



TITLE: F&B MFG LLC Standard Terms and Conditions of Purchase
FORM # QAF74-02-01 Reissue Date: 05/21/18 REVISION: B

F&B MFG. LLC
Standard Terms and Conditions of Purchase

ACCEPTANCE OF ORDER

- (a) This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) Supplier's acknowledgment, acceptance of payment, or commencement of performance, shall constitute supplier's unqualified acceptance of this contract
- (c) Unless expressly accepted in writing by Buyer, additional or differing terms or conditions proposed by Supplier or included in supplier's acknowledgment are objected to by Buyer and have no effect.

DEFINITIONS

As used throughout this Order, the following definitions apply unless otherwise specifically stated:

- A.** "Buyer" means F&B MFG. LLC., or a subsidiary, division, affiliate, successor, or assign of F&B MFG. LLC., or other entity issuing this Order, or issuing any order under any agreement to which these terms and conditions are attached or referenced therein, or to any entity to which this Order is assigned pursuant to this Order.
- B.** "Purchase Order", "Order", "Contract" or "Agreement" means this agreement, including change notices, supplements, amendments, or modifications thereto, except where the context indicates that a particular Purchase Order document or other particular document is being referred to.
- C.** "Supplier" or "Contractor" means the legal entity providing Goods and/or Services or otherwise performing work pursuant to this Order.
- D.** "Goods" means goods, supplies, or items that include, but are not limited to, those part numbers, model numbers, and/or descriptions set forth on the face of this Order. These terms also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered or to be delivered under this Order.
- E.** "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- F.** "Open Source" means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from:
 - (a)** withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; and/or
 - (b)** adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of this Contract, "Open Source" Software shall also include "Free Software" as defined by the Free Software Foundation Inc. By way of example and not limitation, "Open Source" licenses shall include such licenses as the GNU General Public License, the Mozilla Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.
- G.** "Services" means any effort provided by Supplier incidental to the sale of Goods by Supplier under this Order including, without limitation, installation, repair and maintenance Services. The term "Services" shall also include, without limitation, any effort specifically required by this Order, including all associated efforts such as design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services.
- H.** "Counterfeit Good(s)" means a part that is a copy or substitute without legal right or authority to do so or one whose material, performance, or characteristics are knowingly misrepresented by a supplier at any level in the supply chain. Examples of Counterfeit Goods may include, but are not limited to: (i) parts which do not contain the proper internal construction (die, manufacturer, wire bonding, etc.) consistent with the ordered part, (ii) parts which have been used, refurbished or reclaimed, but represented as new product, (iii) parts which have a different package style or surface plating/finish than the ordered parts, (iv) parts which have not successfully completed the Original Equipment Manufacturer's (OEM) / Original Component Manufacturer's (OCM) full production and test flow, but are represented as completed product, (v) parts sold as up-screened parts, which have not successfully completed up-screening, or (vi) parts sold with modified labeling or markings intended to misrepresent the part's form, fit, function, grade or manufacturing date.



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GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Specifications

Supplier shall comply with all specifications stated in this Order and contained in Supplier's product literature or proposal to the extent consistent with this Order.

2. Modifications

This Order shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of this Order shall be effective unless in writing and signed by an authorized representative of both Buyer and Supplier.

3. Delivery

Supplier's timely performance is critical to the success of this Order. Supplier will make deliveries strictly in accordance with the delivery schedule. If the Supplier suspects or determines that deliveries will not be made on time, the Supplier will advise Buyer of the possible delay, the cause, and the proposed recovery schedule as soon as possible, and shall continue to notify Buyer's Purchasing Representative of any material change in the situation. In the event of such notification or of an actual failure by Supplier to comply with the delivery or completion schedules, Buyer may, in addition to all other remedies, require Supplier, at Supplier's expense, to ship goods via air freight or expedited routing to avoid or minimize delay.

4. Quantity

The quantities specified for delivery on this Order are the only quantities required by the Buyer. Therefore, if Supplier delivers quantities in excess of those specified in this Order, the Buyer shall not be required to make any payment for the excess goods and, at the Buyer's election, may keep or return the excess goods at Supplier's risk and expense.

5. Buyer-Furnished and Buyer-Funded Items

(a) All materials, tooling, equipment, and parts for repair or service that Buyer is required to furnish to Supplier under the provisions of this Order (hereinafter "Buyer-Furnished Items") shall be delivered in sufficient time to enable Supplier to meet its delivery schedule. Buyer shall have no liability to Supplier by reason of any delay in delivery of, or failure to deliver, such Buyer-Furnished Items. If such Buyer-Furnished Items are not delivered to Supplier in sufficient time, the resultant delay of

Supplier in delivering to Buyer shall be excusable in accordance with Article 19, "Force Majeure".

(b) Title to any Buyer-Furnished Items shall remain with Buyer or Buyer's customer as the case may be.

(c) Title to all tooling, test equipment and material identified as a separate line item under this Order and fabricated or acquired by Supplier under this Order shall vest in Buyer upon any payment for such items (hereinafter "Buyer-Funded Items").

(d) Any Buyer-Furnished Items and any Buyer-Funded Items shall be used only for and in the performance of this Order unless otherwise directed by Buyer in writing.

(e) Upon completion or termination of this Order, any Buyer-Furnished

Items and any Buyer-Funded Items shall be dispositioned in accordance with instructions from Buyer.

(f) Supplier agrees, as a condition of this Order, that it will: (i) properly mark/label, identify and segregate any and all Buyer-Furnished Items and Buyer-Funded Items in connection with this Order in such fashion as to clearly identify such items as being the property of Buyer or Buyer's customer as the case may be, at all stages of its possession by Supplier; (ii) prevent the commingling of Buyer-Furnished Items and Buyer-Funded Items with other material in the Supplier's possession except in accordance with applicable Buyer specifications or Buyer's written approval; and (iii) assume responsibility for risk of loss or damage with respect to any Buyer-Furnished Items and Buyer-Funded Items at all times while it is in the custody, care, or control of Supplier, including Supplier's subtiers, and while in the hands of carriers with responsibility for such materials; and (iv) shall be responsible to provide confirmation of the foregoing as requested by Buyer.

(g) Supplier will maintain a policy or policies of insurance covering all property on Supplier's premises owned by Buyer against loss or damage. A certificate verifying such insurance will be submitted by Supplier to Buyer on request.

(h) Supplier, upon request, will provide a schedule of all quantities on hand of Buyer-Furnished Items and Buyer-Funded Items. Supplier will be accountable for all quantities provided and financially liable for all damages or unaccounted Buyer-Furnished Items and Buyer-Funded Items, unless specifically agreed upon in writing by the Buyer and provided for in this Order.

(i) When Buyer provides Buyer-Furnished Items for the manufacture of parts or assemblies, Supplier shall not substitute material from any other source nor shall Supplier or its subcontractors alter the Buyer-Furnished Item's physical or chemical properties except in accordance with applicable Buyer specifications or with Buyer's written approval.



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(j) Supplier agrees not to copy or duplicate any Buyer-Funded Items, special tooling or special test equipment for any purpose other than performance of this or other Orders for Buyer. Supplier warrants and affirms that it has not used, transferred to any person, firm or corporation, copies or duplicated any such Buyer-Funded Items, special tooling or special test equipment acquired or fabricated under any previous Order for the development or production of particular supplies or parts, or the performance of particular Services required under this Order, for any purpose other than performance of orders for Buyer.

(k) Buyer shall have the right to audit all pertinent books and records of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance hereof. Buyer shall be entitled to commence such audit no later than five (5) days after Buyer notifies Supplier.

6. Special Tooling

Unless otherwise specified in this Contract, the price includes the cost of gauges, jigs, fixtures, dies, molds, tools, patterns, and similar items of special tooling that may be manufactured or acquired by Supplier for use in the manufacture, fabrication, or assembly of the goods called for herein, and unless otherwise specified herein, title to such special tooling will remain in Supplier.

7. Quality Control, Inspection, Acceptance & Rejection

(a) Supplier shall provide and maintain, without additional charge to Buyer, an inspection system that complies with all specifications stated in this Order and, in the absence of such specifications, Supplier shall be required to provide and maintain without additional charge to Buyer, an inspection system, which is acceptable to Buyer and, if applicable, Buyer's customer.

(b) Supplier shall tender to Buyer for acceptance only Goods that have been inspected in accordance with the appropriate inspection system and have been found by Supplier to be in conformity with all requirements of this Order.

(c) As part of the inspection system, Supplier shall prepare records evidencing all inspections made under the system and the outcome of such inspections. These records shall be complete and made available to Buyer during performance of this Order and for as long afterward as required by this Order or applicable laws and regulations, but in no event shall such period expire prior to: (i) five (5) years after final payment; or (ii) final resolution of any dispute involving the Goods delivered hereunder, whichever is later.

(d) Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this Article. Such reviews and evaluations shall be conducted in a manner that will not unduly delay work under this Order. Further, it is recognized that despite such reviews, Supplier controls the day-to-day production, delivery and associated documentation of its work, and therefore, Buyer's right of review, whether exercised or not, does not release Supplier of any of its obligations of testing, inspection, quality control and associated documentation.

(e) Buyer and Buyer's customer shall have the right to inspect and test the material and workmanship of all Goods at all places and times including, when practicable, during the period of manufacture or provision of Services. If any such inspection or test is made on the premises of Supplier, Supplier shall furnish, without additional charge to any such party(ies) all reasonable facilities and assistance for the safe and convenient performance of the inspection or test.

(f) Buyer shall accept or reject supplies within thirty (30) calendar days after delivery, unless otherwise provided in the Order. Buyer's failure to inspect and accept or reject the supplies shall not relieve the Supplier from responsibility, nor impose liability on Buyer, for nonconforming supplies.

(g) Inspections and tests by Buyer do not relieve the Supplier of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(h) If acceptance is not conclusive for any of the reasons in paragraph (g) hereof, Buyer, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Supplier:

(1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Supplier's plant at the election of Buyer's Authorized Procurement Representative, and in accordance with a reasonable delivery schedule as may be agreed upon between the Supplier and Buyer's Authorized Procurement Representative; provided, that Buyer's Authorized Procurement Representative may require a reduction in contract price if the Supplier fails to meet such delivery schedule; or

(2) within a reasonable time after receipt by the Supplier of notice of defects or nonconformance, to repay such portion of the contract as is equitable for rework or replacement under the circumstances if Buyer's Authorized Procurement Representative elects not to require correction or replacement by Supplier due to delivery schedules or other reason. When supplies are returned to the Supplier, the Supplier shall bear the transportation cost from the original point of delivery to the Supplier's plant and return to the original point when that point is not the Supplier's plant. If the Supplier fails to perform or act as required in paragraph (h)(1) or (h)(2) of this clause and does not cure such failure within a period of 10 days (or such longer period as Buyer's Authorized Procurement Representative may authorize in writing) after receipt of notice from Buyer's Authorized Procurement Representative specifying such failure, Buyer shall have the right by contract or otherwise to replace or correct such supplies and charge to the Supplier the cost occasioned Buyer thereby.

(i) Seller will maintain an inspection and quality system acceptable to Purchaser and in conformity with any drawings, specifications and data which are part of this Purchase Order and with any quality program of Purchaser described in materials referenced on the face of this Purchase



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Order and incorporated herein by such reference. Certifications are required on all shipments and shall reference Purchase Order number, name of supplier, all applicable specifications and applicable revisions and all applicable testing per specifications. Supplier shall use the latest revision of specifications in effect unless otherwise specified. Seller will maintain adequate authenticated inspection and test reports, affidavits and certifications relating to the Works performed under this Purchase Order, retain such records for a period of ten years after completion of this Purchase Order or as otherwise specified By Purchaser, and make such records available to Purchaser upon request. Seller acknowledges that Purchaser may reduce its inspection procedures in reliance on Seller's maintenance of a quality system as required hereunder.

(j) Supplier will not redeliver corrected or rejected items without disclosing the former rejection or requirement for correction.

Supplier will disclose any corrective action taken. Repair, replacement and other correction and redelivery will be completed within the original delivery schedule or such later time as Buyer's authorized Purchasing Department Representative may reasonably direct.

(k) Buyer's rights under this Section shall be in addition to and shall not be deemed to diminish its rights under this Order including the section hereof entitled "Warranty" or under any other warranties, express or implied, provided by Supplier.

8. Warranty

(a) Supplier warrants that, for a period of twenty-four (24) months from acceptance, all items furnished under this Order will conform to all specifications and requirements of this Order, be free from defects in materials and workmanship and be free from all liens and encumbrances. To the extent items are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the items will be free from design and specification defects. This warranty will survive inspection, test, acceptance and payment for the items, will run to Buyer and its successors, assigns and customers and will begin after Buyer's acceptance of the items.

(b) Buyer may, at its option, either:

(i) return the items for credit or refund, or

(ii) require prompt correction or replacement of the defective or non-conforming items. The return to Supplier of defective or nonconforming items and redelivery to Buyer of corrected or replaced items will be at Supplier's expense.

(c) Regardless of whether the parties disagree about the existence of a breach of this warranty, Supplier will promptly comply with Buyer's direction to:

(i) repair, rework or replace the items, or

(ii) furnish any materials, parts and instructions required for Buyer to successfully correct the defect or nonconformance or have it corrected at Supplier's expense. If Buyer later determines that Supplier did not breach this warranty, future payments will be adjusted for actual costs incurred by Supplier.

9. Price Warranty

Supplier warrants that the prices for the Goods sold or Services provided to Buyer hereunder are not more than those currently extended to any other customer for the same or similar Goods or Services in similar quantities. In the event Supplier reduces its price for such Goods or Services during the term of this order, Supplier agrees to reduce the prices hereof correspondingly.

10. Indemnification

(a) Supplier covenants and agrees to indemnify, protect, and hold harmless Buyer, its officers, directors, employees, agents and successors and assigns ("Indemnified Person(s)") from any and every liability, claim of liability, allegation, judgment, cost, expense, reasonable attorneys fees, cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of Supplier's performance under this Order, howsoever arising, including, without limitation, by reason of negligence, breach of warranty, defect in design, material, workmanship or Service, or strict liability, unless caused by the sole negligence of the Indemnified Person. In the event Buyer should bring an action for enforcement of this indemnification provision, Supplier agrees that Buyer shall be entitled to be awarded its reasonable attorneys' fees and costs if Buyer prevails in such proceeding.

(b) Supplier agrees, in any instance where any claims, suits, actions or legal proceedings, are brought against the Supplier and in any way affect Buyer's interests under this Order or otherwise, that:

(i) Supplier shall notify Buyer in a timely manner (not to exceed five (5) business days) after learning of any actual or threatened claims, suits, actions or legal proceedings, and shall not at any time consummate any settlement without Buyer's prior written consent;

(ii) Without releasing any obligation, liability or undertaking of Supplier to indemnify Buyer hereunder, Buyer shall have the right to:

(1) Cooperate in the defense of such claim; or

(2) With permission of the court, intervene in any such action; or

(3) Supersede Supplier in the defense of any such claim.

11. Packing, Declaration of Origin, And Shipment



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- (a) Supplier will comply with instructions contained in Buyer's Inbound Freight Guide and make deliveries as ordered, without additional charges for boxing, crating, carting or storage.
- (b) Unless otherwise specified, items will be suitably packed for their protection during transportation and shipped via the lowest cost means that are otherwise appropriate for the item in accordance with the requirements of common carriers. Supplier is responsible for contacting Buyer to resolve any questions regarding proper packing or shipment under this Order.
- (c) Supplier will describe items in bills of lading in accordance with current national mode of freight or uniform freight classification, whichever is applicable. Buyer's Order number, symbols, and identification numbers must be plainly marked on all packages, bills of lading and shipping orders. Supplier will not declare any value on bills of lading if Buyer is responsible for shipping charges. If Supplier does declare a value without the permission of Buyer, all insurance charges will be deducted from the Supplier's invoice.
- (d) Packing lists will accompany each box or package shipped, showing Buyer's Order number, symbols, item number and description of items. Buyer's count or weight will be final and conclusive on shipments not accompanied by packing lists.
- (e) Supplier will comply with all applicable export / import requirements.
- (f) When goods provided under this Order originate outside of the United States, prior to its first shipment of goods to Buyer, Supplier shall provide Buyer a Certificate of Origin specifying the Country of Origin, including supplier name, Buyer Purchase Order number, Buyer part number, and, as requested, any other documentation that is reasonably required for Customs compliance.
- (g) Supplier shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Supplier, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Paragraph 11.

12. Invoicing and Payment

- (a) Concurrent with each shipment under this Order, Supplier will mail one original invoice to Buyer's, Accounts Payable Department, at the address shown on the face of this Order. Delays in receiving invoices, errors or omissions on invoices, or lack of supporting documentation will be cause for Buyer withholding payment without losing discount privileges. Payment for the items delivered under this Order will be made in accordance with Order terms, following receipt of a valid invoice, or acceptance of such delivered items, whichever is later. In such case that Order terms have not been defined, payment is due Seller sixty (60) days after delivery and acceptance by Purchaser.
- (b) Payment shall be deemed to have been made as of the date of mailing Buyer's payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

13. Inspection of Records

If this is a time and material or cost-based Order or provides for the payment of any amount prior to final delivery of Goods hereunder based on Supplier's incurred cost, including, without limitation, progress or advance payments based on cost, Supplier agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this Order, shall at all reasonable times be subject to inspection by Buyer.

14. Changes

- (a) Buyer may, at any time and without notice to third parties, including sureties (if any), unilaterally make changes within the general scope of this Order, including, but not limited to, changes in whole or part and to any one or more of the following:
 - (i) shipping or packing instructions, (ii) place of delivery, (iii) any drawings, designs, or specifications, (iv) the statement of work, (v) the method or manner of performance of the work, and (vi) Buyer-furnished property, facilities, equipment, materials, or Services. Supplier shall perform any changes ordered by Buyer.
- (b) Buyer's engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Supplier's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for equitable adjustment. No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's purchasing department.
- (c) If any change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, and the Order shall be modified in writing accordingly. Any claim by Supplier for adjustment, must be asserted in writing not later than fifteen (15) calendar days after the date of receipt by Supplier of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Supplier's request. Supplier's complete change proposal, fully supported by factual information, shall be submitted to Buyer's purchasing department within forty-five (45) days of the notice of change, provided, however, that Buyer may in its discretion consider any such claim regardless of when asserted, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this Order.



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(d) If the cost of property or material made obsolete or excess as a result of a change is included in Supplier's claim for adjustment, Buyer shall have the right to prescribe the disposition of such property or material.

(e) Notwithstanding any pending claims for adjustment submitted by Supplier, Supplier shall diligently proceed with the performance of this Order, as directed by Buyer, and nothing herein shall be construed as relieving Supplier of its obligations to perform, including without limitation the failure of the parties to agree upon Supplier's entitlement to, or the amount or nature of, any such adjustment.

15. Schedule Acceleration/Deceleration

Notwithstanding Article 14 "Changes", Buyer may revise the delivery schedule without additional cost or change to the unit price stated in the applicable order if (1) the delivery date of the Product under such order is on or before the last date of the contract and (2) Buyer provides Supplier written notice of such changes. Upon receipt of the written notice of the change, Supplier shall make its best effort to implement the change as soon as possible, but in no event shall the change be implemented later than four (4) months after notification of a schedule acceleration or three (3) months after notification of a schedule deceleration.

16. Compliance with Applicable Laws and Regulations

(a) Supplier will perform the requirements of this Order in compliance with all applicable laws, statutes, orders, acts, codes, rules and regulations of the United States and its individual states (including, but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, the Occupational Safety and Health Act, Executive Orders, export/import laws and regulations, Uniform Commercial Code, and Environmental Protection Acts), and of other Countries or Unions. Supplier will indemnify Buyer against any and all loss, cost, liability, damage or expense arising from or related to Supplier's failure to comply with this provision.

(b) If this Order is issued under a United States Government prime contract or subcontract, the flow down clauses attached hereto and any other provision or requirement mandated as applicable to U.S. Government subcontracts by the Federal Acquisition Regulation and or applicable government department or agency supplement (including, without limitation, the Department of Defense FAR Supplement) is hereby incorporated herein. Such government contract provisions shall be controlling over any conflicting terms and conditions set forth herein.

(c) Supplier expressly acknowledge and agrees that it will, to the extent required by law or government contract requirements, provide information and verification concerning the citizenship or immigration status of Supplier's personnel or Supplier's subcontractor personnel entering onto Buyer's premises or the premise of Buyer's prime contractor or the U.S. Government.

17. Government Import / Export Regulations

(a) The goods and data provided under this Order may be subject to the provision of the Export Administration Act of 1979 (50 USC 2401-2420) and the Export Administration Regulations (15 CFR 768-799) promulgated there under; the Arms Export Control Act of 1976 (22 USC 2751-2779) and the International Traffic in Arms Regulation (22 CFR 120-128 and 130) promulgated there under; and the Foreign Corrupt Practices Act. The Parties acknowledge that these statutes and regulations impose restrictions on import, export, and transfer to third countries of certain categories of data and goods, and that licenses from the U.S. Department of State and/or U.S. Department of Commerce may be required before such goods and data can be provided hereunder, and that such licenses may impose further restrictions on use of such goods and data. Disclosure of such goods and data to foreign persons is subject to the above regulations regardless if the export occurs in the U.S. or abroad. Supplier agrees to comply with all U.S.

Governmental regulations mentioned above as they relate to the import, export, and re-export of goods and/or data, including, without limitation, the ITAR Registration requirements specified at 22 CFR 122.1.

(b) Supplier agrees to notify Buyer if any deliverable under this contract is restricted by export control laws or regulations.

(c) Supplier shall immediately notify the Buyer's Procurement Representative if Supplier is, or becomes, listed in any denied parties list or if Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(d) If Supplier is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Supplier represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

(e) Where Supplier is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), supplier shall provide prompt notification to the Buyer's Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U. S. Government investigation, that could affect the Supplier's performance under this contract.

(f) Supplier shall on the first shipment to Buyer, provide to Buyer a Certificate of Origin or a Manufacturer's Affidavit for each item, and either:

- (i) for U.S. sources, the U.S. Munitions List Category or Export Control Classification Number; or
- (ii) for non-U.S. sources, the Harmonized Tariff Schedule Classification Number.



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(g) Supplier shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of supplier, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

18. Insurance

(a) In the event Supplier will be performing services on Buyer's premises, Supplier agrees to secure and carry as a minimum the following insurance covering all work to be performed under this Order:

- (i) Workers' Compensation and Employer's Liability Insurance in an amount sufficient by virtue of the laws of the country, state, or other governmental subdivision in which the work or any portion of the work is performed;
- (ii) General Liability Insurance in which the limit of liability for injuries, including accidental death, shall be \$1,000,000 for any one occurrence;
- (iii) General Liability Insurance in which the limit of liability for property damage shall be \$1,000,000 for any one occurrence;
- (iv) Automobile Liability Insurance in which the limit of liability for injuries, including accidental death, shall be \$1,000,000 for any one occurrence;
- (v) Automobile Liability Insurance in which the limit of liability for property damage shall be \$1,000,000 for any one occurrence; and
- (vi) Contractual Liability Insurance sufficient in scope of coverage and amount (in Buyer's reasonable discretion) to cover the liabilities herein assumed by Supplier.

(b) All such insurance shall be issued by companies authorized to do business under the laws of the applicable governmental authority for the place in which all or part of the Services are to be performed, shall be in form satisfactory to Buyer, and shall contain a provision prohibiting cancellation except upon at least ten (10) days' prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of the Supplier's performance of work. Certified copies of said policies or certificates evidencing such insurance and naming Buyer as an additional insured shall be provided to Buyer upon request within 30 days after the date of this Order and within a reasonable time after any renewals or changes to such policies are issued.

19. Force Majeure

(a) Neither party shall be deemed in default of this Agreement or any Order to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, or strikes ("Force Majeure").

(b) If any Force Majeure condition affects Supplier's ability to perform, Supplier shall give immediate notice to Buyer and Buyer may elect to either: (1) Cancel at no cost to Buyer the affected Order(s) or any part thereof, (2) suspend the affected Order(s) or any part for the duration of the Force Majeure condition, with the option to obtain elsewhere Goods and Services to be furnished under such Order(s) and deduct from any commitment under such Order(s) the quantity of the Materials and Services obtained or for which commitments have been made elsewhere or (3) resume performance under such Order(s) once the Force Majeure condition ceases, with an option in Buyer to extend any affected Delivery Date or performance date up to the length of time the Force Majeure condition endured. Unless Buyer gives written notice otherwise within thirty (30) days after being notified of the Force Majeure condition, option (2) shall be deemed selected.

20. Termination for Convenience

(a) Buyer may, at any time by written notice to Supplier, terminate all or any part of this Order for Buyer's convenience, in which event Supplier agrees to stop work immediately as to the terminated portion of this Order and to notify subcontractor(s) to stop work, and protect and preserve property in its possession in which Buyer has an interest. If this Order is terminated, in whole or in part, for Buyer's convenience, Supplier shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Supplier's actual performance of work under this Order to the effective date of termination, plus a reasonable profit thereon provided that no amount shall be paid to Supplier for (i) any anticipatory profits related to work under this Order not yet performed, or (ii) costs incurred due to Supplier's failure to terminate work as ordered on the effective date of termination. Buyer shall have no obligation to make any of the aforementioned payments to Supplier, either for completed items or in connection with terminated work in process, unless Supplier shall establish to Buyer's satisfaction that such completed items, or the work in process, including materials, are unusable in connection with Supplier's other business. In no event shall the termination charges and all previous payments made under this Order exceed the total Order value shown on the face of this Order.

(b) Supplier shall submit to Buyer all claims resulting from such termination within sixty (60) days after Supplier's receipt of Buyer's notice of termination. Buyer shall have, upon reasonable advanced notice, the right to inspect Supplier's records, facilities, work, and materials relating to performance of the Order for purposes of evaluating Supplier's claim.

21. Termination for Default:



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(a) Buyer may terminate the whole or any part of this Contract in any of the following circumstances:

(i) If Supplier fails to deliver the goods or to perform the services required by this Contract within the time specified herein, or any extension thereof granted by BUYER in writing; or

(ii) If Supplier fails to perform any of the other provisions of this Contract or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two (2) circumstances does not cure such failure within a period of ten (10) days after receipt of notice from BUYER specifying such failure; or

(iii) In the event of suspension of Supplier's business, insolvency, institution of bankruptcy, liquidation proceedings by or against Supplier, appointment of a trustee or receiver for Supplier's property or business, or any assignment, reorganization or arrangement by Supplier for the benefit of creditors; or

(iv) If otherwise expressly authorized under the provisions of this Contract;

(b) Buyer may require Supplier to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (1) any completed goods, and (2) such partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, (hereinafter called "manufacturing materials") as Supplier has produced or acquired for the performance of this Contract, including the assignment to Buyer of Supplier's subcontracts; and Supplier shall protect and preserve property in possession of Supplier in which Buyer has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the contract price. Payment for manufactured materials delivered to and accepted by Buyer and for the protection and preservation of property shall be at a price determined in the same manner as provided in Article 20 hereof, except that Supplier shall not be entitled to profit. Buyer may withhold from Supplier monies otherwise due Supplier for completed goods and/or manufacturing materials in such amounts as Buyer determines necessary to protect BUYER against loss due to outstanding liens or claims against said goods.

(c) If this Order is entirely or partially terminated by Buyer under this section, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those so terminated, and Supplier shall be liable to Buyer for any and all procurement costs for such similar goods or services, including any price for such similar goods or services that is higher than this Order provided however, that Supplier shall continue the performance of this Order to the extent not terminated. Supplier shall not be liable for such additional costs if Supplier's failure to perform this Order:

(i) arises out of causes beyond the control and without the fault or negligence of Supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or

(ii) is caused by the default of a vendor or subcontractor to Supplier, so long as such default arises out of causes beyond the control of both the Supplier and the vendor or subcontractor, and the subcontracted goods or services were not obtainable from other sources in sufficient time to permit Supplier to meet the required delivery schedule.

(iii) No cause shall constitute a basis for excusable delay unless Supplier has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.

(d) if after notice of termination under this section, it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the section entitled "Termination for Convenience."

22. Suspension of Work

(a) Buyer may, by written notice, suspend all or part of the work to be performed under this Order for a period not to exceed one hundred (100) days. Within such period of any suspension of work, Buyer may: (i) cancel the suspension of work; (ii) terminate the Order in accordance with the "Termination for Convenience" clause; (iii) terminate the Order in accordance with the "Termination for Default" clause; or (iv), with the written consent of the Supplier, extend the stop work period.

(b) The Supplier shall resume work whenever a suspension is canceled. Buyer and the Supplier shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Order is not canceled or terminated, (ii) the suspension results in a change in the Supplier's cost of performance or ability to meet the Order delivery schedule, and (iii) the Supplier asserts a claim for such adjustment within twenty-five (25) days after the suspension is canceled. Supplier shall submit its fully supported request for equitable adjustment no later than sixty (60) days, or such other time as Buyer may allow, after the suspension is canceled.

23. Notification Of Toxic Chemicals

Where applicable, Supplier will comply with Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA) and 40 CFR Part 372 and compliance to the European REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) regulation (EC 1907/2006). Supplier will notify Buyer of the following information with the initial shipment of each item to Buyer:

(a) A statement that the product contains chemicals which are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 and 40 CFR 372.45.



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(b) The name and the associated Chemical Abstract Service Registry number of each chemical which has been incorporated in the product and which is listed in the specific Toxic Chemical Listings contained in 40 CFR 372.65.

(c) The percent by weight of each toxic chemical component of the product shipped. This notification must be attached to or otherwise incorporated into Supplier's Material Safety Data Sheet (MSDS) whenever the MSDS requirement applies.

24. Products Manufactured With And/or Containing Ozone Depleting Substances

If items to be delivered under this Order are manufactured with and/or contain Ozone Depleting Substances as defined by 40 CFR Part 82, the appropriate warning label will be applied in accordance with 40 CFR 82.100.

25. Electrostatic Discharge Control Requirements

Supplier will determine if any items ordered by Buyer are electrostatic discharge (ESD) sensitive and, if so, will comply with the following requirements: (i) Supplier will design, manufacture, test, and repair these items using good commercial ESD control practices at all related sites and facilities; (ii) Items supplied to Buyer that are susceptible to ESD damage as delivered will be properly handled and packaged to prevent ESD damage; and (iii) packages containing ESD sensitive items will be marked with an appropriate caution label.

26. Access To Supplier's Facilities

Buyer, Buyer's customer and relevant regulatory authorities will have access to Supplier's, and all other facilities involved in the order, where they will have access to all procedures, practices, processes, associated documents and records related to quality assurance, quality control and configuration control. Buyer reserves the right to determine and verify the quality of work, records and material. The Supplier will notify Buyer of any change in the location of Supplier's facility.

27. Supplier Changes In Product, Manufacturing Location, Or Process Definition

Buyer must be promptly notified of changes in product, manufacturing location, or process definition that were not requested by Buyer. Notification should describe the change or changes that have been made or are being proposed. Buyer reserves the right to require its approval of the product, manufacturing location or the process change before the Supplier forwards the product.

28. Intellectual Property Indemnity

Supplier shall indemnify Buyer and Buyer's customers and their respective officers, agents and employees against liability and losses, including costs, for infringement of any United States or foreign patent, copyright, trademark, or other intellectual property arising out of the manufacture of delivery of supplies or performance of services under this Order or out of the use or disposal by, or for the account of, Buyer, Buyer's customer and/or the Government, of such supplies or services. The foregoing indemnity shall not apply unless Supplier shall have been informed as soon as practicable by Buyer, Buyer's customer and/or the Government, of the suit or action or other proceedings alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

29. Subcontracting

Supplier agrees to obtain Buyer's written approval before subcontracting this Order or any substantial portion of this Order. However, this requirement will not apply to the purchase of standard commercial supplies or raw materials on which Supplier will perform further work.

30. Assignment

The assignment of any right or interest in this Order, without the written permission of Buyer, will be void and totally ineffective. The Supplier may, with written consent of Buyer, assign claims for money due or to become due through a bank, trust company, federal lending agency or other financial institution. Supplier will not delegate any obligation under this Order without the written permission of Buyer and any attempted delegation without written permission will be void and totally ineffective for all purposes. Any permitted assignment will provide that payment by Buyer to an assignee of any amount will be subject to set-off or recoupment for any present or future claims which Buyer may have against Supplier and will be valid only after Supplier has provided Buyer with two properly executed copies of the assignment.

31. Gratuities

Supplier warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents, or representatives for purposes of securing this Order or securing favorable treatment under this Order. If it is found that gratuities (in the form of entertainment, gifts or otherwise) are offered by Supplier, or any agent or representative of Supplier, to any employee of Buyer or its agents or representatives with a view toward securing favorable treatment with respect to the awarding or



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performing of any Purchase Order issued by Buyer to Supplier, Buyer may, by written notice to Supplier, terminate this Order in accordance with Article 21, Termination for Default, in addition to the exercise of any other rights or remedies provided to Buyer by law.

32. Governing Law And Interpretation

The requirements of this Order will be interpreted and construed in accordance with the laws of the State of Arizona, excluding choice of law rules. Buyer's remedies described herein shall be cumulative and in addition to any remedies provided by law or in equity. The failure of Buyer to insist upon strict performance of any of the terms of this Order or to exercise any rights under this Order will not be construed as a waiver of Buyer's right to assert or rely on any such terms or rights in the future. Jurisdiction and venue for any suit between the Parties hereto arising out of or connected with this Order or the goods or services furnished hereunder shall lie only in the county and state in which such Buyer facility is located. In the event this Order is issued to an international Supplier in a country that has ratified the United Nations Convention on the International Sales of Goods (UNCISG), it is expressly agreed that the UNCISG will not apply.

33. Confidential, Proprietary And Trade Secret Information And Materials

(a) Buyer and Supplier will each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information; (ii) tangible items containing, conveying or embodying such information; and (iii) tooling identified as being subject to this provision and obtained, directly or indirectly, from the other in connection with this Order (collectively referred to as "Proprietary Information"). Buyer and Supplier will each use and disclose Proprietary Information of the other only in the performance of and for the purposes of this Order.

(b) However, despite any other obligations or restrictions imposed by this provision, Buyer will own and maintain all rights in any design and/or development work or items, including software, that are produced by Supplier under the Order and paid for by Buyer. Further, Buyer will have the right to use, disclose and reproduce Supplier's Proprietary Information and make derivative works for the purposes of testing, certification, use, sale and support of any item delivered in connection with this order. Any such use, disclosure, reproduction or derivative work by Buyer will include restrictions suitable under the particular circumstances.

(c) The restrictions on disclosure and use of Buyer's Proprietary Information by Supplier will apply to all materials derived therefrom by Supplier. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Order, Supplier will return to Buyer all of Buyer's Proprietary Information and all derivative materials and copies unless specifically directed otherwise in writing by Buyer. Supplier will not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with any of Buyer's Proprietary Information. Prior to disposing of such parts or other materials as scrap, Supplier will render them unusable. Buyer will have the right to audit Supplier's compliance with this provision.

(d) Supplier may disclose Buyer's Proprietary Information to its subcontractors as required for the performance of this Order, provided that legends are maintained on each disclosure and subcontractors first agree in writing to the same obligations imposed on Supplier by this provision. Supplier will be liable to Buyer for any breach of this obligation by a subcontractor. The requirements of this provision will take precedence over any inconsistent restrictive legends or notices applied to Proprietary Information and will survive the performance, completion, termination or cancellation of this Order.

(e) Notwithstanding any other provisions of these Terms and Conditions, upon prior written notice to Buyer and to the extent that such use will not interfere with Supplier's performance of purchase orders with Buyer, Supplier with the Government's authorization, may use any Proprietary Information or items, which the Government owns or for which it has the right to authorize use on other Government contracts or subcontracts.

34. Disputes

Any dispute that arises under or is related to this Order that cannot be settled by mutual agreement of the Parties following consideration through ascending levels of their respective management, up to and including their Presidents or Chief Executive Officers, may be submitted to and decided by a court of competent jurisdiction. Venue will coincide with the residence of the Buyer facility noted on the face of this Order. Pending final resolution of any dispute, Supplier will diligently proceed with the performance of this Order as directed by Buyer. Pending resolution of any dispute hereunder, Supplier shall proceed diligently with the performance of work, including the delivery of goods in accordance with Buyer's direction. Upon resolution of the dispute, this Order shall be equitably adjusted, if necessary to reflect such resolution.

35. Entire Agreement

This Order contains the entire agreement of Buyer and Supplier with respect to its terms and supersedes any and all prior agreements, understandings and communications between them. No amendment or modification of this Order will be valid or binding unless it is in writing and is signed by Buyer's authorized Purchasing Department Representative.

36. Federal, State and Local Taxes



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Except as may be otherwise provided in the Order, the price includes all applicable Federal, State and local taxes and duties.

37. Order of Precedence

The various documents constituting this Order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this Order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items:

- (a) provisions required by statute, regulation or Government contract;
- (b) provisions set forth on the face page of this Order form;
- (c) this Terms and Conditions document;
- (d) the Statement of Work attached hereto, if any;
- (e) Specifications approved by Buyer; and (f) Drawing(s) approved by Buyer.

38. Intellectual Property Rights

- (a) All technical work product, including inventions (whether patented or not), information, data, documents, drawings, software, software documentation, designs, specifications and processes produced by or for Supplier, either alone or with others, using funds paid by Buyer under this contract will be the exclusive property of Buyer and will be delivered to Buyer promptly upon request.
- (b) All inventions conceived, developed or first reduced to practice by or for Supplier, either alone or with others, using funds paid by Buyer under this contract, and any patents based on any such inventions will be the exclusive property of Buyer. Supplier will (i) promptly disclose all such inventions to Buyer in writing and (ii) execute all papers, cooperate with Buyer and perform all acts necessary in connection with the filing, prosecution or assignment of related patents or patent applications on behalf of Buyer.
- (c) All works of authorship, including documents, drawings, software, software documentation, photographs, videotapes, sound recordings and images, created by or for Supplier using funds paid by Buyer under this contract, together with all copyrights subsisting therein, will be the sole property of Buyer. To the extent permitted under United States copyright law, all such works will be works made for hire, with the copyrights therein vesting in Buyer.
- (d) Supplier grants to Buyer, and to Buyer's subcontractors and customers in connection with work being performed for Buyer, an irrevocable, nonexclusive, paid-up, worldwide license under any patents, copyrights, industrial designs and mask works owned or controlled by Supplier at any time and existing prior to or during the term of this contract, but only to the extent that such patents or copyrights would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers' or customers' use or enjoyment of the goods being delivered under this contract or the work product, inventions or works of authorship belonging to Buyer under this contract.
- (e) Supplier grants to Buyer a perpetual, nonexclusive, paid-up, world- wide license to reproduce, distribute copies of, perform publicly, display publicly and make derivative works from software included in or provided with or for the goods delivered under this contract (Software) and related information and materials (Software Documentation) as reasonably required by Buyer in connection with (i) the testing, certification, use, sale or support of a product or the manufacture, testing, certification, use, sale or support of any item including and/or utilizing the goods delivered under this contract or (ii) the design or acquisition of hardware or software intended to interface with Software. The license granted to Buyer includes the right to grant sublicenses to its customers as reasonably required in connection with customers' operation, maintenance, overhaul and modification of any item including and/ or utilizing Software. All copies and derivative works made pursuant to the foregoing license or any sublicense to a customer will automatically become the property of Buyer or customer, and Buyer agrees to preserve Supplier's copyright notice thereon to the extent that such notice was included with the original Software and/or Software Documentation. Supplier acknowledges that Buyer is the owner of all copies of Software and Software Documentation provided to or made by Buyer or customers pursuant to this contract, and Supplier authorizes Buyer and customers to dispose of, and to authorize the disposal of, the possession of any such copies by rental, lease or lending or by any act in the nature of rental, lease or lending.

39. Offset Notification

Definition: For purposes of this Order, "Offset Agreement" or "Offset Commitment", means an agreement, arrangement, or understanding between Buyer and a foreign country or other corporation under which Buyer has agreed to purchase or acquire, or to promote the purchase or acquisition by other entities of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purpose by the foreign country of articles or services from Buyer.

Regardless of whether this Order is in direct support of a foreign sale, to the extent allowed by applicable law, Supplier agrees that it will assist Buyer to satisfy its Offset Agreements and Commitments. During the term of this Order in support of Buyer's offset obligations, supplier agrees to inform Buyer when it is considering procurement of products and services from non-United States sources in connection to the supply of products subject to this Order. Offset credits arising out of or resulting from, directly or indirectly, this order are for the exclusive use of Buyer and may be used by Buyer and any of its affiliates and subsidiaries to fulfill all past, present and future Offset Agreements. In addition, supplier



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agrees to identify and retain for Buyer's use any rights to offset credits generated by its subcontractors arising out of or resulting from this Order.

40. Notices

All notices required or permitted to be given in connection with this Order shall be deemed to be properly given if in writing and delivered to the receiving party at the address (including to the attention of the individual representative, if specified) shown on the face of this Order or to such other address or individual representative specified from time to time by such written notice. Notice shall be deemed effective upon receipt.

41. Duty to Proceed

Supplier shall proceed diligently with the performance of this order. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement provided for by the terms of this Order shall excuse the Supplier from proceeding.

42. Partial Invalidity/Unenforceability

If in any instance any provision of this Order shall be determined to be invalid or unenforceable under any applicable law, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms.

43. Survival

Supplier agrees that the Warranty, Indemnification, Inspection of Records, Intellectual Property Rights, Cumulative Remedies, Offset, Intellectual Property Indemnity and Confidential, Proprietary and Trade Secret Information and Materials provisions of this Order and all provisions which relate to claims which may be made by Buyer under this Order shall survive and continue in full force and effect upon the termination of this Order, unless otherwise agreed to in writing by a duly authorized representative of the Supplier and an attorney in Buyer's Legal Department.

44. No Waiver

Buyer's failure to seek a remedy for any breach by Supplier or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, or privileges or any other terms, conditions, or privileges whether of the same or similar type.

45. Cumulative Remedies

The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

46. Non-Endorsement Policy

(a) Neither Buyer's purchase of Goods nor procurement of Services from Supplier shall be deemed in any way to constitute or authorize Buyer's endorsement of Supplier or of Supplier's Goods and/or Services. Accordingly, any release, advertisement, or publication of information, (whether oral or written, in whatsoever format, and regardless of medium) relating to this Contract or to any Order and/or relating to Buyer's obtaining Goods and/or Services from Supplier shall require the advance written permission of Buyer, which Buyer may, in its sole discretion, elect to withhold for any reason or for no reason.

This provision shall extend to, but shall not be limited to, the following: news bulletins, press releases articles, brochures, advertisements, marketing material, promotional material, and speeches. Further, Supplier shall not use any Buyer trademarks or trade names for any purpose, unless otherwise expressly authorized by Buyer in writing, which such authorization shall be at Buyer's sole discretion.

(b) The Supplier further agrees to include this provision in any subcontract awarded as a result of this Order.

(c) In the event of Supplier's breach of this provision, Buyer shall, in addition to other available remedies, have the right to terminate this Contract in accordance with the provisions of Article 21 of this Contract.

47. Independent Contractor Relationship

(a) Supplier's relationship to Buyer shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Buyer and Supplier personnel. Supplier personnel engaged in performing Work under this Contract shall be deemed employees of Supplier and shall not for any purposes be considered employees or agents of Buyer. Supplier assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. Buyer assumes no liability for Supplier personnel.



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(b) Nothing contained in this Contract shall be construed as granting to Supplier or any personnel of Supplier rights under any Buyer benefit plan.

(c) Supplier personnel: (i) will not remove Buyer or its Customer's assets from Buyer's or Customer's premises without Buyer authorization; (ii) will use Buyer or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use Buyer's computer networks and equipment, communications resources, programs, tools or routines as Buyer agrees, all at Supplier's risk and expense, and then only in compliance with applicable Buyer policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may monitor any communications made over or data stored in Buyer computer networks and equipment or communications resources.

48. Open Source Software

Without the prior written approval of Buyer, which Buyer may withhold in its sole discretion, Supplier shall not incorporate any Open Source Software, including any source code governed by an open source license, into work to be performed and/or delivered under this contract. Before Buyer will consider providing written approval for the incorporation of such open source software, Supplier shall first identify all Open Source Software incorporated into Work to be performed and/or delivered under this Contract, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any licenses required to be accepted.

49. Parts Obsolescence

When Supplier has knowledge that any hardware item or material to be provided in performance of this purchase order is obsolete, is marked for impending obsolescence, or has an established end of production date, Supplier shall immediately give initial notice thereof, including all relevant information with respect thereto, to Buyer. Such notice shall include, but not be limited to (1) complete details of which parts are affected, including rated Mean Time Between Failure (MTBF), where available; (2) date of obsolescence; (3) end of production date; (4) reason for obsolescence; (5) pricing and availability of lasttime buy; (6) supportability terms (repair and warranty) for lasttime buy; and (7) Supplier's recommendation for replacement hardware inclusive of known impacts to performance, pricing, availability, and lead time. Supplier's initial notifications of obsolescence shall be made through the end of the contracted warranty period for the items provided under this order.

50. Counterfeit Goods Prevention

(a) Supplier represents and warrants that Counterfeit Goods are not contained in Goods delivered to Buyer through the implementation of policies that include prevention, detection and risk mitigation methods to protect against the use of Counterfeit Parts.

(b) Supplier shall purchase parts directly from the Original Component Manufacturer (OCM) / Original Equipment Manufacturer (OEMs), or from the OCM authorized or franchised distributor. Procurement through an independent distributor, non-franchised distributor or broker is NOT authorized. A certificate of conformance shall accompany each shipment of Goods delivered, along with OCM/OEM documentation that authenticates traceability of the components to that applicable OCM. If an original OEM/OCM certificate is NOT available, distributor shall provide a De-lid and Die Verification Report for the supplied parts verifying authenticity of the parts and such other documentation, testing and/or other information as Buyer shall reasonably request; however, the submission of such additional items shall not relieve Supplier of its obligations hereunder.

(c) In the event Supplier becomes aware or suspects that it has furnished Counterfeit Parts, it shall immediately notify Buyer.

When requested by Buyer, Supplier shall provide (if available) Authorized Supplier documentation that authenticates traceability of the parts to the applicable Authorized Supplier.

(d) In the event that Goods delivered under this Order are, or include, Counterfeit Parts, Supplier shall promptly investigate, analyze and report in writing to Buyer whether such Counterfeit Parts should be replaced with genuine parts conforming to the requirements of this Order, or whether an alternative solution is recommended to meet the Order requirements at Supplier's sole expense. The parties shall then agree upon the appropriate course of action.

(e) Supplier shall include this clause or reasonably equivalent provisions in all subcontracts for the delivery of Goods that will be furnished to or included in Goods furnished to Buyer.

51. Customer Communication

Buyer shall be solely responsible for all liaison and coordination with the Customer and higher tier customers, if any, as it affects this Contract or any Work hereunder or related thereto. Except as required by law, Supplier shall not communicate with the Customer, and any higher tier customers, with respect to this Contract or any Work hereunder or related thereto, without prior approval of the Buyer's Procurement Representative. Supplier shall promptly notify Buyer of any communications initiated by the Customer or any higher tier customers that affects this Contract or any Work related thereto.



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52. Electronic Contracting

Buyer and Supplier agree that if this Contract, or any ancillary agreement, or correspondence is transmitted electronically neither Buyer nor Supplier shall contest the validity thereof, on the basis that this Contract, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature.

53. Conflict Minerals

Supplier recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). Accordingly, Supplier commits to comply with Section 1502 of Dodd-Frank and its implementing regulations. In particular, Supplier commits to have in place a supply chain policy and processes to undertake (1) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into products it provides Buyer; (2) due diligence of its supply chain, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (3) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Supplier shall take all other measures as are necessary to comply with the Act and its implementing regulations, as they may be amended over time.

54. Supplier Awareness

Suppliers shall ensure that they are aware of, and their employees are aware of:

- (a) their contribution to product or service conformity;
- (b) their contribution to product safety;
- (c) the importance of ethical behavior.