

**TC-06**  
**Terms and Conditions of Purchase**  
**(Firm Fixed Price Orders for Commercial Items)**

**Definitions.** The following definitions apply to these terms and conditions: (a) "PO" or "Purchase Order" or "Order" or "Contract" – the Purchase Order along with these Terms and Conditions of Purchase, and any referenced special or supplemental provisions, drawings, technical data, specifications, statement of work, quality provisions (in all cases including any changes), and all other documents incorporated herein; (b) "Buyer" – the legal entity issuing this PO, as listed on the face of the PO; (c) "Procurement Representative" – the individual authorized to issue this PO as the Buyer's authorized representative; (d) "Seller" or "Contractor" or "Offeror" – the legal entity contracting with the Buyer; (e) "Work" -- all required labor, articles, materials, products, supplies, parts, assemblies, data, drawings, goods, items, and services constituting the subject matter of this PO; (f) "Due Date" - the date of receipt at destination (not the ship date) irrespective of FOB point; (g) "Subcontractor" – any legal entity contracting with the Seller or its lower tier subcontractors under this PO; (h) "Seller Engaged Personnel" – any of Seller's employees; Seller's contingent, contract, or temporary workers; or Seller's agents or Subcontractors (and their employees) engaged, directed, or allowed by Seller to provide Work, directly or indirectly, to Buyer under this PO; (i) "U.S." – the United States of America. Further, the term "including" shall not be limited by any list of examples provided thereafter.

**2. Entirety of Agreement.** (a) Seller agrees to provide and sell to Buyer the Work, per the requirements and the Due Date(s) described in the PO.

(b) This PO constitutes the complete and entire agreement between the parties hereto and unless agreed in writing otherwise, supersedes all previous negotiations, discussions, communications, representations, course of dealing, usage of trade, or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof. No agreement or understanding varying, contradicting or extending the terms or conditions of this PO, including Seller provided terms and conditions included within a quote, proposal, order acknowledgement, or like document, will be binding unless in writing, expressly incorporated in the PO, and signed by duly authorized representatives of both parties. This PO constitutes an offer by Buyer in accordance with the terms set forth herein. Acceptance of this PO by the Seller will be by any one of the following: (1) acknowledgment in writing, (2) commencement of performance by the Seller; or (3) delivery in whole or in part of the Work called for hereunder.

(c) Any inconsistencies among the documents comprising the PO shall be resolved in accordance with the following descending order of precedence: (1) provisions contained in the text of the PO excluding any attachments; (2) these Terms and Conditions of Purchase; (3) the specifications and/or statement of work; and (4) other provisions attached or incorporated by reference to or in the PO.

**3. RESERVED**

**4. Changes.** Buyer may unilaterally and at any time by a written order issued by its Procurement Representative, suspend performance of this PO in whole or in part, or make changes

within the general scope of this PO, including changes to the following: method of shipment and/or packing, delivery schedule, place of delivery, quantity of Work, drawings designs or specifications, and inspection and acceptance requirements. Seller shall proceed immediately to perform this PO as changed. If any such change causes an increase or decrease in the cost of, or the time required, for performance of this PO, or otherwise affects any other provisions of this PO, an equitable adjustment shall be made in the purchase price and/or delivery schedule as agreed to in writing by Buyer, and the PO modified in writing accordingly. Any claim by the Seller for adjustment under this Clause must be asserted in writing within twenty (20) days from the date of the notification of change, and such request must include pertinent cost and/or pricing data sufficient to permit Buyer to evaluate any such claim; provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon a claim for adjustment asserted at any time prior to final payment under this PO. If Seller's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, Buyer shall have the right to prescribe the manner of disposition of the property. Nothing in this Clause nor the failure of the parties to agree on an equitable adjustment, shall excuse the Seller from proceeding with the PO as changed. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" Clause of this PO. Only the Procurement Representative has authority on behalf of Buyer to make changes to this PO.

**5. Product Changes/Part Obsolescence.** (a) Seller shall provide written notification to Buyer prior to making any changes to Seller's tooling, facilities, materials, or processes, and/or shall provide written notification to Buyer upon becoming aware of any such changes by Seller's Subcontractors at any tier, that could affect the Work in this PO. This requirement includes changes to fabrication, assembly, handling, inspection, acceptance, testing, manufacturing location, parts, materials, or suppliers.

(b) Seller shall notify Buyer of any pending or contemplated future action to discontinue Work purchased pursuant to this PO and shall allow Buyer to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the Work. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to the actual discontinuance. Seller shall extend opportunities to Buyer to place last time buys of such Work with deliveries not to exceed one hundred eighty (180) days after the last time buy date. Seller shall flow down to Subcontractor(s) the requirements of this Clause and all other applicable flow down provisions.

**6. Delivery and Notifications.** (a) Time is of the essence and Seller shall furnish the Work covered by this PO in strict adherence with the Due Date(s) stated on the face of this PO. Unless pre-approved in writing by Buyer, Buyer shall not be liable for material commitments or production arrangements made by Seller in excess of the amount or in advance of the time reasonably required to meet the Due Date(s). Seller shall not make deliveries in advance of the Due Date(s) unless authorized in writing by Buyer. Work delivered to Buyer in advance of the Due Date(s) without Buyer's authorization may be returned or

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stored by Buyer at Seller's expense and without any obligation to Buyer. Deliveries will be made even in the event of a strike at Seller's location, unless otherwise authorized by Buyer. If the Seller fails to deliver in accordance with the schedule, Buyer will be entitled, at its election and its sole discretion, to either a price reduction for late deliveries, or the right to terminate this PO for default for late deliveries.

(b) In the event of any anticipated or actual delay in the performance of this PO, Seller will immediately notify the Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay along with a proposed written recovery schedule. If Buyer requests, Seller shall, at Seller's expense, ship via air or other expedited routing to avoid or minimize any delay. Seller shall also immediately notify Buyer in writing of any events that could affect contract performance, such as bankruptcy proceedings, strikes, accidents, etc. Seller agrees to flow this Clause down to its Subcontractors, and promptly notify Buyer in writing when there exists such events and/or there are anticipated or actual delays at its Subcontractors that could affect performance under this PO. Notification shall not relieve Seller of its obligation to comply with PO delivery requirements including Due Date(s).

(c) In the event of a termination for convenience or change by Buyer, no claim will be allowed for any manufacture or procurement in advance of Seller's normal lead time(s) or in excess of what is reasonably required to meet the Due Date(s) in the absence of Buyer's prior written consent.

**7. Disputes.** In the event of any dispute arising under or relating to this PO, the parties agree to make diligent and reasonable attempts to resolve through negotiations all such disputes prior to resorting to any remedy available in law or equity. Any action at law, suit in equity, or judicial proceeding of any kind arising directly, indirectly, or otherwise in connection with this PO or the relationship between the parties shall be brought only in a court of competent jurisdiction within the Commonwealth of Virginia. Each party hereby agrees to irrevocably submit and consent to the exclusive jurisdiction and venue of courts located in Virginia and each hereby waives its rights to challenge the personal jurisdiction of those courts over it. Pending resolution of any such dispute by settlement or by final judgment, Seller shall proceed diligently with performance unless otherwise directed by Buyer in writing. In the event litigation is pursued, the prevailing party shall be entitled to recover its reasonable costs and expenses including its reasonable attorneys' fees and costs.

**8. RESERVED**

**9. RESERVED**

**10. Counterfeit Parts.** (a) For purposes of this Clause, the term "**Parts**" consists of those parts delivered under this PO that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). The term "**Counterfeit Part**" means a Part that fulfills any or all of the following: 1) is or contains items misrepresented as having been designed, produced and/or tested under an approved system or other acceptable method; 2) is an item altered to resemble a product

without authority or right to do so, or is an imitation of another product, with the intent to mislead or defraud by presenting the imitation as original or genuine; 3) is an approved Part that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; or 4) is a used, refurbished, sample, or reclaimed item passed off as a new one.

(b) Seller agrees and shall ensure that Seller and Seller Engaged Personnel shall deliver no Counterfeit Parts to Buyer. Seller shall only purchase items to be delivered or incorporated as Parts directly from the original component manufacturer /original equipment manufacturer, or through an authorized distributor. Parts shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. Seller shall, at its expense, promptly replace any delivered Counterfeit Part with a genuine Part conforming to the requirements of this PO. Notwithstanding any other provision herein, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Parts, including costs borne by Buyer, its customer or subcontractor associated with removing Counterfeit Parts, of reinserting replacement Parts and of any testing necessitated by the need to identify the Counterfeit Parts and the reinstallation of Parts after Counterfeit Parts have been exchanged. The remedies contained in this Clause are in addition to any remedies Buyer may have at law, equity or under other provisions of this PO.

**11. Intellectual Property.** (a) Seller agrees that Buyer shall be the owner of all rights and title of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this PO by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Buyer, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Buyer's request and expense, all documentation necessary to perfect title therein in Buyer. Seller shall maintain and disclose to Buyer written records of, and otherwise provide Buyer with full access to, the subject matter covered by this Clause and that all such subject matter will be deemed information of Buyer and subject to the protection provisions of the Clause 14, Confidential and Proprietary Information/Property. Seller shall assist Buyer, at Buyer's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this Clause.

(b) Seller warrants that, to the best of its knowledge, the Work under this PO will not infringe or otherwise violate the intellectual property rights of any third party.

(c) The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by Seller and furnished to Buyer pursuant to this PO shall become the sole property of Buyer.

(d) No other provision in this PO, including but not limited to Clause 18, Indemnification, shall be construed to limit the liabilities or remedies of the parties under this Clause.

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**12. Title to Drawings, Specifications and Work Product.** (a) Buyer and/or its customers shall at all times have title to: (1) all drawings and specifications furnished by Buyer to Seller, and (2) all documents (including all drawings and specifications) and work product, in any form, generated by, for or on behalf of Seller in connection with this PO that is derived from such furnished documents and work product. The Seller shall, upon Buyer's request or upon completion of this PO, promptly return or deliver all documents and work product, including all copies, to Buyer.

(b) The Seller hereby assigns and agrees to assign to Buyer the Seller's entire right, title and interest in and to (1) any and all documents and work product referred to in paragraph 12(a)(2) above, (2) any and all applications for patent, domestic and foreign, that may be filed on said documents and work product, (3) any and all patents that may issue or be granted on such applications, and (4) any and all trademarks and copyrights in material related to said documents and work product. Seller shall, upon request by Buyer, immediately sign or have signed and deliver to Buyer, without further consideration, any and all documents necessary to perfect the assignments granted in this Clause.

**13. RESERVED**

**14. Confidential or Proprietary Information/Property.**

Information provided by Buyer to Seller remains the property of Buyer. Both parties shall comply with the terms of any proprietary information agreement between Buyer and Seller and comply with all proprietary information markings and restrictive legends applied by such party to anything disclosed hereunder. The parties shall use such information and property only in the performance of and for the purpose of this PO and in the case of Buyer, for Buyer's higher tier contract related to this PO. Seller shall not, at any time during or after performance of this PO, disclose to others (except those Seller Engaged Personnel with a need to know) any information, knowledge, or data (including business, technical, financial, or information of a proprietary or trade secret nature) that Seller: (a) receives from Buyer; or (b) conceives, develops or acquires in the performance of this PO. Nothing in the foregoing shall affect compliance with U.S. Government requirements. Upon either party's request upon the completion, termination or cancellation of this PO, the other party shall return all proprietary or confidential information and property to or certify the destruction thereof. **Seller shall not sell or dispose of any scrap or any completed, partially completed, or defective proprietary property that is subject to U.S. Export Regulations before receiving written authorization and disposition instructions from Buyer.** Seller shall flow down to Seller Engaged Personnel receiving such information or property these requirements to provide to Buyer the same rights and protection as contained in this Clause. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

**15. Release of Information and Use of Name.** The Seller shall not, without the prior written consent of Buyer, publicly release any information regarding the subject matter or existence

of this PO. This includes advertisements, brochures, news releases (including photographs, films, public announcements, or denial/confirmation of the same, or interviews with news media) and the like. Seller shall not use or allow to be used, Buyer's name, logo or trademarks without the prior written approval of Buyer. The Seller shall include the substance of this Clause, including this sentence, in all of its subcontracts.

**16. Seller's Compliance with Applicable Laws.** (a) Seller shall comply with all applicable international, federal, state and local laws, statutes, ordinances, rules, regulations, programs, plans, and orders (collectively referred to as "**Laws**") in its performance of this PO, and shall assure that its Subcontractors are also in compliance with the Laws. All Work delivered hereunder shall comply with all applicable Laws.

(b) Without limitation to the foregoing, Seller warrants that it is in compliance with all Laws regarding prohibitions on bribery of public officials and kickbacks, including the Foreign Corrupt Practices Act and similar laws of foreign countries.

(c) Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. Seller, at its expense, shall provide reasonable cooperation to Buyer in conducting any investigation regarding the nature and scope of any failure by Seller or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of Seller's obligations under this PO.

(d) Seller agrees to defend, indemnify, and hold harmless Buyer from and against any Damages (as defined in Clause 18 below) relating to any actual or alleged non-compliance by Seller or Seller's Subcontractors of any Laws.

**17. Hazardous Material Identification and Material Safety**

**Data.** Prior to shipment of any hazardous material or chemical (as determined by OSHA regulation at 29 CFR § 1910.1200[d], Federal Standard No. 313, or the Hazardous Materials table under 49 CFR 172.101) onto Buyer property or work sites, Seller shall provide to Buyer one copy of OSHA Form 20 or 174, Safety Data Sheet or equivalent, for each such material or chemical. The form shall include the Buyer stock number or the material specification number as defined in this PO and all of the information required by 29 CFR § 1910.1200(g). The packaging, labeling, handling, and shipping of all hazardous items must conform to all Laws, including Title 49 of the CFR Hazardous Material Regulations and carrier regulations. In addition to application of proper shipping labels on the outside container, each container of hazardous items shall be marked with the appropriate precautionary label according to the Code of Federal Regulations. Seller shall comply with all regulations issued by the Environmental Protection Administration and with the requirements of the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended. Any failure to comply with this Clause shall be grounds for withholding payments due the Seller hereunder.

**18. Indemnification.**

(a) Each party agrees to defend, indemnify and hold harmless the other party, its officers, directors, employees, agents,

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representatives, dealers, distributors, customers, and their subcontractors from any and all lawsuits, claims, fines, penalties, offsets, liabilities, judgments, losses, damages, costs and profit disallowed, or expenses (including reasonable attorneys' fees) (collectively, "Damages") for: (1) property damage or personal injury including death, of whatever kind or nature to the extent caused by that party's or its Engaged Personnel's performance or failure to perform pursuant to this PO; (2) any liability that arises as the result of failure of either party or its Engaged Personnel to comply with any Law or Clause of this PO. Further, Seller agrees to defend, indemnify and hold harmless Buyer for: (3) liability from any actual or alleged patent, copyright, trademark, or trade secret infringement by reason of any manufacture, use, or sale of any Work delivered by Seller under this PO; and (4) any breach of Seller's obligations, warranties, representations, certifications, or guarantees provided under this PO.

(b) If the use or sale of any Work or deliverable, in respect to which Seller indemnifies Buyer under paragraph 18(a)(3), is enjoined as a result of any action or proceeding, Seller, at no expense to Buyer, shall obtain for Buyer and its customer(s), the right to use and sell said Work or deliverable or shall substitute an equivalent item acceptable to Buyer and extend this indemnity with respect to such equivalent item. In the event that Seller is unable to secure such right of use for Buyer and/or its customer(s), Seller shall indemnify Buyer and its customer(s) for any and all losses, damages, costs, and expenses (including reasonable attorneys' fees) sustained by reason of such injunction.

**19. Inspection.** (a) Seller shall, in its own inspection and testing of the Work, provide and maintain an inspection system in accordance with sound business practices.

(b) Final inspection and acceptance by Buyer shall be at point of delivery unless otherwise specified in this PO. Such inspection shall be in accordance with the customary established inspection procedures of the location of Buyer where the Work is received.

(c) No such inspection shall relieve Seller of its obligations to provide and warrant the Work in accordance with the terms of this PO.

**20. Acceptance.** If any Work is defective or otherwise not in strict conformance with the requirements of this PO, Buyer shall have the right either to reject it, require its correction, or accept it with an equitable adjustment in price or other consideration. Buyer acceptance of nonconforming Work does not release Seller from its warranty or latent defect obligations. Any Work that has been rejected or requires correction shall promptly be replaced or corrected at Seller's expense, including transportation charges. If Seller fails to promptly replace or correct any Work within the schedule for the Due Date(s), Buyer may: (a) return, re-perform, repair, replace, or re-procure the non-conforming Work at Seller's expense; and (b) terminate this PO in accordance with the Termination for Default Clause established herein and recover from Seller any monies paid toward the rejected Work. Should Buyer's customer or other circumstances require acceptance of non-conforming Work, payment will be made at an equitable reduction in price.

**21. Delivery, Title, and Risk of Loss.** (a) Unless this PO specifically provides otherwise, the delivery point shall be FOB Destination.

(b) Title to Work delivered under this PO shall pass to Buyer upon formal acceptance, regardless of when or where Buyer takes physical possession, unless the PO specifically provides for earlier passage of title.

(c) Risk of loss or damage to the Work shall remain with the Seller until, and shall pass to Buyer, upon the latter of acceptance or delivery to the FOB point. The risk of loss of nonconforming Work remains with the Seller until cure and acceptance of conforming Work.

(d) A reference on the PO to "FOB Origin" shall be considered FOB Shipping Point-Freight Allowed (SPFA), and the total amount paid by Buyer for the freight shipment(s) of the Work shall be deducted from the Seller's invoice(s) when payment is made by Buyer.

**22. Invoices and Payment.** (a) Seller shall prepare at time of shipment (or delivery at F.O.B. Origin) full and complete invoices for the Work performed and shall deliver one (1) legible copy of invoices by mail or email as directed in the PO. Seller shall verify email address accuracy to avoid payment delays. Payment terms shall be as specified on the face of the PO.

(b) Each Seller invoice shall be for delivery/completion of Work on only one PO. Seller shall limit the number of submitted invoices on this PO to one (1) per month, with multiple items on a given invoice. Each Seller invoice shall contain as a minimum the PO number and total invoice amount, and for each Work item include: PO line item, Work description (including serial numbers, if required), quantity delivered and invoiced, and invoiced amount. Invoiced unit costs for each Work item must exactly match what is in the PO. Tax and freight charges, when applicable, shall be separately stated on the invoice. Unless the PO specifies otherwise, prices shall not include any sales or use taxes for which Buyer provided an exemption.

**23. Packing, Marking, and Shipping Documents.** All Work shall be packed, marked, and shipped strictly in accordance with the requirements specified in the PO. If no specific instructions are provided, the Seller shall utilize good commercial practices and will cover any damage resulting from its failure to pack or ship properly. On containers, Seller shall mark handling and loading instructions, shipping information, PO number, item and account number, shipment date, and names and addresses of Buyer and Seller. Each shipment of Work shall also include a separate packing list in a waterproof envelope or wrapper.

**24. Representations, Warranties and Guarantees.** (a) By acceptance of this PO, Seller warrants for at least twelve (12) months from the date of acceptance or re-sale by Buyer, whichever is earlier ("Warranty Period"), that all Work: (1) shall be new, suitable for the uses intended, of the grade and quality specified and free from all defects in design, material and workmanship; (2) shall strictly conform to all applicable specifications, drawings, descriptions, samples furnished, and/or other requirements of the PO; (3) shall be adequately packaged and labeled; (4) shall be of good and merchantable title, free of

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liens and encumbrances; and (5) are not in violation of any Laws.

(b) The foregoing warranties are in addition to all other warranties, expressed or implied, and shall not be deemed to be exclusive; these warranties shall survive delivery, inspection, acceptance and payment by Buyer.

(c) If the Work is found not to meet the warranties and guarantees specified herein, Buyer may, within its sole discretion, return such Work to Seller at Seller's expense, for correction, replacement, re-performance or credit, plus transportation charges. If repair, or replacement, or re-performance of the Work is not timely, Buyer may elect to return, repair, replace, or re-procure the non-conforming Work at Seller's expense.

(d) Any Work corrected, replaced, or re-performed shall be subject to the provisions of this Clause to the same extent as the Work initially furnished hereunder twelve (12) months from acceptance of the corrected, replaced or re-performed Work, whichever is longer.

(e) Should Buyer's customer require acceptance of the Work not conforming to this warranty, payment will be made at an equitable reduction in price.

(f) This warranty shall run to Buyer, its successors, assigns, customers, and users of its products.

**25. RESERVED**

**26. RESERVED**

**27. Assignment and Subcontracting.**

Seller shall not assign this PO or any rights or obligations under this PO without the prior written consent of the Procurement Representative. Any prohibited assignment under this PO shall be null and void. This PO shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

**28. RESERVED**

**29. Liens.** Seller agrees that no liens, security interests, encumbrances or property rights of any kind ("**Liens**") shall lie or attach upon or against the Work or any Buyer Property, or any part thereof, for or on account of any work performed, provided, or service furnished by Seller pursuant to this PO.

**30. Choice of Law.** Irrespective of the place of performance, this PO shall be governed by and construed according to the laws of the Commonwealth of Virginia, without regard to its conflict of laws or choice of laws provisions. The parties expressly reject the application of the United Nations Convention of Contracts for the International Sale of Goods to this PO.

**31. Records.** Unless a different period is set forth elsewhere in this PO, Seller shall retain all pertinent books, documents, papers, and records, including but not limited to inspection records, involving transactions related to this PO for a period of three (3) years after final payment on this PO. At the conclusion of this time period, Seller shall make written request to the Procurement Representative, for permission to (1) destroy such

records; (2) package and ship same to Buyer; (3) maintain said records at Seller's facilities; or (4) any combination of the above.

**32. Termination for Convenience.** (a) Buyer may terminate performance of Work under this PO in whole or, from time to time, in part when Buyer determines that it is in its best interest. Buyer shall terminate by issuing to the Seller a "Notice of Termination" specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by Buyer, the Seller shall immediately proceed with the following obligations in addition to any specifically included in the Notice of Termination: (1) Stop work as specified in the Notice of Termination; (2) Place no further subcontracts or orders except as necessary to complete the continued portion of this PO; (3) Terminate all subcontracts to the extent they relate to the Work terminated; (4) Complete performance of the Work not terminated; (5) As directed by Buyer, transfer title and deliver to Buyer: (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and (ii) the completed or partially completed plans, drawings, information, and property that, if the PO had been completed, would be required to be furnished to Buyer; and (6) Comply with the instructions by Buyer in the Notice of Termination and any subsequent written instructions.

(c) Seller shall submit a final termination settlement proposal to Buyer in the form and with the certifications prescribed by Buyer. Seller shall submit the proposal promptly, but no later than ninety (90) calendar days from the Notice of Termination. If the Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay that amount. Such determination shall be conclusive.

(d) Subject to paragraph (c) of this Clause, the Seller and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid due to the termination. The Seller shall be reimbursed for actual, reasonable, and allowable cost incurred up to the date of termination plus a reasonable profit on work performed (a loss rate would apply if the Seller would have sustained a loss on the entire PO had it been completed) not to exceed the total price to be paid for the remaining Work on the PO. In no event shall Buyer be obligated to pay for Seller's anticipatory profit or unabsorbed overhead on the Work terminated. Unless a later date is determined by Buyer, if within ninety (90) days of the Notice of Termination or the Seller's Settlement Proposal, whichever is later, the Seller and Buyer have not agreed on the entire amount to be paid, Buyer shall pay the Seller the amount determined by Buyer to be due the Seller. Failure of the parties to reach agreement shall be a dispute under the "Disputes" Clause. A dispute shall not excuse Seller's obligation to continue performance on any non-terminated portion of this PO.

**33. Termination for Default, Cure Notice, Force Majeure.**

(a) Buyer may, subject to paragraphs (d) and (e) of this Clause, by written notice, terminate this PO for default, in whole or in part, if Seller: (1) Fails to deliver the Work within the time specified in this PO or any extension; (2) Fails to make progress,

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so as to endanger performance of any Work and/or this PO; (3) Fails to perform or breaches any of the provisions of this PO; or (4) Files a petition of any type as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or goes into liquidation or receivership.

(b) Buyer may terminate this PO under paragraphs (a) (2) and (a) (3) of this Clause if the Seller does not cure such failure within ten (10) days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.

(c) If Buyer terminates this PO in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Work similar to those terminated, and the Seller will be liable to Buyer for any excess costs of such Work. However, the Seller shall continue the Work not terminated.

(d) Except for defaults of Subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform the PO arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include: (1) acts of God or public enemy; (2) acts of the Federal Government in its sovereign or contractual capacity; (3) fires or floods; (4) epidemics; (5) quarantine restrictions; (6) freight embargoes; and (7) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(e) If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and Subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted Work were obtainable from other sources in sufficient time for the Seller to meet the Due Date(s).

(f) If this PO is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed Work and partially completed Work that the Seller has specifically produced or acquired for the terminated portion of this PO. Upon direction of Buyer, the Seller shall also protect and preserve property in its possession in which Buyer has an interest.

(g) Buyer shall pay the PO price for completed Work delivered and accepted. Seller and Buyer shall agree on the payment for other Work delivered and accepted and for the protection and preservation of all Work not yet delivered to Buyer. Failure to agree will be a dispute under the "Disputes" Clause. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss due to outstanding liens or related claims. If, after termination, it is determined that the Seller was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Buyer. Seller agrees that any assistance given them by Buyer on this PO or any acceptance of delinquent or nonconforming Work will be solely for the purpose of mitigating damages. It is not the intention of Buyer to condone any delinquency, waive any defect, or waive any rights Buyer has under this PO. The rights and remedies of Buyer in this Clause are in addition to those provided by law or under this PO.

**34. Buyer Property.** (a) Buyer may, by written authorization, provide to Seller property owned by either Buyer or its customer

(Furnished Property). Furnished Property shall be used only for the performance of this PO.

(b) Title to Furnished Property shall remain in Buyer or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage to Furnished Property. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this PO and good commercial practice.

(d) At Buyer's request, and/or upon completion of this PO, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

**35. Export Compliance.** (a) Seller warrants and certifies it has complied and will comply with the International Traffic in Arms Regulations, 22 CFR 120, et seq. ("ITAR") and the Export Administration Regulations ("EAR").

(b) It shall be the responsibility of Seller to notify and properly mark, including jurisdiction and classification of, all Export Controlled Items provided under this PO to Buyer. If any Export Controlled Item is received by the Buyer from the Seller and is not properly marked, the Buyer shall request from the Seller, and the Seller shall provide the Buyer with the proper jurisdiction and classification markings.

(c) Seller shall immediately notify Buyer in writing if it or any parent, subsidiary or affiliate: (i) is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or on the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom; or (ii) if it has had its export privileges denied, suspended, or revoked in whole or in part by any U.S. Government agency..

(d) Should the Seller's Work originate from a foreign location, such Work may also be subject to the export control laws/regulations of the country in which the Work originates. Seller agrees to comply with all applicable export control laws/regulations of that originating country.

(e) In the event Seller is shipping any Work to Buyer from a location outside the US, Seller or Seller Engaged Personnel must be listed as the U.S. importer of record and fulfill all applicable U.S. customs entry requirements. Seller must notify, and provide the country of origin of such Work to, the Procurement Representative in writing no less than five (5) days prior to such shipment.

(f) In carrying out its responsibilities under this PO, Seller will not directly or indirectly authorize, promise, offer or make any political contributions as defined in 22 CFR 130.6 or any fees or commissions as defined in 22 CFR 130.5. This paragraph (f) applies only if this PO involves Defense Articles or Defense Services.

**36. Foreign Personnel.** If the Work includes software maintenance support, Seller agrees that all "On Call" Technical Service numbers will be in the U.S. and that only U.S. Persons will monitor Buyer technical calls due to restrictions on receiving export controlled technical data.

**TC-06**  
**Terms and Conditions of Purchase**  
**(Firm Fixed Price Orders for Commercial Items)**

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**37. RESERVED**

**38. Insurance.** (a) Seller shall secure and keep in force during the term of this PO, and Seller shall require all Subcontractors, prior to commencement of an agreement between Seller and the Subcontractor, to secure and keep in force during the term of this PO, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in the relevant state(s) of operation under this PO, the following insurance coverages:

(1) Commercial general liability (ISO form CG 0001 12/04 or newer equivalent), written on an occurrence basis, including premises or operations, contractual, and products and completed operations coverages (if applicable), with minimum liability limits of \$5 million per occurrence, and a \$5 million general aggregate for bodily injury, property damage and personal/advertising injury, and a \$5 million products/completed operations aggregate, unless other values are specified in the PO. Products/completed operations coverage must be maintained for a minimum of two (2) years past the end of this PO. (2) Transit Insurance to cover the replacement value of the cargo being transported.

(b) The Seller shall furnish a certificate of insurance to the Buyer within 30 days of a request by Buyer. Failure to effect, maintain, or provide evidence of the insurance required in this PO is a material breach of contract entitling Buyer to terminate this PO immediately. Limits required may be met by any combination of primary and umbrella/excess insurance.

**39. Non-Representation.** It is understood and agreed that the Seller is an independent contractor in the performance of its obligations hereunder and that its employees shall not be deemed to be Buyer's employees under any circumstance, nor shall Buyer's employees be deemed to be Seller's employees. Neither party shall have any power or right, express or implied, to commit, obligate nor make any representations on behalf of the other party.

**40. Supplier Standards of Business Conduct.** Seller shall comply with the Northrop Grumman Supplier Standards of Business Conduct (available at <http://www.northropgrumman.com/suppliers/OASISDocument/s/NGSupplierStandardsofBusinessConduct.pdf>) (the "Northrop Grumman Supplier Code"). Seller shall ensure that its employees are aware of their contribution to product or service conformity, their contribution to product safety, and the importance of ethical behavior. Seller represents and warrants that it has not participated, and will not participate, in any conduct that violates the Supplier Code of Conduct. Seller shall notify Buyer if at any time Seller becomes aware of any actual or suspected violation of the Supplier Code of Conduct. If Buyer determines that Seller is in violation of the Supplier Code of Conduct, Buyer may cancel this Order upon written notice to Seller and Buyer shall have no further obligation to Seller.

**41. Conflict Minerals.** Seller acknowledges that Buyer must comply with the Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Act"), codified at 15 U.S.C. § 78m(p), and any implementing regulations of the

Securities and Exchange Commission, which set forth certain reporting requirements for conflict minerals that originate in the Democratic Republic of the Congo and its adjoining countries. To that end, Seller will cooperate with Buyer's efforts to comply with the Act and upon request will timely provide information to Buyer related to the Act. Further, Seller shall no later than thirty (30) days following Buyer's request for reasonable country of origin (RCOI) for delivered Work under this PO, complete and return to Buyer a single and comprehensive Conflict Minerals Reporting Template, using the form provided by Buyer. Seller shall perform an appropriate review of its supply chain in order to fulfill the obligations of this Clause.

**42. Miscellaneous.** (a) If any part, term, or provision of this PO shall be held void, illegal, unenforceable, or in conflict with any Laws having jurisdiction over this PO, the validity of the remaining portions of provisions shall not be affected thereby. The parties agree, to the extent possible, to include a replacement provision, construed to accomplish its originally intended effect, that does not violate such Laws.

(b) All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this PO, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this PO.

(c) The failure of either party in any one or more instances to insist upon exact performance of any of the provisions of this PO or to exercise any right or privilege shall not be construed as thereafter waiving any provisions, rights or privileges which shall continue and remain in full force and effect.

(d) The headings of Clauses herein are used for convenience and ease of reference only and do not limit the scope or intent of the Clause, nor shall any priority be implied by the order in which they appear in this PO.

(e) No waiver, alteration, or modification of any of the provisions of this PO shall be binding on either party unless evidenced by a written change or modification to this PO signed by both parties.

(f) The rights and remedies provided under this PO shall be cumulative and in addition to any rights and remedies provided by law or equity.

**43. Incorporation of Other Terms and Conditions.** If the face of the PO references any of the following document(s), such document(s) shall be deemed to be incorporated herein to these Terms and Condition of Purchase: (a) TC-02 (Work on Buyer's Premises); and (b) TC-05 (International Terms).