



**LEONARDO DRS, INC.**

**GENERAL PURCHASE ORDER TERMS AND CONDITIONS**

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## 1. **Definitions**

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

- A. Buyer: The legal entity issuing this Order.
- B. Buyer's Purchasing Representative: Buyer's designated purchasing representative responsible for issuing this Order and any amendments or changes thereto.
- C. Seller: The legal entity that contracts with Buyer under this Order.
- D. Order: The contractual instrument of which these terms and conditions are a part.
- E. Goods or Services: The products and/or services to be provided by Seller and identified in the Order.
- F. Government: The United States of America, acting in its contractual capacity.
- G. Prime Contract: The contract under which this Order is issued.
- H. FAR: The Federal Acquisition Regulation, if applicable.
- I. DFARS: The Department of Defense Federal Acquisition Regulation Supplement, if applicable.
- J. Contracting Officer: The Government official authorized to commit the Government contractually under a Government Prime Contract.
- K. Days: Means calendar days (unless specified otherwise).

## 2. **Acceptance of This Order**

Seller's written acknowledgement of the Order, its commencement of any performance under the Order (including, but not limited to, providing any Goods or Services hereunder), or acceptance of any payment under the Order, shall each constitute Seller's unqualified and irrevocable acceptance of this Order subject solely to these terms and conditions (these "Terms and Conditions"). In the event 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 these Terms and Conditions, whether in a quote, delivery document or otherwise, shall be void and of no effect unless specifically agreed to in writing by Buyer's Purchasing Representative, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.

## 3. **Acceptance of Goods or Services**

- A. All Goods or Services provided by Seller under this Order shall be in accordance with the requirements of this Order, including all applicable exhibits and attachments, and shall be subject to rejection if such Goods or Services are nonconforming. No inspection or evaluation performed by



Buyer (and/or Buyer's customer, if applicable) shall in any way relieve Seller or its suppliers of their obligation to furnish all required Goods or Services in strict accordance with the requirements of this Order. If Seller delivers nonconforming Goods or Services, Buyer may, at its option and at Seller's expense: (i) return the Goods for refund or credit; (ii) require Seller to promptly correct or replace the Goods, or reperform the Services; or (iii) obtain conforming Goods or Services from another source.

B. At Buyer's sole option, any rejected Goods may be returned for credit or replacement at Seller's risk and expense, and all handling and transportation expenses, both ways, shall be assumed by Seller. No Goods returned as defective shall be replaced without written authorization from Buyer.

C. Unless otherwise stated in the Order, the acceptance of any Goods or Services will be made by Buyer in writing. It is expressly agreed that payment by Buyer to Seller for Goods or 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, if applicable.

D. Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

#### **4. *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.

#### **5. *Invoices and Payment***

A. Seller's invoices or vouchers shall contain all certifications required by the Order and shall include the invoice date, the Order number, as well as a complete breakout of the prices by line item for the Goods or Services encompassed by the invoice or voucher.

B. Unless otherwise stated in the Order, 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 licenses or use fees, and any other cost of every kind and description associated with Seller's work.

C. Buyer shall pay Seller after receipt of Seller's proper invoices or vouchers for Goods or Services delivered and accepted, less any deductions provided for in this Order. Payment terms shall be stated at the time of the Buyer's Request for Quote and on the face of the Order. Payment terms are from (i) delivery of the Goods or completion of the Services, or (ii) receipt of invoice, whichever is later.

D. If the Order is of a Labor Hour or Time-and-Materials (T&M) type, the Seller shall provide reconciliations of billed and paid amounts on a quarterly basis. This report shall be provided to the Buyer's Purchasing Representative unless otherwise noted.



E. If the Order is of a Labor Hour, T&M, or cost reimbursement type and contains labor category descriptions, each invoice shall contain the following certification signed by the Seller's authorized representative:

**“This is to certify to the best of my knowledge that the qualifications of the individuals whose labor is being invoiced herein were performed during the period stated and meet the minimum labor category qualifications stated in the Order, including but not limited to any education or experience requirements, for the specific labor category in which their respective hours are being billed.”**

## **6. Shipping, Packing and Marking**

A. 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 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 at law or in equity, require delivery by the most expeditious way, and any charges resulting from the premium transportation shall be fully prepaid and absorbed by Seller. Title to all Goods passes at Buyer's dock unless otherwise specified in this Order.

B. Seller shall pack, mark and ship all Goods in accordance with the requirements of this Order and 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 shall be 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.

C. Acceleration of delivery is not authorized unless specified in writing by Buyer's Purchasing Representative.

D. Buyer reserves the right to refuse or return at Seller's risk and expense any shipments made in excess of the quantities stipulated in the Order or received in advance of the required delivery schedule, or to keep the Goods received in advance of the required delivery schedule and defer payment as if the delivery was made per the required delivery schedule.

## **7. Non-US Origin Shipments**

A. For any Order issued to a Seller domiciled within the United States, the expectation is that Goods will ship to Buyer from the Seller's facility within the United States. Unless otherwise specified in the Order, any shipments originating outside the customs territory of the United States will import under the terms of sale Delivered Duty Paid (DDP) Buyer



facility Incoterms 2020. Seller shall communicate its customs clearance instructions to its international third-party supplier prior to arrival into the United States to avoid any delays in delivery to Buyer. Under no circumstances shall Buyer be listed as the importer of record (or consignee for shipments delivered via courier) on customs documents for any Orders shipped directly to Buyer from a foreign location and Seller expressly agrees to accept all liability associated with said customs entries for any such Orders.

B. For any Order issued to a Seller domiciled outside the United States, the expectation is that Seller will deliver the Goods, cleared for export, at the Seller's facility. Unless otherwise specified in the Order, any shipments originating outside the customs territory of the United States will import under the terms of sale Free Carrier (FCA) Seller facility Incoterms 2020. Under no circumstances shall Buyer be listed as the exporter of record and Seller expressly agrees to accept all liability associated with any export duties, taxes and customs clearance.

#### **8. Schedule**

Seller shall strictly comply with the delivery or performance schedule specified in the Order. No acts of Buyer, including without limitation acceptance of late deliveries or performance, shall constitute a waiver of this provision. Seller shall immediately notify Buyer in writing of any actual or potential delay in the deliveries or performance of this Order and such notice shall include the actions being taken to overcome or minimize the delay and a revised schedule using the Seller's best efforts; provided, however, that Buyer's receipt of such notice shall not constitute a waiver of Buyer's rights to timely deliveries and performance and remedies for any late deliveries or performance. Buyer reserves the right to cancel this Order without incurring any liability to Seller and without waiving any other remedies available if delivery or performance, as specified in the Order or on Buyer's written shipping authorizations, is not completed.

#### **9. Inspection**

Buyer (and Buyer's customer, if applicable) through any authorized representatives, has the right at all reasonable times and places to inspect and test the Goods or Services being supplied under this Order, including those provided by Seller's suppliers. Buyer assumes no contractual obligation to perform any inspection or test unless otherwise specifically set forth in the 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 reasonable access to facilities and assistance for the safety and convenience of the personnel conducting any inspection or test. Seller shall maintain proper inspection records, which shall be made available to Buyer upon request.

#### **10. Warranty**

A. 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) free from defects in design (unless the Goods are provided in accordance with Buyer's design specifications), (iv) suitable for the purposes intended, (v) in compliance with all applicable specifications, drawings, and performance requirements, and, for any software provided with the Goods, (vi) free from any viruses, malicious codes, worm, time bomb, self-help code, or other software code or routine designed to damage,



destroy or alter any software, hardware or data, disable any computer automatically, or permit any unauthorized access to any software or hardware; and that all Services provided hereunder shall be (i) free from defects in workmanship, (ii) suitable for the purposes intended, (iii) performed in a professional and workmanlike manner, and (iv) in compliance with all applicable specifications, drawings, and performance requirements. In addition, if this Order is for delivery of Goods, Seller shall also comply with all applicable warranties contained in Article 2 of the Uniform Commercial Code (Sale of Goods), in accordance with the governing law at Article 22.

B. If any nonconformity under this warranty appears within one (1) year after final acceptance of the Goods or Services, Seller shall, at Buyer's option, either (i) promptly and diligently repair, replace or correct (by re-performance or otherwise) such nonconformity at no cost to Buyer (including any transportation costs associated therewith), or, for Goods only, (ii) accept return of the Goods for credit or refund. If any repair, replacement or correction is not made in a timely manner to Buyer's satisfaction, then the Buyer may, at its election and in addition to any other remedies available to Buyer at law or in equity, correct or have corrected such nonconformity at Seller's expense.

#### **11. Counterfeit Electronic Parts**

A. For purposes of this Article, the term "electronic part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode) or a circuit assembly and includes any embedded software or firmware. The term "counterfeit electronic part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. For purposes of this Article 11, the term "counterfeit electronic part" also means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

B. Seller shall only purchase electronic parts to be delivered or incorporated in the Goods to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM) or through an OCM/OEM authorized distribution chain. Seller shall not acquire any electronic parts from independent distributors or brokers without the Buyer's prior written approval. Seller shall promptly notify Buyer in writing with all relevant information if Seller becomes aware or suspects that it has furnished any counterfeit electronic parts under the Order. When requested by Buyer, the Seller shall provide all relevant OCM/OEM documentation that authenticates the traceability of the affected items to the applicable OCM/OEM.

C. Seller shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Seller shall also quarantine any counterfeit electronic parts and make them available for investigation by appropriate government authorities. Any suspected counterfeit electronic parts shall not be returned to the supply chain unless and until such parts are determined to be authentic.



D. This Article applies in addition to any quality provision, specification, statement of work or other provision included in or incorporated into this Order addressing the authenticity of the electronic part. To the extent any such provisions conflict with this Article, this Article prevails.

E. Seller shall not deliver any counterfeit electronic parts under this Order. If any counterfeit electronic parts are delivered or incorporated in the Goods under this Order, Seller shall, at its expense, promptly replace such counterfeit electronic parts with electronic parts conforming to the requirements of this Order. Notwithstanding any other provisions in this Order, the Seller shall be liable for all costs relating to or associated with such counterfeit electronic parts including, without limitation, the Buyer's costs of removing any counterfeit electronic parts, of installing replacement electronic parts and of any testing necessitated by the reinstallation of electronic parts after the counterfeit electronic parts have been replaced. The remedies contained in this Article are in addition to any remedies available to Buyer at law, in equity or under any other provision of this Order.

F. Seller shall include this Article or an equivalent provision in any purchase orders or lower-tier subcontracts for the delivery of electronic parts that will be included in or incorporated in the Goods provided to Buyer hereunder.

## **12. Conflict Minerals**

A. Consistent with the U.S. public policy underlying the enactment of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the Seller recognizes the significant risks associated with sourcing tin, tantalum, tungsten and gold (hereinafter the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries (the "Conflict Region").

B. Seller shall not knowingly provide any Goods containing Conflict Minerals from the Conflict Region.

C. Seller shall adopt (or already have in place) policies and processes to (i) conduct a reasonable inquiry into the country of origin of any Conflict Minerals incorporated into any Goods provided under the Order, (ii) conduct due diligence of its supply chain, as necessary, to determine if any Conflict Minerals from the Conflict Region are incorporated into any Goods provided under the Order, and (iii) promptly notify Buyer if any Conflict Minerals from the Conflict Region are incorporated into any Goods provided under the Order. The Seller shall fully cooperate (at no cost to Buyer) with any inquiries conducted by Buyer or its customers to ensure compliance with this Article including, but not limited to, completing any applicable disclosure forms or surveys.

## **13. Proprietary Information**

A. All specifications, information, data, drawings, software and other items furnished by Seller under the Order that are clearly marked with a restrictive or proprietary designation shall be handled by Buyer on a proprietary basis, but may be used and/or disclosed by Buyer solely for the purposes of Buyer's contract with its customer. Seller agrees to promptly notify Buyer in writing of any pre-existing patents or any other similar form of protection which Seller may hold or know of which relates to the Goods or Services to be provided under this Order.

B. If any pre-existing patents, inventions, copyrights, technology, designs, works of authorship, mask works, technical information, software, or other information or data of Seller



(hereinafter "Seller's Intellectual Property") are used, included, or contained in the Goods or Services provided hereunder, Seller grants Buyer an irrevocable, transferable, non-exclusive, world-wide, royalty-free license to use Seller's Intellectual Property with such Goods or Services.

C. Unless otherwise expressly agreed in writing to the contrary, and subject to any rights by the Government, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller and paid for by Buyer under this Order, shall be the exclusive property of Buyer, shall be maintained by Seller as proprietary to Buyer, 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 prior written consent. All such items supplied by Buyer shall be promptly returned to Buyer on request or upon completion or earlier termination of this Order. Nothing herein shall be construed or interpreted to limit or restrict the rights of the Government in or to any specifications, information, data, drawings or software in accordance with applicable FAR and DFARS Clauses.

#### **14. Buyer's Property**

A. All information, such as specifications and designs, as well as all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer (hereinafter the "Buyer's Property") shall be and remain the sole property of Buyer, and Buyer shall have the right to enter Seller's premises on a non-interference basis 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.

B. Unless the Buyer otherwise consents in writing, the Buyer's Property shall be used only in the performance of this Order and Seller may not use the Buyer's Property to provide any goods or services to any third party. Nothing herein shall be construed or interpreted to limit or restrict the rights of the Government in or to the Buyer's Property in accordance with applicable FAR and DFARS Clauses.

C. Seller shall protect and maintain the Buyer's Property in its possession or control and shall be responsible for all loss or damage thereto, except for normal wear and tear.

#### **15. Release of Information**

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

#### **16. Intellectual Property**

A. Seller warrants that the Goods delivered or Services performed under this Order which are not of Buyer's design specifications shall be free and clear of infringement or misappropriation of any patent, copyright, trademark or other third party intellectual property rights. Except to the extent the Government assumes liability therefor, Seller shall indemnify, defend and hold Buyer and its officers, directors, employees, affiliates, customers, successors and assigns harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including reasonable attorneys' fees) arising out of claims, suits or actions alleging such infringement or misappropriation, 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 Seller written notice of any such suit or action promptly after such notice is received and Seller agrees to conduct, at its own





expense, the entire defense thereof. Seller shall pay or reimburse all costs and expenses incurred by Buyer in enforcing this indemnity, including attorneys' fees.

B. Seller further agrees at its expense to indemnify, hold harmless and defend Buyer against all liens, security interests, and/or encumbrances whatsoever asserted against such Goods by others. To the extent that the Goods delivered hereunder are manufactured pursuant to Buyer's design specifications, 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, drawings, specifications or other materials ("Protected Materials"). Buyer, in turn, grants to Seller a non-exclusive, non-transferable license to reproduce the Protected Materials for purposes related solely and directly to the Seller's performance of its obligations to Buyer hereunder. 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. Nothing herein shall be construed or interpreted to limit or restrict the rights of the Government in or to the Protected Materials in accordance with applicable FAR and DFARS Clauses.

C. Seller shall replace or modify any infringing Goods with comparable Goods acceptable to Buyer of substantially the same form, fit and function 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.

D. Any invention or intellectual property first made, developed or conceived by Seller in the performance of this Order and/or which is derived from or based on the use of information supplied by Buyer, in whole or in part, alone or with others, shall be the sole 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. Any original works of authorship created by Seller hereunder are considered "works made for hire" under U.S. Copyright Law (17 U.S.C. §101). 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.

## **17. Changes**

A. Buyer, by written notice, shall have the right at any time to (i) suspend all or any portion of Seller's work for a period up to one hundred (100) Days, and/or (ii) 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 Goods or Services to be provided hereunder;
- (2) statement of work or description of Services;
- (3) method of shipment or packing;
- (4) time or place of performance, inspection, delivery, or acceptance of Goods or Services; and
- (5) amount of any Buyer-furnished or customer-furnished property or facilities.



B. If any such suspension or change causes a change in the cost of, and/or 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 (20) Days from the date of receipt of a written order from Buyer's Purchasing Representative directing such change (or 20 Days after the expiration/termination of the suspension).

C. 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 clause entitled "Disputes Under This Order."

D. If this Order is placed under a Government Prime Contract, any equitable adjustment hereunder shall be in accordance with the cost principles enunciated in FAR Part 31 in effect as of the date thereof (as amended).

E. No constructive changes: Any 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, and shall not be the basis for an equitable adjustment, unless set forth in a writing signed by Buyer's Purchasing Representative which expressly states that it constitutes an amendment or change to this Order.

#### **18. Access to Records**

Buyer, and, if applicable, the Government, shall have access to all technical and quality records of Seller's performance hereunder. Nothing herein shall be construed or interpreted to limit or restrict the rights of the Government to audit Seller's records in accordance with any applicable FAR and DFARS Clauses.

#### **19. Termination for Convenience**

A. Buyer, by written notice, may terminate this Order at any time, in whole or in part, without cause and/or for Buyer's convenience, and such termination shall not constitute a default. In such event, Buyer shall have all rights and obligations accruing both at law and in equity, including Buyer's rights to title and possession of any Goods for which payment has been made. Seller shall be reimbursed for any actual, reasonable, substantiated and allowable costs, plus a reasonable profit, for work performed to date of termination. In no event shall the amount of any such reimbursement exceed the then-current value of the Order. Buyer may take immediate possession of all work so performed upon notice of termination.

B. Any termination settlement proposal shall be submitted to Buyer within sixty (60) Days from the effective date of the termination. If Seller fails to submit a termination settlement proposal within this time period, or any extension thereof granted by Buyer in writing, then Seller irrevocably and forever waives and releases any termination claim.

C. 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.



**20. Termination for Default**

A. Buyer may, by written notice of default to Seller, terminate this Order in whole or in part if Seller fails to (i) deliver the Goods or perform the Services within the time specified in this Order or any extension thereof granted by Buyer in writing, (ii) perform any of the other provisions or meet any of the requirements of this Order, or (iii) 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 (10) Days after receipt of written notice thereof from Buyer (or such longer period as the Buyer may authorize in writing).

B. 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 hereunder and, provided further, that Buyer shall pay the price set forth in this Order for completed Goods or Services delivered and accepted.

C. The rights and remedies of Buyer in this Article are in addition to any other rights and remedies provided by law or in equity, or under this Order.

D. If, after termination hereunder, it is later determined that Seller was not in default, then the rights and remedies of the parties shall be as if the Order was terminated for convenience under Article 19.

**21. Set-Off**

Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer against any amount payable at any time by Buyer to Seller.

**22. Governing Law**

This Order shall be enforced and interpreted in accordance with the laws of the State of New York, without regard to the conflict of law rules thereof. This Order excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**23. Disputes Under This Order**

The parties shall attempt to amicably resolve all disputes arising from or related to this Order. If the parties are unable to resolve a dispute within a reasonable time, then the parties may agree upon alternate dispute resolution, or the dispute shall be adjudicated exclusively in a court of competent jurisdiction in the State from which this Order is issued as shown on the first page thereof, applying the governing law stated in Article 22. Seller hereby submits to the exclusive jurisdiction of the courts of such State and shall not raise any objection thereto (whether procedural, substantive or based on convenience). The parties voluntarily and irrevocably waive any and all rights to a trial by jury in any action arising out of or relating to this Order. Pending resolution or settlement of any dispute hereunder, Seller shall proceed diligently as directed by Buyer with the performance of this Order.

**24. Disputes Under A Government Prime Contract**

A. If the Contracting Officer of Buyer's Government Prime Contract by a final decision



interprets any provision or requirement of Buyer's Prime Contract, and the same or substantially similar provision or requirement is contained in this Order, 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 Buyer any and all information requested by Buyer to justify Buyer's verifying, supporting, or providing any and all certifications required by the Contract Disputes Act of 1978, 41 U.S.C. Chapter 71. 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 Buyer with 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.

B. If Seller asserts a claim against Buyer 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.

C. Any claims or disputes involving the Government will be governed solely by federal law.

D. Except as may be expressly set forth with the Contracting Officer's prior written consent, the Seller shall not acquire any direct claim or direct course of action against the Government.

E. Any reference to the "Disputes" clause in any applicable FAR or DFARS Clause incorporated into this Order shall mean this Article 24.

## **25. Indemnification**

In addition to any other indemnification provision in these Terms and Conditions, Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, employees, affiliates, customers, successors and assigns, from any and all claims, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, for -

(1) any (a) injury to any person, (b) damage to any property, or (c) violation of any applicable laws or regulations, arising from or related to Seller's (or Seller's subcontractors) performance of work in connection with this Order; or

(2) any negligent, reckless or willful act or omission by Seller hereunder; or

(3) Seller's breach of any warranty or representation hereunder; or

(4) any civil or criminal penalty or fine incurred by Buyer, which is caused to any extent by Seller, its employees, agents, representatives, suppliers, or subcontractors.

Seller shall pay or reimburse all costs and expenses incurred by Buyer in enforcing this indemnity, including attorneys' fees.



**26. Design Changes**

During performance of this Order, Seller shall not make any changes in the design of Goods to be furnished under this Order without the prior written approval of Buyer's Purchasing Representative. This applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

**27. Export Control**

A. Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the United States 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. This Order may involve information or items that are subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) and that may not be released to Foreign Persons inside or outside the United States without the proper export authority.

B. The ITAR defines a "Foreign Person" as any person who is not a U.S. citizen, a lawful permanent resident as defined by 8 USC 1101(a)(20), or a protected individual as defined by 8 USC 1324b(a)(3). Foreign Person is also defined as a corporation, a business, an association, a partnership, or any other entity that is not incorporated or organized to do business in the United States including international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions).

C. 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 Buyer, to any Foreign Person, including persons employed by or associated with, or under contract with, Seller or Seller's lower-tier suppliers without the prior written consent of Buyer and without first obtaining any required export license or other approval.

D. If Seller participates 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 Foreign Person employees, suppliers, agents, or representatives shall not participate in the performance of this Order at Buyer's facilities without Buyer's prior written consent, and such consent may be subject to any applicable security or export license approvals.

E. Seller shall comply with the registration requirements of the ITAR at 22 CFR §122.1, as applicable.

F. Seller represents that neither Seller nor any parent, subsidiary or affiliate of Seller is included on any of the restricted party lists maintained by the Government. Seller shall promptly notify Buyer in writing if Seller is, or becomes, listed in any Restricted or Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental authority.



G. Seller shall include Sections A through G or equivalent provisions in all lower tier subcontracts for any items that will be included in or delivered as Goods to Buyer.

H. Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees and other expenses arising or resulting from Seller's failure to comply with this clause.

**28. 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. If Buyer incurs any costs, damages or penalties as a result of a violation of any applicable laws or regulations by Seller, its directors, officers, employees, agents, suppliers or subcontractors at any tier, Buyer may, in addition to any rights or remedies available at law or in equity, make a corresponding reduction of any amounts due under this Order or demand payment thereof from Seller.

**29. Equal Employment Opportunity; Notification of Employee Rights Under Federal Labor Laws**

A. As applicable, the provisions of the Equal Opportunity Clauses pursuant to Section 202 of Executive Order 11246, as amended, and 41 CFR Section 60-1.40; as well as 29 CFR Part 471, Appendix A to Subpart A, are herein incorporated by reference. Further, if Seller (1) is not otherwise exempt as provided by 41 CFR 60-1.5, (2) has 50 or more employees, and (3) has a contract, subcontract or purchase order amounting to \$50,000 that is necessary to the completion of a covered federal contract or subcontract, Seller is hereby notified of its obligations to file EEO Standard Form 100 and to prepare an affirmative action plan(s) as required under the regulations set forth above.

**B. Buyer and Seller shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

**30. Duty to Proceed**

Except as expressly authorized in writing by Buyer's Purchasing Representative, the failure of Buyer and Seller to reach agreement with respect to any dispute relating to or arising under this Order shall not excuse Seller from proceeding diligently with the performance required by this Order.

**31. Incorporation of Supplemental Terms and Conditions**

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 Supplement 1 and, if applicable, Supplement 2, are incorporated by reference into this Order with the same force and effect as though set out in full text herein.



**32. 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 precedence: (i) Supplement 1 (FAR Clauses) and Supplement 2 (DFARS Clauses), if and to the extent applicable; (ii) Typed provisions set forth in this Order; (iii) Documents incorporated by reference on the face page(s) of this Order; (iv) These Terms and Conditions, and any additional terms and conditions set forth on the reverse side of the Order; (v) The Statement of Work; and (vi) Specifications attached to this Order or incorporated by reference. Buyer's specifications shall prevail over any specifications of Seller.

B. 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 shall, before proceeding, consult Buyer's Purchasing Representative, whose written interpretation shall be final and binding on the parties.

**33. Assignment/Change of Control**

A. Seller shall not sell, assign, novate, or in any manner transfer this Order or its rights, duties, and obligations under this Order without first obtaining the written consent of Buyer's Purchasing Representative. Any attempted assignment without such consent shall be void. The foregoing shall not apply to an assignment to any successor entity in the event Seller only changes its name. Notwithstanding the foregoing, in the event of an approved sale, assignment or transfer as provided hereunder, Seller shall remain liable, jointly and severally, to Buyer for all obligations arising under or resulting from this Order.

B. Absent Buyer's prior written consent, a change of control of Seller shall constitute an impermissible assignment.

**34. 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 (with confirming receipt), recognized overnight courier service or certified mail, return receipt requested, to the other party at the address 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 (with confirming receipt), (ii) on the next business day if sent by recognized overnight courier service, or (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.

**35. Survival**

Each party's rights and obligations under the Warranty, Counterfeit Electronic Parts, Conflict Minerals, Proprietary Information, Buyer's Property, Intellectual Property, Access to Records, Set-Off, Governing Law, Disputes, Indemnification, Use of Free, Libre and Open Source



Software (FLOSS), and Waiver, Severability and Remedies provisions of this Order shall survive completion or any earlier termination of this Order.

**36. Force Majeure**

Neither Buyer nor Seller shall be liable for failure to perform under this Order if such failure is due to events which are beyond the reasonable control and without the fault or negligence of such party, and which intervene after the issuance of this Order and impede its performance, provided such failure to perform shall only be excused for the duration of such intervening event and shall be subject to the Buyer's right to terminate this Order pursuant to Article 19. Examples of such Force Majeure events include, but are not limited to: a strike or labor dispute, war or act of war (whether or not an actual declaration thereof is made), insurrection, riot or civil commotion, act of public enemy, fire, flood, or other act of God, or any act of a governmental authority (including export restrictions). The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and cessation thereof. Buyer may reasonably adjust the delivery schedule due to the existence of a Force Majeure event. If Seller is the affected party, Seller shall notify Buyer within five (5) business days of the expected delay due to Force Majeure and include a detailed mitigation plan to lessen the impact thereof.

**37. No Third Party Beneficiary**

This Order has been entered into solely for the benefit of the parties and is not intended to create any legal, equitable, or beneficial interest in any third party, or to vest in any third party any interest with respect to the enforcement or performance of this Order. The parties agree no third party has any legal interest in this Order, or in any dispute arising hereunder, and that no third party is a necessary or indispensable party to any action or proceeding for the resolution of any such dispute. The parties further agree not to assert in any such action or proceeding that any third party is necessary or indispensable to such action or proceeding or to a determination of the relief to be granted therein.

**38. Use of Free, Libre and Open Source Software (FLOSS)**

- A. This Article only applies to Goods or Services that include the delivery of software (including software contained or residing in hardware).
- B. Seller shall disclose to Buyer's Purchasing Representative in writing any FLOSS that will be used or delivered in connection with this Order and shall obtain Buyer's prior written consent before using or delivering any FLOSS in connection with this Order. Buyer may withhold such consent in its sole discretion.
- C. The term "FLOSS License" means the General Public License (GPL), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution (BSD) license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."
- D. The term "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b)





requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

E. Seller shall include this Article or an equivalent provision in all lower tier subcontracts for any items that will be included in, or delivered as, Goods or Services to Buyer hereunder.

F. Absent Buyer's prior written consent under Section B., Seller shall defend, indemnify, and hold harmless Buyer and its customers from and against any claims, damages, losses, costs, penalties, and expenses, including reasonable attorneys' fees, relating to the use or delivery of FLOSS in connection with this Order. No other provision in this Order shall be construed to limit Seller's liability for the unauthorized use or delivery of FLOSS hereunder.

### **39. Waiver, Severability and Remedies**

A. The failure or delay of either party to insist on performance of any provision of this Order, or to exercise any right or remedy available hereunder, 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.

B. Unless otherwise expressly stated herein, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies available at law or in equity; provided, however, that in no event shall Buyer be liable to Seller for any anticipatory profits or for any special (including multiple or punitive), indirect, incidental, or consequential damages howsoever arising.

### **40. Entire Agreement**

This Order, including any attachments and documents incorporated by reference, constitutes the entire agreement between the Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order, whether oral or written.