, provided Seller shall not be required to disclose to Buyer such communications containing information that is legally privileged and confidential to Seller. In addition to any other remedies provided by law or under this Purchase Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subject to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3 or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses.

* 1. Truth in Negotiations (Cost and Pricing Data)

Unless exempt, Seller shall submit a FAR Part 15 compliant cost proposal inclusive of any appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing data.

1. Indemnification:

If any cost or price (including profit or fee) negotiated in connection with the prime contract between the Government and Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller shall indemnify Buyer in the amount of said reduction.

The phrase “cost or pricing data” as used herein shall be deemed to include any such data related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of or in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate.

If any reduction of the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable and shall pay Buyer at the time such overpayment is repaid:

* 1. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date Buyer is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
  2. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate or non-current.

1. Cost or Pricing Data for Changes

Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit expected to exceed threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that such data, as defined in Federal Acquisition Regulation 2.101, submitted either actually or by specific identification in writing are accurate, complete and current as of the date of completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.

**General Terms and Conditions of Purchase**

**Supplement 2 – DEPARTMENT OF DEFENSE FAR SUPPLEMENT (DFARS) GOVERNMENT CONTRACT PROVISIONS**

1. When the materials or products furnished are for use in connection with a U.S. Government Department of Defense prime contract or subcontract, in addition to the JWF DEFENSE General Purchase Order Terms and Conditions and the Supplement 1 FAR provisions, the following provisions shall apply. The effective version of each Department of Defense FAR Supplement (hereinafter “DFARS”) provision shall be the same version as that which appears in Buyer’s prime contract or higher tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these DFARS provisions, or the Supplement 1 FAR provisions, and the General Purchase Order Terms and Conditions, the DFARS provisions shall control.
2. The following clauses set forth in the DFARS in effect as of the date of JWF DEFENSE’S prime contract or higher tier subcontract are incorporated herein by reference. In all clauses listed herein, the terms “Government,” “Contracting Officer” and “Contractor” shall be deemed revised to suitably identify the contracting parties herein and effect the proper intent of the provision except where further clarified or modified below. “Subcontractor,” however, shall mean “Seller’s Subcontractor” under the Purchase Order. The Seller, by signing its offer, hereby certifies compliance with the following clauses and is, therefore eligible for award.
   1. ***Applicable to All Purchase Orders: DFARS***
      1. Disclosure of Information 252.204-7000
      2. Intent to Furnish Precious Metals as Government-Furnished Material 252.208-7000
      3. Restrictions on Employment of Personnel 252.222-7000
      4. Hazard Warning Labels 252.223-7001
      5. Safety Precautions for Ammunition and Explosives 252.223-7002
      6. Change in Place of Performance 252.223-7003
      7. Prohibition on Storage and Disposal of Toxic and Hazardous Materials 252.223-7006
      8. Safeguarding Sensitive Conventional Arms, Ammunition and Explosives 252.223-7007
      9. Buy American Act -- Balance of Payments Certificate 252.225-7000
      10. Buy America Act and Balance of Payments Program 252.225-7001
      11. Qualifying Country Sources as Subcontractors 252.225-7002
      12. Preference for Certain Domestic Commodities 252.225-7012
      13. Duty-Free Entry 252.225-7013
      14. Preference for Domestic Specialty Metals (Alt 1) 252.225-7014
      15. Restriction on Acquisition of Hand or Measuring Tools 252.225-7015
      16. Restriction of Acquisition of Ball and Roller Bearings 252.225-7016
      17. Restriction on Acquisition of Foreign Anchor and Mooring Chain 252.225-7019
      18. Trade Agreements Certificate 252.225-7020
      19. Trade Agreements 252.227-7021
      20. Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber 252.225-7022
      21. Restriction on Acquisition of Forgings 252.225-7025
      22. Restriction on Contingent Fees for Foreign Military Sales 252.225-7027
      23. Exclusionary Policies and Practices of Foreign Governments 252.225-7028
      24. Restriction of Acquisition of Carbon, Alloy and Armor Steel Plate 252.225-7030
      25. Secondary Arab Boycott of Israel 252.225-7031
      26. Restriction on Acquisition of Air Circuit Breakers 252.225-7038
      27. Rights in Technical Data – Noncommercial items 252.227-7013
      28. Rights in Noncommercial Computer Software and Noncommercial 52.227-7014 Computer Software Documentation
      29. Technical Data – Commercial Items 252.227-7015
      30. Rights in Bid or Proposal Information (No substitutions for “Government” or 252.227-7016 “Contracting Officer” are made)
      31. Identification and Assertion of Use, Release or Disclosure Restrictions 252.227-7017
      32. Validation of Asserted Restrictions – Computer Software 252.227-7019
      33. Limitation on the Use or Disclosure of Government-Furnished Information 252.227-7025 Marked with Restrictive Legends (No substitution is made for “Government”)
      34. Deferred Delivery of Technical Data or Computer Software 252.227-7026
      35. Deferred Ordering of Technical Data or Computer Software 252.227-7027
      36. Technical Data or Computer Software Previously Delivered to the Government 252.227-7028
      37. Technical Data – Withholding of Payment 252.227-7030
      38. Patents – Subcontracts 252.227-7034
      39. Declaration of Technical Data Conformity 252.227-7036
      40. Validation of Restrictive Markings on Technical Data 252.227-7037
      41. Patents – Reporting of Subject Inventions 252.227-7039
      42. Accident Reporting and Investigation Involving Aircraft, Missiles, and Space 252.228-7005 Launch Vehicles
      43. Supplemental Cost Principles 252.231-7000
      44. Frequency Authorization 252.235-7003
      45. Modification Proposals -- Price Breakdown 252.236-7000
      46. Training for Contractor Personnel Interacting with Detainees 252.237-7019
      47. Protection Against Compromising Emanations 252.239-7000
      48. Telecommunications Security Equipment, Devices, Techniques and Services 252.239-7016
      49. Earned Value Management System (Applicable only when specifically stated 252.242-7002 on the Purchase Order)
      50. Cost Schedule Status Report (Applicable only when specifically stated on the 252.242-7005 Purchase Order)
      51. Subcontracts for Commercial Items and Commercial Components 252.244-7000
      52. Reports of Government Property 252.245-7001
      53. Warranty of Data 252.246-7001
      54. Representation of Extent of Transportation by Sea 252.247-7022
      55. Notification of Transportation of Supplies by Sea 252.247-7024
   2. ***Orders Over $100,000 Shall Also Include the Following:***
3. Prohibition on Persons Convicted of Fraud or Other Defense Contract Related 252.203-7001 Felonies
4. Transportation of Supplies by Sea 252.247-7023
5. Notification of Anticipated Contract Terminations or Reductions 252.249-7002
   1. ***Orders Over $500,000 Shall Also Include the Following:***
6. Small, Small Disadvantaged, and Women Owned Small Business 252.219-7003 Subcontracting Plan
7. Reporting of Contract Performance Outside the United States (first tier 252.225-7004 subcontractors only)
   1. ***Orders Over $1,000,000 Shall Also Include the Following:***
8. Acquisition Streamlining 252.211-7000
9. Waiver of United Kingdom Levies 252.225-7033