

PURCHASE ORDER TERMS AND CONDITIONS

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ARTICLE 1. DEFINITIONS

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

Section 1.1 Buyer: The legal entity issuing this Order.

Section 1.2 Buyer's Purchasing Representative: Buyer's designated purchasing representative responsible for issuing this Order and any amendments or changes thereto.

Section 1.3 Contracting Officer: The Government official(s) authorized to commit the Government contractually under a Government Prime Contract, or the authorized representatives of these officials acting within the scope of their authority.

Section 1.4 Days: Calendar days (unless specified otherwise).

Section 1.5 DFARS: The Department of Defense Federal Acquisition Regulation Supplement, if applicable.

Section 1.6 EAR: Defined in Section 2.5.

Section 1.7 FAR: The Federal Acquisition Regulation (Title 48 Code of Federal Regulations Chapter 1), if applicable.

Section 1.8 Foreign Person(s): Defined in Section 2.5.

Section 1.9 Government: The United States of America, acting in its contractual capacity.

Section 1.10 ITAR: Defined in Section 2.5.

Section 1.11 Lead Time: "Lead-time" means the mutually agreed upon minimum amount of time in advance of shipment that Seller must receive a firm Order in order to deliver goods and services by the requested delivery date.

Section 1.12 Materials Declaration Requirements: "Mate-

rials Declaration Requirements” means Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment as amended from time to time, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment, as amended from time to time, any European Union Member State implementations thereof, and/or other similar environmental and/or materials declaration laws, directives, regulations and requirements, including international laws and treaties regarding such subject matter, as amended from time to time.

Section 1.13 Order: The contractual instrument of which these terms and conditions are a part.

Section 1.14 Prime Contract: The contract under which this Order is issued, if applicable.

Section 1.15 Seller: The legal entity that contracts with Buyer under this Order.

ARTICLE 2. ORDERS

Section 2.1 Acceptance of This Order. Seller’s written acknowledgement of the Order, its commencement of any performance under the Order, or acceptance of any payment under the Order, shall constitute Seller’s unqualified and irrevocable acceptance of this Order subject solely to these terms and conditions. In the event that this Order does not state price or delivery terms, Buyer will not be bound to any prices or delivery terms to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions contained in this Order shall be void and of no effect unless specifically agreed to in writing by Buyer, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.

Section 2.2 Acceptance of Goods and Services.

- (a) All goods and/or services provided by Seller under this Order shall be in accordance with the requirements of this Order, including all applicable exhibits and attachments, and shall be subject to rejection if such goods and/or services are nonconforming. No inspection or evaluation performed by Buyer (and/or Buyer’s customer, if applicable) shall in any way relieve Seller or its suppliers of their obligation to furnish all required goods and/or services in strict accordance with the requirements of this Order. If any of the goods and/or services provided hereunder do not conform with the requirements of this Order, Buyer may require Seller to replace the goods or perform the work and/or services again in conformity with the applicable requirements at no cost to Buyer.
- (b) At Buyer’s sole option, any rejected items may be returned for credit or replacement at Seller’s risk and expense, and all handling and transportation expenses, both ways, shall be assumed by Seller. No items returned as

defective shall be replaced without written authorization from Buyer.

- (c) Acceptance of goods and/or services will be made by Buyer only in writing and through a document entitled “Final Acceptance” issued by Buyer. It is expressly agreed that payment by Buyer to Seller for goods and/or services provided under this Order shall not constitute acceptance. It is further agreed that nothing in this Order shall require Buyer to accept any goods and/or services prior to acceptance thereof by Buyer’s customer, if applicable.
- (d) Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

Section 2.3 Shipping, Packing and Marking.

- (a) Except as otherwise provided on the face of this Order, transportation charges on all goods are sold FOB destination. No insurance or premium transportation costs will be allowed unless authorized in writing by Buyer’s Purchasing Representative. Risk of loss from any casualty to goods ordered hereunder, regardless of cause, shall be Seller’s responsibility until the goods have been delivered in compliance with terms of transportation required by this Order. If Seller does not comply with the stated delivery schedule, Buyer may, in addition to any other rights which it may have at law or in equity, require delivery by the most expeditious way, and any charges resulting from the premium transportation shall be fully prepaid and absorbed by Seller. Title to all goods passes at Buyer’s dock unless otherwise specified in this Order.
- (b) Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of this Order and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection against damage from weather and shipment, including any applicable federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge shall be payable by Buyer for containers, crating, boxing, handling, storage or any other services unless specifically stated in this Order or otherwise agreed to by Buyer in writing. Seller shall mark each container with the number of this Order and shall enclose a packing slip with this Order number in an envelope attached to each container. Damage resulting from improper packing or shipping will be charged to Seller.
- (c) Acceleration of delivery is not authorized unless specified in writing by the Buyer’s Purchasing Representative.
- (d) Buyer reserves the right to refuse or return at Seller’s risk and expense any shipments made in excess of the quantities stipulated in the Order or received in advance of the required delivery schedule, or to keep the goods received

in advance of the required delivery schedule and defer payment as if the delivery was made per the required delivery schedule.

Section 2.4 Inspection. Buyer (and Buyer's customer, if applicable) through any authorized representatives, has the right at all reasonable times and places to inspect and test the goods and/or services being supplied under this Order, including by Seller's suppliers. Buyer assumes no contractual obligation to perform any inspection or test unless otherwise specifically set forth in this Order. Buyer's failure to inspect or test any goods and/or services shall not relieve Seller from responsibility for any defective or nonconforming goods and/or services. If any inspection or evaluation is made by Buyer or its customer on the premises of Seller or any of Seller's suppliers, Seller or its suppliers shall provide at no additional charge all reasonable facilities and assistance for the safety and convenience of the personnel conducting the inspection or test.

Section 2.5 Export Control. Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the United States pertaining to the export of any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer in the performance of this Order, whether in the United States or abroad. This Order may involve information or items that are subject to the International Traffic in Arms Regulations ("ITAR") or Export Administration Regulations ("EAR") and that may not be released to Foreign Persons inside or outside the United States without the proper export authority.

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

Seller further agrees that it will not export or re-export, directly or indirectly, any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer to any Foreign Person, including persons employed by or associated with, or under contract with the Seller or Seller's lower-tier suppliers without the prior written consent of the Buyer and without first obtaining any required export license or other approval.

In addition, should Seller participate in the performance of this Order at Buyer's facilities, Seller shall inform Buyer in advance in writing of the country of citizenship (or countries, in the case of dual citizenship) of each Foreign Person employee, agent, or representative of Seller or of Seller's suppliers prior to such

person being allowed access to Buyer's facilities. Seller's and Seller's suppliers' Foreign Person employees, agents, or representatives shall not participate in the performance of this Order at Buyer's facilities without Buyer's written consent.

Seller shall comply with the registration requirements of the International Traffic in Arms Regulations at 22 CFR §122.1, as applicable.

In addition to all other obligations, Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees and other expenses arising or resulting from Seller's failure to comply with this Section 2.5.

ARTICLE 3. INVOICES AND PAYMENT

Section 3.1 Contents of Invoices: Seller's invoices or vouchers shall contain all certifications required by Buyer and shall include the invoice date, the purchase order number, as well as a complete breakout of the prices by line item for the goods and/or services encompassed by the invoice or voucher.

Section 3.2 Prices: The price for all goods and/or services provided by Seller is all-inclusive and encompasses any and all federal, state, local or foreign taxes and duties that may be applicable, and all installation, testing, debugging, warranty charges, any and all license or use fees, and any other cost of every kind and description associated with Seller's work.

Section 3.3 Terms: Buyer shall pay Seller after receipt of Seller's proper invoices or vouchers for goods and/or services delivered and accepted, less any deductions provided for in this Order. Unless otherwise mutually agreed in writing and stated on the face of the Order, payment terms are net 45 days from receipt of invoice.

ARTICLE 4. WARRANTY

Section 4.1 Seller's Warranty: Seller warrants to Buyer, its successors and assigns, that all goods provided hereunder shall be (i) merchantable, (ii) free from defects in material and workmanship, (iii) with regard to goods designed by Seller, free from defects in design, (iv) suitable for the purposes intended whether expressed or reasonably implied, and (v) in compliance with all applicable specifications, drawings, and performance requirements; and that all services provided hereunder shall be (i) free from defects in workmanship, (ii) suitable for the purposes intended whether expressed or reasonably implied, (iii) performed in a professional and workmanlike manner, and (iv) in compliance with all applicable specifications, drawings, and performance requirements.

Section 4.2 Remedies: If any nonconformity under this warranty appears within one (1) year after final acceptance of the goods and/or services, Seller shall promptly and diligently repair, replace or correct (by re-performance or otherwise) such nonconformity at no cost to Buyer (including any transporta-

tion costs associated therewith). If repair, replacement or correction is not made in a timely manner to Buyer's satisfaction, then the Buyer may, at its election and in addition to any other remedies available to Buyer at law or in equity, correct or have corrected such nonconformity at Seller's expense.

ARTICLE 5. RIGHTS IN DATA AND INTELLECTUAL PROPERTY.

Section 5.1 Proprietary Information.

- (a) Unless otherwise expressly agreed by Buyer in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller under this Order, whether or not marked with any restrictive or proprietary designations, shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction in any way in the conduct of its business. Seller's sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents shall be determined only by any valid pre-existing patent rights of Seller as related to the manufacture, use, or sale of goods and/or services covered by this Order. Seller agrees to promptly notify Buyer in writing of any such pre-existing patents or any other similar form of protection which Seller may hold or know of which relates to the goods and/or services to be provided under this Order.
- (b) If any pre-existing patents, inventions, copyrights, technology, designs, works of authorship, mask works, technical information, computer software, or other information or data of Seller (hereinafter "Seller's Intellectual Property") are used, included, or contained in the goods and/or services provided hereunder, the Seller grants Buyer an irrevocable, transferable, non-exclusive, world-wide, royalty-free license to use Seller's Intellectual Property with such goods and/or services.
- (c) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller and paid for by Buyer under this Order, shall be the exclusive property of Buyer, shall be maintained by Seller as proprietary to Buyer, shall be used only for purposes of providing goods and/or services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer shall be promptly returned to Buyer on request or upon completion or earlier termination of this Order.

Section 5.2 Buyer's Property.

- (a) All information as well as all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer shall be and remain the sole property of Buyer, and Buyer shall have the right to enter Seller's premises and remove any such property and Seller's records with re-

spect thereto at any time without being liable for trespass or for damages of any sort.

- (b) All such items shall be used only in the performance of work under this Order unless Buyer consents otherwise in writing.
- (c) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.
- (d) Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be responsible for all loss or damage to the property except for normal wear and tear.

Section 5.3 Release of Information. Seller shall not publish any information developed under this Order nor distribute it nor make any news release about the existence or subject matter of this Order without Buyer's prior written consent.

Section 5.4 Intellectual Property.

- (a) Seller warrants that the sale, use or incorporation into manufactured products of any machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder (collectively "goods") which are not of Buyer's design, composition or manufacture shall be free and clear of infringement or misappropriation of any valid patent, copyright, trademark or other third party intellectual property rights. Seller shall indemnify, defend and save Buyer and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits or actions alleging such infringement or misappropriation, including proceedings under 28 U.S.C. § 1498, which claims, suits or actions Seller agrees to defend with counsel acceptable to Buyer. The Buyer agrees to give the Seller written notice of any such suit or action promptly after notice is received by the Buyer and the Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, that the Buyer may, at its own election and expense, at any time supersede the Seller in any such defense in which event the Seller shall thereby be released from its obligation under this Section 5.4 with respect to the particular suit or action involved.
- (b) Seller further agrees to indemnify, hold harmless and defend, at Seller's own expense, Buyer against all liens, security interests, and/or encumbrances whatsoever asserted against such goods, including claims to said merchandise, asserted by others. To the extent that the goods delivered hereunder are manufactured pursuant to the designs originated by Buyer, the Seller hereby assigns to Buyer, without reservation, all patent rights, copyrights and trademark rights relating to the goods and all related documents, models, computer drawings and other elec-

tronic expression, photographs, related documents, models, computer drawings and other electronic expression, photographs, drawings, specifications or other materials ("Protected Materials"). Buyer, in turn, grants to Seller a non-exclusive, non-transferable license to reproduce the Protected Materials for purposes related solely and directly to the Seller's performance of its obligations to Buyer hereunder. No other Protected Materials may be reproduced for any other purpose without the express written permission of Buyer. This non-exclusive license shall terminate immediately upon termination of the Order.

- (c) Seller may replace or modify infringing goods with comparable goods acceptable to Buyer of substantially the same form, fit and function so as to remove the source of infringement, and shall extend this provision to such comparable goods. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and Buyer's customers the right to use and sell the items.
- (d) Any invention or intellectual property first made, developed or conceived by Seller in the performance of this Order or which is derived from or based on the use of information supplied by Buyer, in whole or in part, alone or with others, shall be the sole property of Buyer, and Seller hereby conveys, transfers and assigns to Buyer all rights, title and interest in and to any such invention or intellectual property. Any original works of authorship created by Seller hereunder are considered "works made for hire" under U.S. Copyright Law (17 U.S.C. §101). This Order shall operate as an irrevocable assignment from Seller to Buyer of all rights to such inventions or intellectual property including all rights, title and interest throughout the world.

Section 5.5 Access to Records. Buyer shall have access to all records of Seller's performance hereunder.

ARTICLE 6. CHANGES AND SUSPENSION OF WORK

Section 6.1 Changes and Suspension. Buyer shall have the right at any time to (i) suspend all or any portion of Seller's work, and/or (ii) make changes within the general scope of this Order that affect any one or more of the following:

- (a) drawings, designs, specifications, or quantities of goods and/or services to be provided hereunder;
- (b) the statement of work or description of services;
- (c) method of shipment or packing;
- (d) the time or place of performance, inspection, delivery, or acceptance of goods and/or services; and
- (e) the amount of Buyer-furnished or customer-furnished property or facilities.

Section 6.2 Equitable Adjustment. If any such suspension

or change causes a change in the cost of, and/or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both and this Order shall be modified in writing accordingly. Any claim by Seller for such an adjustment must be made in writing within twenty days from the date of receipt of a written order from Buyer's Purchasing Representative directing such a suspension or change.

Section 6.3 Duty to Proceed. Except as expressly authorized in writing by Buyer, no failure of Buyer and Seller to reach agreement with respect to any dispute relating to or arising under this Order shall excuse Seller from proceeding diligently with the performance of the work required by this Order.

Section 6.4 Disputes. Nothing in this Article 6, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with this Order as changed. Any disagreement between the parties arising out of this clause shall be resolved in accordance with Article 8 below."

Section 6.5 Pricing in Accordance with Cost Principles. If this Order is placed under a Government Prime Contract, the pricing of any equitable adjustment hereunder, or of any other adjustment under this Order, shall be in accordance with the cost principles enunciated in Part 31 of the Federal Acquisition Regulation in effect on the date of this Order.

Section 6.6 No Constructive Changes: Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's Purchasing Representative and which states that it constitutes an amendment or change to this Order.

Section 6.7 Design Changes. During performance of this Order, Seller shall not make any changes in the design of goods to be furnished by Seller under this Order without advance written notification to and written approval of Buyer. This requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

ARTICLE 7. TERMINATION

Section 7.1 Termination for Convenience.

- (a) Buyer, by written notice, may terminate this Order at any time, in whole or in part, without cause and/or for Buyer's convenience, prior to final delivery of goods and/or completion of services, and such termination shall not constitute a default. In such event, Buyer shall have all rights and obligations accruing both at law and in equity, including Buyer's rights to title and possession of any goods paid for. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. Buyer may

take immediate possession of all work so performed upon notice of termination.

- (b) If this Order is terminated as a result of the termination for convenience of Buyer's Government Prime Contract, then the rights, duties, and obligations of the parties shall be determined in accordance with the applicable termination for convenience clause incorporated into this Order by the Supplemental Terms and Conditions.

Section 7.2 Termination for Default.

- (a) Buyer may, by written notice of default to Seller, terminate this Order in whole or in part if Seller fails (i) to deliver the goods and/or perform the services within the time specified in this Order or any extension thereof, (ii) to perform any of the other provisions or meet any of the requirements of this Order, or (iii) to make progress so as to endanger performance of this Order in accordance with its terms and, in either of the second or third circumstances, does not cure such failure within ten days after receipt of written notice from Buyer specifying such failure.
- (b) If Buyer terminates this Order in whole or in part it may acquire, upon such terms as it deems appropriate, goods and/or services similar to those terminated. Seller shall be liable to Buyer for any excess cost for such similar goods and/or services, provided, however, that Seller shall continue performance of this Order to the extent not terminated under the provisions of this Section 7.2 and, provided, further, that Buyer shall pay the price set forth in this Order for completed goods or services delivered and accepted.
- (c) The rights and remedies of Buyer in this Section 7.2 are in addition to any other rights and remedies provided by law or in equity, or under this Order.

Section 7.3 Set-Off. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer, or to any of Buyer's affiliated companies, against any amount payable at any time by Buyer, or by any of its affiliated companies, to Seller.

ARTICLE 8. DISPUTE RESOLUTION

Section 8.1 Informal Resolution; Duty to Proceed. The parties shall attempt amicably to resolve all disputes arising from or related to this Order. If the parties are unable to resolve amicably such a dispute within a reasonable time, the dispute shall be adjudicated as set forth in this Article 8, Pending resolution or settlement of any dispute arising under this Order, Seller shall proceed diligently as directed by Buyer with the performance of this Order.

Section 8.2 Judicial Reference of Disputes; Jury Trial. If any controversy or claim arises relating to this Order (whether contract, tort, or both) either party shall apply to the superior court for the appointment of a referee to hear the dispute in accordance with California Code of Civil Procedure sections

638 through 645.1. **Judicial reference includes the waiver of the right to a trial by jury.** This judicial reference will be conducted under the following conditions:

- (a) **Discovery:** The parties shall have all rights of discovery permitted by the Code of Civil Procedure in civil litigation, except that the time periods shall be shortened by agreement or by order of the referee, and the extent of discovery shall also be limited, with the goal of completing all discovery within 90 days.
- (b) **Decision:** The referee shall submit a reasoned statement of decision, with findings of fact and conclusions of law, citing both the law and the evidence relied upon.
- (c) **Appeal:** After entry of judgment by the superior court, the judgment may be reviewed in the Court of Appeal under California Code of Civil Procedure section 645. Otherwise, the judgment is binding.
- (d) **Referee:** The referee is to be a retired superior court judge or an attorney with substantial experience in entertainment or intellectual property matters.
- (e) **Record:** A stenographic record of the trial is to be made, but will be confidential except as necessary for post-hearing motions and appeals.
- (f) **Applicable Law.** The referee shall apply the laws of the State of California, as well as, when applicable, the law of federal contracts as enunciated in decisions of administrative boards of contract appeals and the federal courts.

ACKNOWLEDGEMENT: By initialing below, the parties acknowledge that they have read and understand the foregoing Section 8.2 and accept that they are waiving their separate rights to a trial by jury. This waiver means that the trial will be heard before a referee. The parties both understand that reference pursuant to this reference provision will require fees to be paid to the referee. The parties are to share costs and the referee's fees equally, unless the referee orders otherwise. Before the proceedings commence, each party shall pay the referee half of the expected cost of the reference, unless the referee waives this requirement. At the conclusion of proceeding, the referee may award the prevailing party some or all of the reference fees and costs. I AGREE TO THE SUBMITTAL OF ANY DISPUTES TO A REFEREE AS SET FORTH ABOVE:

Initials of Seller:

Initials of Buyer:

Section 8.3 Consolidation: To the maximum extent possible, any proceedings under this section shall be consolidated with any reference proceeding in which related issues are being resolved. The parties shall take all action necessary or desirable to achieve consolidation.

Section 8.4 Referee’s Fees and Costs: The parties both understand that reference pursuant to this reference provision will require fees to be paid to the referee. The parties are to share costs and the referee’s fees equally, unless the referee orders otherwise. Before the proceedings commence, each party shall pay the referee half of the expected cost of the reference, unless the referee waives this requirement. At the conclusion of proceeding, the referee may award the prevailing party some or all of the reference fees and costs.

Section 8.5 Disputes Under A Government Prime Contract.

- (a) If the Contracting Officer of Buyer’s Government Prime Contract by a final decision interprets any provision or requirement of Buyer’s Prime Contract, and the same or substantially similar provision or requirement is contained in this Order, such interpretation shall be binding between Buyer and Seller, provided that Buyer affords Seller the opportunity to appeal such decision in Buyer’s name, and provided further that Seller provides to Buyer any and all information requested by Buyer to justify Buyer’s verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. If Seller so appeals, Seller shall, upon Buyer’s written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. As used in this provision, the term “appeal” shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts.
- (b) If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer’s customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer’s name and at Seller’s cost against Buyer’s customer.
- (c) Any reference to the “Disputes” clause in any applicable FAR or DFARS clause incorporated into this Order shall mean this Section 8.5.”

ARTICLE 9. INDEMNITY

Section 9.1 Indemnification. In addition to any other indemnification provision of this Order, Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, and employees, from any and all claims, liabilities, losses, damages, costs, and expenses, including attorneys’ fees:

- (a) for actual or alleged
 - (i) injury to any person,
 - (ii) damage to any property, or
 - (iii) violation of any law, ordinance, or regulation, arising from or related to Seller’s (or Seller’s subcontractors’) performance of work in connection with this Order (including, if applicable, Seller’s violation of the Truth in Negotiations Act or any implementing or comparable regulation, including FAR Part 15); or
- (b) any civil or criminal penalty or fine incurred by Buyer which is caused to any degree or any extent by Seller, its employees, agents, representatives, suppliers, or subcontractors.

ARTICLE 10. GENERAL PROVISIONS

Section 10.1 Incorporation of Supplemental Terms & Conditions. If this Order is placed under a Government Prime Contract, then the clauses set forth by citation in the Supplemental Terms and Conditions, attached as Supplement 1 and, if applicable, Supplement 2, are incorporated by reference into this Order with the same force and effect as though set out in full text herein.

Section 10.2 Time of the Essence. Time is and shall remain a material element of this Order, and no acts of Buyer, including without limitation modifications of this Order or acceptance of late deliveries or performance, shall constitute a waiver of this provision. Seller shall notify Buyer in writing immediately of any actual or potential delay in the deliveries or performance of this Order and such notice shall include a revised schedule using the Seller’s best efforts; provided, however, that Buyer’s receipt of such notice shall not constitute a waiver to Buyer’s rights and remedies for such late deliveries or performance. Buyer reserves the right to cancel this Order without liability to Buyer and without waiver of any other remedies of Buyer if delivery or performance is not affected as specified in the Order or on written shipping authorizations that may be furnished by the Buyer.

Section 10.3 Compliance with Laws. Seller shall comply with the applicable provisions of all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder, and such compliance shall be a material requirement of this Order.

Section 10.4 Notification of Employee Rights. Seller shall comply, as applicable, with the requirements of 29 CFR Part

471 - Notification of Employee Rights Under Federal Labor Laws, and 29 CFR Part 471, Appendix A to subpart A is incorporated by reference into this Order with the same effect as though set out in full text herein. Seller, by signing its offer, hereby certifies compliance with the requirements of 29 CFR Part 471.

Section 10.5 Certificates. Seller shall furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Section 10.5, the word "certificate" shall include any plan or course of action or recordkeeping function.

Section 10.6 Independent Contractor. Seller is an independent contractor and the employees, agents, or representatives of Seller are not employees, agents, or representatives of Buyer for any purpose including, but not limited to, federal, state, and local tax obligations, unemployment and worker's compensation obligations, social security, and any and all other benefits.

Section 10.7 Order of Precedence.

- (a) In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following descending order of precedence: (i) Typed provisions set forth in this Order; (ii) Documents incorporated by reference on the face page(s) of this Order; (iii) These standard terms and conditions, and any supplemental terms and conditions as referenced herein and/or set forth on the reverse side of the Order; (iv) The Statement of Work; and (v) Specifications attached to this Order or incorporated by reference. Buyer's specifications shall prevail over any specifications of Seller.
- (b) In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples (whether or not approved by Buyer), and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller shall, before proceeding, consult Buyer, whose written interpretation shall be final and binding on the parties.

Section 10.8 Construction. The construction of this Order shall be governed by the laws of California. The title designations of the numbered articles and provisions to this Order are for convenience only and shall not affect the interpretation or construction of this Order. Notwithstanding any other provisions of these terms and conditions, upon prior written notice to Buyer and to the extent that such use will not interfere with Seller's performance of this Order or any other purchase order/subcontract between Seller and Buyer, Seller, with the U.S. Government's written authorization, may use any fur-

nished property, data, information or other items, which the U.S. Government owns and/or for which it has the right to authorize use on other U.S. Government contracts or subcontracts.

Section 10.9 Assignment. Seller shall not sell, assign, or in any manner transfer this Order or its rights, duties, and obligations under this Order without first obtaining the written consent of Buyer. Any attempted assignment without such consent shall be void. The foregoing shall not apply to assignment to any successor entity in the event Seller shall change its name. Notwithstanding the foregoing, in the event of an approved sale, assignment or transfer as provided hereunder, Seller shall remain liable, jointly and severally, to Buyer for all obligations arising under or resulting from this Order.

Section 10.10 Notices. All notices required or permitted to be sent by either party shall be deemed sufficiently given when delivered by hand delivery or sent by telecopy (which is confirmed), recognized overnight courier service or certified mail, return receipt requested, to the parties at the addresses shown on the first page of this Order for each party and to the attention of the individual who executes this Order on behalf of the party to whom the notice is sent. All notices shall be deemed given (i) on the date of delivery if delivered by hand or sent by telecopy, (ii) on the next business day if sent by recognized overnight courier service and (iii) on the third business day following the date sent by certified mail, return receipt requested. Either party may designate, in writing, a different manner of address for notices under this Order.

Section 10.11 Survival. Seller's obligations under the warranty, proprietary information, Buyer's property, and intellectual property provisions of this Order shall survive completion or any earlier termination of this Order.

Section 10.12 Force Majeure. Neither Buyer nor Seller shall be liable for failure to perform under this Order if such failure is due to events which are beyond the reasonable control and without the fault or negligence of Buyer or Seller, as the case may be, and which intervene after the execution of this Order and impede its performance, provided such failure to perform shall only be excused for the duration of such intervening event and shall be subject to the Buyer's right to terminate this Order pursuant to Article 7. Examples of such Force Majeure events include, but are not limited to: a strike or labor dispute, war or act of war (whether or not an actual declaration thereof is made), insurrection, riot or civil commotion, act of public enemy, fire, flood, or other act of God, or any act of governmental authority (including export restrictions). The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and cessation thereof.

Section 10.13 Waiver, Remedies, and Severability.

- (a) The failure or delay of Buyer to insist on performance of any provision of this Order, or to exercise any right or remedy available under this Order, shall not be construed as

a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this Order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

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

Section 10.14 Further Documents. Seller shall execute and deliver all documents and instruments consistent herewith as Buyer may from time to time reasonably require, and will take such action as Buyer or Buyer's successors and assigns may from time to time reasonably request, for the purpose of confirming, evidencing, establishing, maintaining, protecting, enforcing, defending or further assuring Buyer's title to the rights granted or intended to be granted hereunder or are reasonably necessary and desirable to carry out the terms and intent of this Order.

Section 10.15 No Third-party Beneficiaries. Nothing in this Order, express or implied, is intended to confer any rights or remedies under or by reason of this Order on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Order intended to re-

lieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Order.

Section 10.16 Attorney Fees. If either party becomes involved in litigation, reference, arbitration, or other proceedings arising out of this Order or the performance thereof, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses. Unless judgment goes by default, the attorney's fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney's fees and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all the attorney's fees and expenses incurred in good faith.

Section 10.17 Entire Agreement. This Order, including any attachments and documents incorporated by reference, constitutes the entire agreement between Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order, whether oral or written. No amendment or modification of this Order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller.