



General Provisions

This Order is subject to the following conditions:

- 1. Order:** This Order constitutes Buyer's offer to purchase the materials, services and articles, all of which are herein called "articles" described elsewhere in this Order, in accordance with its provisions which include the provisions set forth on the face of this Order, the provisions attached hereto, and the provisions incorporated herein by reference. Acceptance of this Order is expressly limited to the provisions hereof. Signing and returning the acknowledgment copy of this Order (if attached hereto) or, in any event, delivery or performance in whole or in part of the articles to be furnished hereunder shall constitute acceptance of this Order.
- 2. Shipping Instructions:** (a) On date of shipment, send original bill of lading, airbill or express receipt reflecting this Order number to Buyer's traffic department and one copy of notice of shipment to Buyer's Procurement department. (b) Do not deliver ahead of schedule unless authorized by Buyer. Describe shipments in accordance with the carrier's tariffs to obtain the lowest freight rate. Do not insure or declare value on shipments beyond F.O.B. point. When a shipment is subject to freight rates dependent upon value, annotate the bill of lading, airbill or express receipt to show that the shipment is released at the maximum value which applies to the lowest rate provided in applicable tariffs. Consolidate all shipments to be forwarded on one day. (c) Articles furnished in excess of the quantity specified or in excess of any allowable overage will be retained by Buyer at no additional cost, unless Seller notifies Buyer within 45 days after shipment that it desires the return thereof. Seller will reimburse Buyer for the full cost of returning such overshipment.
- 3. Packaging and Extras:** No charges will be allowed for transportation, packaging, packing or returnable containers unless stated in this Order. Seller shall prepare and pack the articles to prevent damage and deterioration and to comply with carrier tariffs and Buyer's specifications, if any. Damage to any articles resulting from improper packaging will be charged to Seller.
- 4. Specifications:** All articles ordered to Buyer's specifications shall comply with such specifications current as of the date of this Order unless otherwise specified by Buyer.
- 5. Warranty:** Unless otherwise agreed to in writing by the parties, Seller warrants that articles ordered to specifications will conform thereto and to any drawings, samples or other description furnished or adopted by Buyer, or, if not ordered to specifications, will be fit and sufficient for the purpose intended, and that all articles will be merchantable, of good material and workmanship, and free from defect. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the articles and shall run to Buyer, its successors, assigns, and customers. Except for latent defects, fraud or such gross mistakes of Seller as amount to fraud, notice of any defect or nonconformity must be given by Buyer to Seller within one (1) year after delivery, or one (1) year after receipt of satisfactory qualification test reports, if required thereunder, whichever is later. Buyer may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming article or part thereof. Return to Seller of any defective or nonconforming article and delivery to Buyer of any corrected or replaced articles shall be at Seller's expense. Defective or nonconforming articles shall not be corrected or replaced unless specified on Buyer's written order. Articles required to be corrected or replaced shall be subject to the provisions of this clause and the clause hereof entitled "Inspection" in the same manner and to the same extent as articles originally delivered under this Order, but only as to the corrected or replaced part or parts thereof.
- 6. Year 2000 Warranty:** Seller warrants that any hardware, software and firmware (hereunder "Product") delivered under this Order shall be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchange date/time data with it. The duration of this warranty and the remedies available to Buyer for breach of this warranty shall be as defined in, and subject to, the other warranties contained in this Order, provided that notwithstanding any provision to the contrary in such warranties, the remedies available to Buyer under this warranty shall include repair or replacement of any non-compliant Products discovered and made known to Seller in writing. Nothing in this warranty shall be construed to limit any rights or remedies Buyer may otherwise have under this Order with respect to defects other than year 2000 performance.
- 7. Inspection:** Buyer and Buyer's customer each reserve the right to inspect and/or test any or all work included in this Order at the Seller's facility at all times and places, including the period of manufacture. Seller is required to reserve the right of Buyer and Buyer's customer to perform verification at Seller's lower-tier subcontractor facilities to the extent necessary to assure product conformance. If any inspection or test is made on Seller's or Seller's subcontractor premises, Seller, without additional charge, shall provide all reasonable facilities, assistance and applicable documentation for the safety and convenience of Buyer and Buyer's customers. Such inspections and test shall be performed in such a manner as not to unduly delay the work. Buyer verification shall not, in any way, replace Seller's source inspection or relieve the Seller of the responsibility for ensuring product quality. All articles are also subject to final inspection and acceptance at Buyer's plant notwithstanding any payments or other prior inspections.
- 8. Release of News Information and Advertising:** Seller shall not, without the prior written consent of Buyer: (a) make any news release, public announcement, denial, or confirmation of all or any part of the subject matter of this Order, or (b) in any manner advertise or publish the fact that Buyer has placed this Order.

9. Cancellation: Buyer shall have the right to cancel this Order or any part thereof at any time: (a) Without Cause -- In case of cancellation by Buyer of all or any part of this Order without cause, Seller shall be entitled to its costs already incurred in the performance of the work canceled, plus (unless Seller would have sustained a loss on the entire Order had it been completed) a reasonable profit on such costs, which together may not exceed the contract price of the work canceled, plus Seller's reasonable costs of settlement. Any cancellation claim must be submitted to Buyer within sixty (60) days after the effective date of cancellation. The provisions of this subparagraph shall not limit or affect the right of Buyer to cancel this Order for breach of contract and shall not apply to a breach of contract. (b) Breach of Contract -- If Seller fails to cure any material failure to perform, discharge or fulfill its obligations under this Order including, but not limited to, failure to make any delivery in accordance with the agreed delivery date or schedule or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this Order within ten (10) days after receipt of a written notice from Buyer that Buyer considers Seller to be in default under this Order, or fails to make progress so as to endanger performance of this Order or in the event of any proceedings by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided by this Order or by law, cancel all or any part of this Order by written notice to Seller without any liability by Buyer to Seller on account thereof. Notwithstanding the aforementioned, this clause shall not apply if this Order is issued in support of a Government Prime Contract and is not a commercial item pursuant to Federal Acquisition Regulation (FAR) Part 12. Instead, the applicable FAR Termination Clauses shall govern.

10. Rights in Intellectual Property: All information, inventions, software, databases, works of authorship, and data, regardless of form, generated in performance of or delivered under this Order (collectively "Work Product") shall be the sole property of Buyer. For purposes of copyright law, all Work Product shall be regarded as a "work for hire." In the event such Work Product may be ineligible for treatment as a work for hire or that copyright in such Work Product does not vest in Buyer by law, Seller hereby assigns all right, title and interest in the same to Buyer. If Seller provides professional services and regularly uses its own software systems to perform such professional services, then ownership of improvements to such software systems made by Seller during performance, and unrelated to and not dictated by Buyer's business needs and information, shall be retained by Seller. Buyer shall, however, enjoy a fully paid-up, royalty-free, unrestricted, world-wide, irrevocable, nonexclusive license to practice such improvements. Improvements to such systems derived from Buyer or dictated by Buyer's business needs or information shall be owned by Buyer pursuant to the terms herein.

Any information provided to Seller by Buyer shall be and remain the sole property of Buyer. Seller agrees to keep all Buyer's information and any Work Product confidential and agrees not to disclose or use it for any purpose other than in performing this Order, except with Buyer's prior written approval.

All information, software, databases, works of authorship, and data, regardless of form, previously authored, developed or created by Seller prior to entering into this Order and used in connection with this Order shall be and remain the sole property of the Seller, with the proviso that Buyer is licensed to provide the same to its customers and to use, sell, copy, display, perform and create derivative works of any materials included with or incorporated in anything delivered by Seller to Buyer in connection with this Order.

Seller hereby assigns to Buyer the entire right, title, and interest, worldwide, in any invention conceived or first actually reduced to practice in performing this Order. Seller hereby grants to Buyer a fully paid-up, royalty-free, unrestricted, world-wide, irrevocable, nonexclusive license to make, use, sell and offer for sale any invention which is not conceived or first actually reduced to practice in performing this Order, but which is described, necessary for full use and enjoyment of, or incorporated in anything delivered by Seller to Buyer in connection with this Order.

For inventions conceived or first actually reduced to practice under this Order, Seller shall furnish Buyer with notice and information sufficient for Buyer to file and prosecute patent applications, and Seller will cooperate in executing all documents incident to such filing and prosecution. In connection with the licenses granted under this Order, Seller shall furnish any information, data or code necessary to enable Buyer to use and fully enjoy such license(s). Final payment shall not be due hereunder until after receipt by Buyer of such complete invention information, or certification that there is no such information, and receipt of all deliverables.

If this Order is placed under a Government contract and is not for a Commercial Item as defined in and governed by FAR Part 12, the Patent and Data Rights provisions of such contract attached hereto, shall be the governing provisions.

11. Infringement Indemnity: Seller hereby indemnifies Buyer, its successors, assigns, agents, customers, and users of any work product and/or Articles against loss, damage, or liability, including costs and expenses and attorneys' fees, which may be incurred on account of any suit, claim, judgment, or demand involving infringement or alleged infringement of any intellectual property rights in the manufacture, use, or disposition of any Work Product hereunder, provided Buyer shall notify Seller of any suit instituted against it, and to the full extent of its ability to do so, shall permit Seller to participate in the defense of same or to make settlement in respect thereto. Buyer does not grant indemnity to Seller for infringement of any intellectual property rights, including patent, trademark, copyright, trade secret, trade mark, mask works, or data rights.

12. Force Majeure: Neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of any Government authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without fault or negligence of either of them, Seller shall not be liable to Buyer in damages unless the articles or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after the beginning of any such cause.

- 13. Assignment:** Neither this Order nor any rights or obligations herein may be assigned by Seller nor may Seller subcontract in whole, or substantially in whole, the performance of its duties hereunder without, in either case, Buyer's prior written consent. The terms and conditions of this Order shall bind any permitted successors and assigns of Seller. Any consent by Buyer to assignment shall not be deemed to waive Buyer's right to recoupment and/or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to permitted successors and assigns.
- 14. Changes:** Buyer may at any time, by written notice, make changes in the specifications, designs or drawings, samples, or other description to which the articles are to conform, in methods of shipment and packaging, or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Order, whether changed or not changed by any such 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 an adjustment must be made in writing within thirty (30) days of the receipt of any such notice. Nothing in this clause shall excuse the Seller from proceeding without delay to perform this Order as changed.
- 15. Confidential or Proprietary Information:** Seller shall keep confidential and otherwise protect from disclosure all information obtained from Buyer in connection with this Order and identified as confidential or proprietary. Unless otherwise expressly authorized herein or by Buyer, Seller shall use such information, and any other information provided by Buyer thereunder, only in the performance of and for the purpose of this Order. (a) Upon Buyer's request, and in any event upon the completion, or cancellation of this Order, Seller shall return all such information to Buyer or make such other disposition thereof as directed by Buyer. In all subcontracts and purchase orders issued by Seller for performance of work related to this Order, Seller shall, with the prior written approval of Buyer, be permitted to disclose Buyer information under the same obligations as are contained in this clause. (b) Seller shall be liable to Buyer for any loss of the information. (c) Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale, or use of the articles covered by this Order shall be deemed to have been disclosed as part of the consideration for this Order, and Seller shall not assert any claim against Buyer by reason of Buyer's use thereof. (d) The ownership of any information disclosed by a party hereunder shall remain in that party.
- 16. Buyer's Property:** (a) All property used by Seller in connection with this Order which is owned, furnished, charged to, or paid for by Buyer including, but not limited to, materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings and other technical information, specifications, and any replacement thereof, shall be and remain the property of Buyer subject to removal and inspection by Buyer at any time without cost or expense to Buyer and Buyer shall have free access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Buyer's property, used only for this Order and adequately insured by Seller at its expense for Buyer's protection. Seller shall assume all liability for and maintain and repair such property and return the same to Buyer in its original condition, reasonable wear and tear excepted, and when such property is no longer required hereunder, Seller shall furnish Buyer with a list thereof and shall comply with any Buyer disposition instructions applicable thereto. Buyer shall not be obligated to pay any invoices for tooling until the first article produced therefrom shall have been received and accepted. (b) Materials furnished by Buyer on other than a charge basis in connection with this Order shall be deemed to be held by Seller as bailee thereof. Seller agrees to pay Buyer's replacement cost for all such material spoiled or otherwise not satisfactorily accounted for over and above 2% thereof allowable for scrap loss. Notwithstanding the aforementioned, this clause shall not apply if this Order is issued in support of a Government Prime Contract and is not a commercial item pursuant to FAR Part 12. Instead, the applicable FAR clauses shall govern.
- 17. Gratuities:** Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to Buyer's employees, agents or representatives with a view toward securing this Order or securing favorable treatment with respect thereto.
- 18. Utilization of Small Business:** To support Company policy and as consistent with the efficient performance of this Order, Seller agrees to accomplish a maximum amount of subcontracting to small business concerns.
- 19. Compliance with Laws:** In the performance of this Order, Seller shall comply with all applicable federal, state and local laws and regulations. Seller shall notify Buyer immediately if Seller's work for Buyer becomes the subject of a Government audit or investigation. Seller shall promptly notify Buyer if Seller is indicted, suspended or debarred. Seller represents that Seller has not been convicted of fraud or any other felony arising out of a contract with the Department of Defense, as described in more detail in 10 U.S.C. 2408.
- 20. U.S. Export Control Laws and Regulations:** Seller agrees to comply fully with all applicable U.S. laws and regulations as they may apply to the export of any hardware, software, defense service or technical data (collectively "data") provided by, through or with the cooperation of Seller in the performance of this Order in the U.S. or abroad, or under any export license or exemption issued to Buyer. Seller agrees that it will not permit re-export of data, including to foreign nationals employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers without the prior written consent of Buyer and under authority of an export license or applicable license exemption.

Information furnished to Seller under this solicitation/Order may contain technical data as defined in the International Traffic in Arms Regulations ("ITAR") at 22 CFR 120.10. Seller is advised and hereby acknowledges that such technical data may not be exported, disclosed or transferred to any foreign person, as defined in the ITAR at 22 CFR 120.16, without first complying with all requirements of the ITAR (22 CFR 120-130) including requirements for obtaining any required export authority. If such technical data is marked as ITAR controlled, Seller shall be responsible and liable for any and all claims, liabilities and expenses to the extent that the claims, liabilities and expense are a direct result of Seller's failure to comply with the export laws and regulations of the United States.

- 21. Notice to Buyer of Labor Disputes:** (a) Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof, including all relevant information, with respect thereto, to Buyer. (b) Seller agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder to which a labor dispute may delay the timely performance of this Order.
- 22. Severability:** If any covenant, agreement, term or provision of this Order, or the application thereof to any situations or circumstances, shall be deemed by a court of competent jurisdiction as invalid or unenforceable, the remainder of this Order, or the application of such covenant, agreement, term or provision to situations or circumstances other than those as to which it is invalid or unenforceable, shall not be affected.
- 23. Rights, Remedies and Waiver:** The rights and remedies provided Buyer herein shall be cumulative, and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.
- 24. Disputes:** In the event that any claim or controversy arising out of this Order cannot be settled by the parties themselves, the parties agree to attempt in good faith to resolve such claim or controversy by mediation, in accordance with the CPR Mediation Procedure of the Center for Public Resources (CPR) Institute for Dispute Resolution. Any dispute which is not settled by agreement of the parties or by such mediation may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or other settlement of any dispute arising under this Order, Seller shall proceed diligently with the performance of this Order in accordance with the decision of Buyer. If the work covered by this Order relates to a prime contract with the United States and is within the jurisdiction of a Department or Agency of the United States, all references to dispute procedures in Government clauses incorporated by reference shall be deemed to be superseded by this Article 24, "Disputes."
- 25. Buyer Approvals and Reviews:** The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of any of its obligations under this Order, nor excuse or constitute a waiver of any defects or nonconformities in any articles furnished under this Order, nor change, modify or otherwise affect any of the provisions of this Order, including, but not limited to, the prices and delivery schedules contained herein.
- 26. Taxes:** Seller is liable for and shall pay all taxes, impositions, charges and exactions imposed on or measured by this Order except those Buyer specifically agrees or is required by law to pay and which are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges, and exactions for which Buyer has furnished an exemption certificate.
- 27. Title:** Except if title has heretofore passed to Buyer or Buyer's customers under other provisions of this Order, title to the articles shall pass to Buyer upon delivery of the articles to the F.O.B. point named herein.
- 28. Hazardous Materials:** Seller shall notify Buyer of every article ordered hereunder which contains material hazardous or injurious to the health or physical safety of persons even though said hazard or injury may occur due to mishandling or misuse of the article. In addition, Seller shall identify the hazardous or injurious material and notify Buyer of the effects of such material on human beings and the physical manifestations that could result. For each article so identified, Seller shall supply Buyer warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard and its effects.
- 29. Stop Work:** Buyer may, at any time, by written order to the Seller, require Seller to stop all or any part of the work called for by this Order for a period of ninety (90) days and for any further period to which the parties may agree. Upon receipt of the stop work order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by this Order. At the expiration of the stop work order, Buyer shall either cancel the stop work order or cancel this Order as provided in the Cancellation clause of this Order. Notwithstanding the aforementioned, this clause shall not apply if this Order is issued in support of a Government Prime Contract and is not a commercial item pursuant to FAR Part 12. Instead, the applicable FAR clauses shall govern.
- 30. Choice of Law:** This Order shall be governed by and construed and enforced in accordance with the internal law of the state shown in Buyer's address printed on the face of this Order, including its provisions of the Uniform Commercial Code, but specifically excluding such state's conflict of law provisions and the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.
- 31. Entire Agreement and Amendments:** This Order constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements with respect thereto. No amendment or change of any kind shall be binding upon Buyer unless in writing and signed by an authorized representative of Buyer's purchasing department.

If this Order is placed under a Government contract, the following shall apply:

1. FAR 52.244-6, Subcontracts for Commercial Items