

General Purchase Order Terms and Conditions

DEFINITION: As used in this order the term "FAR" means Federal Acquisition Regulations. The effective dates of the below-referred FAR clauses shall be the dates of corresponding clauses in the prime contract that are referenced in this purchase order. Any reference to a "Disputes" clause in the prime contract under which this purchase order is issued shall be inapplicable to this purchase order. If this order includes a Government contract number, then any property furnished herewith is considered government-furnished property which must be accounted for in accordance with FAR Part 45. Refer to General Purchase Order Terms and Conditions for risk of loss.

1. ACCEPTANCE OF PURCHASE ORDER - This order is Buyer's offer to Seller for the materials specified or the work to be performed hereunder and, together with any attachments specifically incorporated herein by reference, contains the entire agreement between Buyer and Seller with respect to such materials or work, and supersedes any other agreements or understanding made to the date hereof. This offer shall become a Contract on the terms and conditions stated herein when it is accepted by Seller by either acknowledgement or performance. No change, modification or revision of this order shall be valid unless in writing signed by Buyer.

2. PACKING AND SHIPPING - All items must be suitably packed and prepared for shipment to secure lowest transportation rates and comply with carrier regulations, otherwise the difference in packing, crating and cartage, as the case may be, will be charged to Seller. No charges will be paid by Buyer for packing, crating or cartage unless stated in the order. All shipments to be forwarded on one day via one route must be consolidated.

3. DELIVERY- Deliveries shall be strictly in accordance with the schedule set out or referred to in the order and in exact quantities. If Seller's deliveries will not meet such schedule, Buyer may request Seller to ship via routing necessary to meet schedule or recover time lost by nondelivery on schedule, and the difference between revised routing and order routing costs shall be paid by Seller. Time is of the essence, and failure by Seller to complete delivery within the time specified shall, at Buyer's option without liability, in addition to Buyer's other rights and remedies, relieve Buyer of any obligation to accept and pay for any such material or work.

4. INVOICES AND PAYMENT - Unless otherwise provided in this order, no invoices shall be issued nor payments made prior to delivery. Individual invoices must be issued for each shipment under this order. Unless freight and other charges are itemized, any discount will be taken on full amount of invoice. All payments are subject to adjustment for shortage or rejection.

5. WARRANTIES - Seller warrants: (a) all items delivered under this order will be free from defects in material and workmanship, will conform to applicable specifications and drawings and, to the extent such items are not manufactured pursuant to detailed designs furnished by Buyer, will be free from defects in design and suitable for the intended purposes; (b) unless otherwise stated on the face of this order, all items delivered under this order are new, have not been previously used and are not former Government surplus property; (c) all materials herein described and the sale thereof do not, and the use of the same for their intended purposes will not, constitute infringement or contributory infringement of any patent, copyright or trademark, or violation of any trade secret; and (d) in the performance of this order. Seller has complied or will comply with all applicable Federal, State, and local laws and ordinances and all lawful orders, rules, and regulations thereunder. These warranties are in addition to and shall not be construed as restricting or limiting any warranties of Seller, expressed or implied, which are provided or exist by operation of law. The warranties of Seller, together with its service warranties and guarantees, if any, shall run to Buyer and its customers.

6. INSPECTION - All items are subject to final inspection and acceptance by Buyer at destination, notwithstanding any prior payment or inspection at source, and such inspection shall be made within a reasonable time after delivery. Acceptance of any items by Buyer shall not be deemed to alter or affect the obligations of Seller or the rights of Buyer and its customers under the Warranties clause.

7. REJECTION - Buyer shall notify Seller if any items delivered hereunder are rejected and at Buyer's election and Seller's risk and expense, such items shall be held by Buyer or returned to Seller. No replacement of defective items shall be made by Seller unless agreed to in writing by Buyer.

8. CHANGES - Buyer may at any time by written notice make changes within the general scope of this order to drawings and specifications, shipping instructions, quantities, and delivery schedule. Should any such change increase or decrease the cost of, or the time required for, performance of the order, an equitable adjustment in the price and/or delivery schedule will be made. Any claims for adjustment by Seller must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon.

9. TITLE AND RISK OF LOSS - (a) Unless otherwise provided in this order, Seller shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this order at the FOB point specified on the face hereof, and upon such delivery title shall pass from Seller to Buyer and Seller's responsibility for loss or damage shall cease except for loss or damage resulting from Seller's negligence or failure to comply with this order. Passing of title upon such delivery shall not constitute acceptance of the items by Buyer. (b) Unless otherwise provided in this order, Seller upon delivery to it or manufacture or acquisition by it, of any materials; parts, special tooling or other property, assumes the risk of and shall be responsible for any loss thereof or damage thereto. Seller, in accordance with the provisions of this order, but in any event upon completion thereof, shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear and except to the extent that such property has been incorporated in items delivered under this order, or has been consumed in normal performance of work under this order. If Seller is furnished Government owned property for use in connection with this order, Seller shall comply with the provisions of Federal Acquisition Regulations (FAR), PART 45 -GOVERNMENT PROPERTY which is hereby incorporated herein by reference. "Special Tooling" as herein used includes all special tools, jigs, fixtures, drawings, dies, molds, and patterns acquired or manufactured by Seller for use in the performance of this order, and does not include any standard or perishable tooling, gauges, or measuring instruments.

10. STOP WORK ORDER - The rights and obligations specified in "Stop Work Order" clause contained in FAR Section 52.242-15 are hereby made applicable to this order by reference except "Contracting Officer" shall mean "Buyer's Purchasing Representatives" the title "Termination for Convenience of the Government in paragraph (a)(2) means "Termination" and the words "for the convenience of the Government" in paragraph (c) are replaced by "in accordance with the Termination Clause."

11. TERMINATION AND DEFAULTS - The rights and obligations specified in FAR Section 52.249-2 and 52.249-8 are hereby made applicable to this order and said sections are hereby incorporated in this order by reference, except that the terms "Contracting Officer" and "Government" used therein shall mean "Buyer", "Contractor" shall mean "Seller", "Contract" shall mean, "this order", the "Termination for Convenience" clause shall mean the Termination clause referred to in this Article; and the reference therein to a "Disputes" clause shall be inapplicable. Waiver by Buyer of any default by Seller shall not be deemed a waiver of any other default in the "Termination of Convenience" clause, paragraph (c), the term "45 days" is changed to "90 days" and in paragraph (d) the term "1 year" is changed to "6 months". In no event shall Seller acquire any direct claim or cause of action against the United States government.

12. USE OF DESIGNS, DATA, ETC. - Seller agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by Buyer and use such items only in the production of items under this order or other orders from Buyer, and not otherwise, unless Buyer's written consent is first obtained; provided, however, that Seller shall have the right to use such items upon written notice to Buyer in the manufacture of end items for direct sale to the Government to the extent the Government has the right under its prime contracts with Buyer to authorize such use by Seller. Upon completion or termination of this order, Seller shall return all such items to Buyer or make such other disposition thereof as may be directed or approved by buyer.

13. INDEMNIFICATION AGAINST INFRINGEMENT - Seller agrees to indemnify Buyer, its successors, assigns, customers and agents from any and all costs, expenses and damages on account of any claim that any of the material covered by this Contract (except material made to Buyer's detailed designs) infringes any United States Letters Patent, copyright or trademark, or that the same is a violation of any trade secret Seller shall be notified promptly of each such claim and, to the extent of Buyer's right so to do, shall be offered control of the defense and settlement of any such claim.

14. NOTICE OF LABOR DISPUTE - 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, Seller shall require of any subcontractor of any material or work hereunder the same or substantially the same obligation as that contained herein.

15. CLEARANCE OF MATERIAL INTENDED FOR PUBLIC RELEASE - No news release, advertisement, public announcement, denial or confirmation of same relating to any part of the subject matter of this order or any phase of any program hereunder shall be made directly or indirectly without prior written approval of Buyer. If this purchase order is issued under a government contract, the Government is excluded from the restrictions set out in this provision.

16. SUBCONTRACTING OR ASSIGNING - Neither this order nor the obligations of Seller hereunder shall be subcontracted, assigned or delegated by operation of law or otherwise without Buyer's prior written consent.

17. GOVERNING LAW - The purchase Order incorporating these terms and conditions and the performance of the parties hereunder shall be construed in accordance with and governed by the law of the State of Texas. Venue shall be San Antonio, Bexar County, Texas.

18. ADDITIONAL TERMS AND CONDITIONS - If this purchase order is issued under a government contract, as shown by a number in the block entitled "Government Contract Number" on the face of this purchase order, and to the extent they are required by the contract under which this order is issued, or by the Federal Acquisition Regulations (FAR) or other comparable government procurement regulations, and subject to the exemptions, conditions, and limitations therein specified, the following terms and conditions and the DAR/FAR clauses listed in **EXHIBIT A** are incorporated herein and made a part hereof. Seller shall include in each lower-tier subcontract the appropriate flow-down clauses as required by FAR and DFARS.

(a) **EQUAL EMPLOYMENT OPPORTUNITY**- Unless exempt by the provisions of Executive Order 11246, as amended, and FAR Section 22.810 the Seller shall comply with paragraph (1) through (7) of Section 202 of Executive Order 11248 and the clause set forth in FAR Section 52.222-26, which are incorporated by reference herein. The term "Contractor" and "Government Prime Contractor" shall mean Seller, and "Contract" shall mean this Purchase Order.

(b) **AFFIRMATIVE ACTION AND REPORTING FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS** - Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and the clauses set forth in FAR Sections 52.222-35 and 52.222-37 which are incorporated by reference herein.

(c) **AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS**- Seller agrees to comply with rules, regulations, and relevant order for the Secretary of Labor issued under the Rehabilitation Act of 1973, as amended, and the clause set forth in FAR Section 52.222-36 which are incorporated by reference herein.

(d) **Americans with Disabilities Act of 1990** – Seller agrees to comply with rules and regulations of the Americans with Disabilities Act of 1990 which is incorporated by reference herein.

(e) **DEFINITIONS** - Whenever appropriate, when used in any DAR/FAR regulation referenced in the terms and conditions applicable to this purchase order, "Contracting Officer" and "Government" shall mean Buyer, "Contractor" and "Government Prime Contractor" shall mean Seller, and "Contract" shall mean this Purchase Order.

(f) **INSPECTION AND AUDIT**- Seller's books and records and its plant, or such parts thereof as may be engaged in the performance of the purchase order, shall at all reasonable times be subject to inspection and audit by any authorized representatives of the United States Government.

(g) **EXAMINATION OF RECORDS BY COMPTROLLER GENERAL** - Seller agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the purchase order, have access to and the right to examine only directly pertinent books, documents, papers, and records of Seller involving transactions related to this purchase order.

(h) **QUALITY CONTROL**- If this purchase order requires compliance with MIL-1-45208, the terms and conditions of FAR Section 52.246-11 Higher-Level Contract Quality Requirement (Government Specification) (APR 1984) is incorporated herein by reference and made a part hereof.

(i) **ENVIRONMENTAL LAWS**

If this purchase order exceeds \$100,000, Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. Sec 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C Sec. 1251 et seq.)

(j) **TRAVEL EXPENSES**

Reimbursement travel cost must be accompanied with receipts. Reimbursement travel cost (including lodging and per diem rates) must be in compliance with current Federal Travel Regulation (FTR) at the time of travel. Airfare will be reimbursed for the lowest priced airfare available to the contractor during normal business hours and costs incurred for luxury rental automobiles will not be reimbursed.

SERVICES - If the Seller is providing "Services" as part or all of this Purchase Order then the following clauses shall apply:

19. INDEPENDENT CONTRACTOR – Services rendered by Seller for Buyer and Seller's and Buyer's respective relationship in all matters related to this purchase order shall be as independent contractor and not as employee, agent or servant. Seller shall obey all federal, state, and local safety and health regulations in the performance of the services to be supplied hereunder, and while on the premises of the Buyer.

20. HOLD HARMLESS – SELLER HEREBY AGREES TO DEFEND AND FOREVER INDEMNIFY, RELEASE AND HOLD HARMLESS BUYER, ITS AGENTS AND EMPLOYEES FROM ANY AND ALL CAUSE OR CAUSES OF ACTION, INCLUDING PERSONAL INJURY, ILLNESS, DEATH, AND PROPERTY DAMAGE, COSTS, CHARGES, FINES, CLAIMS, DEMANDS, AND LIABILITIES OF WHATEVER KIND, NAME OR NATURE, ARISING FROM OR RELATING TO SELLER'S PERFORMANCE, OR FAILURE TO PERFORM HEREUNDER AND HOWSOEVER THE SAME BE CAUSED; EXCEPT AS A RESULT OF THE SOLE NEGLIGENCE OF BUYER.

21. CONTRACTOR INSURANCE – Seller shall comply with the insurance requirements **EXHIBIT B** attached to this Purchase Order and provide a certificate of insurance meeting these requirements prior to the start of work. Failure to comply can result in delay of payment.

22. FOREIGN NATIONAL – By acceptance of this Purchase Order for the performance of services required, the Seller agrees and covenants that the following conditions are met when providing any employee of Seller:

1. None of Seller's employees who provide services to Buyer pursuant to this Purchase Order are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986; and

2. If Seller's employees are foreign national workers present in the United States under a nonimmigrant visa category that carries authorization to work, Seller will furnish to Buyer a copy of the appropriate work authorization document for each foreign national worker verifying the work authorization, including but not limited to copy of employment authorization document, approved Form I-797 and certified labor condition application, or other acceptable documentation. Such employees will only be utilized to perform services which are not export controlled; and

3. All of Seller's employees who are to perform services which are export controlled shall be United States citizens or legal permanent residents of the United States.

23. RETAIN IN CONFIDENCE – Seller agrees it will retain in confidence and not use or disclose to others any of Buyer's trade secrets, confidential know-how, data or other information acquired by, or disclosed to Seller by or on behalf of Buyer.

24. NO ADVERTISING – No advertising or publicity containing any reference to Buyer or any of its employees either directly or by implication, shall be made use of by Seller or on Seller's behalf without Buyer's written approval.

25. LIEN RELEASE – The Seller shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the work, the site or any amounts due or to become due to the Seller under this agreement. If any lien, charge or claim is so asserted, the Seller shall promptly procure its release and indemnify the Buyer against all damage and expense incident thereto. Upon completion of the work and before any final payment and settlement, the Seller shall provide evidence satisfactory to the Buyer of payment and release of debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, subcontractors and sub-subcontractors.

TEXAS SALES TAX EXEMPTION CERTIFICATE – We claim an exemption from payment of sales and use taxes for the purchase of taxable items described on the reverse side hereof. We claim this exemption because Southwest Research Institute is a non-profit organization that qualifies under Section 151.310 of the Texas Tax Code. We understand that we will be liable for payment of sales tax which may become due for failure to comply with the provisions of the state, city and/or metropolitan transit authority sales and tax laws and Comptroller rules regarding exempt purchases. Liability for the tax will be determined by the price paid for the taxable item purchased or the fair market value for the period of time used. We understand that it is a misdemeanor to give an exemption certificate to the Seller for taxable items which we know, at the time of purchase, will be used in a manner other than that expressed in this certificate and, upon conviction, may be fined up to \$500.00 per offense. Sales and use tax "exemption numbers" do not exist.

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