THE AEROSPACE CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS
LABOR-HOUR / TIME-AND-MATERIALS

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1. DEFINITIONS:
   (a) **Buyer** - means The Aerospace Corporation, having its principal place of business at El Segundo, California.
   (b) **Authorized Member of Buyer’s Procurement Department** - means a person authorized by Buyer’s cognizant procurement organization to administer and/or execute the Order.
   (c) **Order** – means any purchase order or release issued by Buyer or the Authorized Member of Buyer’s Procurement Department that incorporates by reference these Purchase Order Agreement Terms and Conditions.
   (d) **Purchase Order Agreement** – means this Purchase Order Agreement, including the schedule, business terms and conditions, the statement of work (SOW), all exhibits, attachments and documents incorporated herein by reference.
   (e) **Product** – means any product, material and/or service, including time and material, labor hours, services, material or products to be performed, produced, manufactured and delivered by Seller to Buyer.

2. ACCEPTANCE OF ORDER: Seller’s acceptance is expressly limited to the written terms of this Order. Buyer hereby objects to any additional or different terms contained in Seller's proposal or acceptance are objected to and hereby rejected. No additional or different terms shall be binding on Buyer unless agreed to in writing and signed by an Authorized Member of Buyer’s Procurement Department. Any of the following acts of Seller shall constitute acceptance of this Order: signing and returning a copy of this Order; commencement of performance; or informing Buyer of commencement. Any term or condition stated by the Seller in any prior proposal or in an acknowledgement or in an acceptance of the Order or this Purchase Order Agreement shall not become part of the Order or this Purchase Order Agreement unless specifically accepted in writing by Buyer.

3. ACCEPTANCE OF SERVICES OR PRODUCTS: Acceptance of the Services or Products, or both shall occur when Buyer determines that the Services or Products, or both meet all of the conditions and requirements of this Order.

4. PERFORMANCE, SHIPMENTS AND SCHEDULE:
   (a) **Time is of the essence in the performance of this Order.**
   (b) Performance of service(s) and delivery of any Product(s) shall be in strict conformance with the specified quantities, schedule and the other requirements specified in this Order. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) immediately notify an authorized member of Buyer's Procurement Department in writing of the reasons for the delay and the actions being taken to mitigate the delay; (ii) provide a recovery schedule; and, (iii) if requested, expend premium time and most expeditious transportation. Any additional costs caused by these requirements shall be paid by Seller.
   (c) Seller shall be solely responsible for all labor, direct supervision and materials necessary for the performance of this Order. Seller shall use skilled personnel for the services to be performed. Seller shall (i) furnish adequate and efficient supervision, (ii) provide an adequate quantity of capable, skilled, qualified and competent personnel and
materials at all times and (iii) perform the services in the most expeditious manner.

(d) Buyer may, at its sole discretion, require Seller to remove from its or its customer’s premises any employee, agent, or representative of Seller, or any of its subcontractors, if Buyer deems incompetent, careless, or otherwise objectionable. Seller shall remove such employee, agent or representative from the premises immediately.

(e) At all times Seller shall use suitable safety precautions, including, as a minimum, those safety precautions issued in instructions and directions by Buyer or Buyer’s customer. Such safety precautions shall include, but not be limited to, the use of proper materials, tools, equipment and other safeguards, as appropriate.

(f) Seller and Seller’s personnel shall also comply with the Buyer’s health and safety policies and procedures at no additional cost to the Buyer and the Occupational Safety and Health Act of 1970, as amended. Seller shall notify Buyer promptly in writing if a charge of noncompliance with the Act has been filed against Seller. Seller agrees to defend, hold harmless, and indemnify Buyer from and against any noncompliance by Seller with any of the above laws, rules, regulations and orders as may be applicable.

(g) Shipments of hazardous materials or substances must be packed and transported in compliance with all applicable provisions of the Code of Federal Regulations (CFR) Title 49.

(h) Packing sheets must accompany each shipment and must contain the following: (1) Order number; (2) Order Product number; (3) premium freight authorization number; (4) freight carrier; (5) Buyer part number; (6) packing slip number; (7) quantity shipped; (8) unit of measure; and (9) number of containers. A bar coded label, conforming to ANSI MH10.8M-1993, containing the above information must be attached to the outside of the container and a duplicate bar coded label attached to the back of the packing sheet. If the shipment is made in more than one container, only the first container requires the packing sheet and the bar coded label. Each container must be identified on the outside in ascending number order; i.e. Box 1 of 2; Box 2 of 2. Order number must be shown on all invoices, bills of lading and correspondence. Packaging, transportation and insurance for any Products to be delivered shall be paid by Seller, unless otherwise agreed to in writing by Buyer.

(i) Seller shall be responsible for the proper packaging, shipment and storage of any Products or materials. All shipments are to be packaged in such a manner as to provide adequate protection of the Products and safety thereof in transit.

(j) Unless otherwise agreed to in writing by an Authorized Member of Buyer’s Procurement Department, the Services shall be performed at Buyer’s designated location and Products or materials shall be delivered F.O.B. Buyer’s designated location. Risk of loss shall remain with Seller until Buyer accepts the Products, except for loss or damage caused by the gross negligence of Buyer. Passing of title shall not constitute acceptance or relieve Seller of its obligations under this Order.

5. TIMEKEEPING, MATERIALS AND RATES:

(a) General - The Seller shall submit invoices to Buyer as indicated in Article 7, Invoices and Payments. Payment to the Seller for hours worked by the Seller employees listed in the Schedule or Order or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule, will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the Seller for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.

(b) Timekeeping - (1) For work to be performed for the Buyer at the Buyer’s location(s), the Seller is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the work by its employees. Work time will be calculated in tenth-of-an-hour increments for each full six (6) minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be appropriately determined by the Seller. The Seller is responsible for establishing a process that monitors its personnel leaving Buyer premises during the workday; (2) For work performed at a location other than Buyer’s, the Seller is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the work by its employees. Unless otherwise provided for in this Subcontract, the Seller shall maintain accurate timekeeping records that are open to inspection by the Buyer at any time; (3) Overtime is defined as work performed in excess of eight hours in one day or forty hours in one workweek or in accordance with applicable State and Federal laws and regulations.

(c) Hourly Rate - (1) Hourly rate means the rate(s) prescribed in the Subcontract for payment for labor that meets the labor category qualifications of a labor category specified in the Order or subcontract that are: (A) Performed by the Seller; (B) Performed by the Seller’s lower-tier subcontractors; or (C) Transferred between divisions, subsidiaries or affiliates of the Seller under a common control; (2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or Subcontract Work Order by the number of direct labor hours performed. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time. Mealtime deductions will be as determined by the Seller. At the end of the day, working time will not be computed beyond the end of the
designated approved shift unless overtime is authorized. Invoices shall be submitted weekly, (unless another interval is specified in the Schedule) to the attention of the Buyer's Disbursements Department. Invoices shall contain the accuracy representation as required by Buyer, and shall be submitted by one of the authorized representatives specified in the Schedule. Promptly after receipt of each invoice, the Buyer shall, except as otherwise provided in this Order or subcontract and subject to the terms of (g) below, pay the invoice as approved by Buyer; (3) The hourly rates shall be paid for all labor performed on the Subcontract that meets the labor qualifications specified in the Subcontract. Labor hours incurred to perform tasks for which labor qualifications were specified in the Subcontract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the Subcontract, unless specifically authorized by the Buyer Subcontracts Manager; (4) The hourly rates listed in the schedule, Order or Subcontract Work Order, shall include all wages, salaries, indirect costs, general and administrative expense, taxes and profit. Fractional parts of an hour shall be payable; (5) Unless otherwise prescribed in the Order or schedule, the Buyer may, in the Buyer's sole discretion, withhold five percent (5%) of the amounts due under this Order or subcontract, or such other amount that the Buyer considers necessary to protect the interest of the Buyer. The amounts withheld shall be retained until the completion of the performance of work and acceptance by the Seller; (6) Unless the schedule prescribes otherwise, the hourly rates in the schedule shall not be varied by virtue of the Seller having performed work on an overtime basis. If the schedule or Order or subcontract Work Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved in advance in writing by an Authorized Member of Buyer’s Procurement Department.

(d) Materials:
(1) For purposes of this subparagraph (d); (A) Direct materials means those materials that enter directly into the end Product or that are used or consumed directly in connection with the furnishing of the end Product or service; (B) Materials means, (i) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Seller under a common control, (ii) Subcontracts for supplies and incidental services for which there isn’t a labor category specified in the Subcontract, (iii) Other direct costs (e.g., incidental services for which there is not a labor category specified in the Subcontract, travel, computer usage charges, etc.), and (iv) Applicable indirect costs.

(2) If the Seller furnishes its own materials, then the price to be paid for such materials shall not exceed the Seller’s established catalog or market price, adjusted to reflect the quantities being acquired and the actual cost of any modifications necessary because of Subcontract requirements.

(3) Except as provided for in subparagraph (d)(2) of this subparagraph, Buyer will reimburse the Seller for allowable cost of materials in accordance with the terms and conditions of the Purchase Order Agreement.

(4) The Seller may include allocable indirect costs and other direct costs to the extent they are, (A) comprised only of costs that are clearly excluded from the hourly rate, (B) allocated in accordance with the Seller’s written or established accounting practices and (C) Indirect costs are not applied to subcontracts that are paid at the hourly rates.

(5) To the extent able, the Seller shall obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and other benefits. When unable to take advantage of the benefits, the Seller shall promptly notify the Authorized Member of Buyer’s Procurement Department and provide justification for obtaining materials without such discounts. The Seller shall give credit to Buyer for cash and trade discounts, rebates, scrap, commission, and other amounts that have accrued to the benefit of the Seller; or would have accrued except for the fault or negligence of the Seller.

(6) Buyer will not pay profit or fee to the Seller on materials.

(7) Buyer will reimburse the Seller for costs of Lower-tier subcontracts that are authorized by Buyer, provided that the costs are consistent with paragraph (d)(5) of this subparagraph. Buyer will limit reimbursable costs in connection with Lower-tier subcontracts to the amounts paid for supplies and services purchased directly for the subcontract when the Seller has made or will make payments determined due of cash, checks, or other forms of payment to the Lower-tier subcontractor; (i) in accordance with the terms and conditions of a lower-tier subcontract or invoice; and (ii) ordinarily within thirty (30) days of the submission of the Seller’s payment request to Buyer. Buyer will not reimburse the Seller for any costs arising from the letting, administration, or supervision of performance of the Lower-tier Subcontract, if the costs are included in the hourly rates payable under paragraph (c)(2) of this subparagraph.

6. TOTAL COSTS AND CEILING:
(a) Total Cost: It is estimated that the total cost to the Buyer for the performance of this Order shall not exceed the ceiling price set forth in the schedule.
and the Seller agrees to use its best efforts to perform the work specified in the schedule and all obligations under this Order within such ceiling price. If at any time the Seller has reason to believe that the hourly rate payments will accrue in performing this Order in the next succeeding thirty (30) days will exceed 85% of the ceiling price in the Schedule, the Seller shall notify Buyer, giving a revised estimate of the total price to the Buyer for performing this Order with supporting reasons and documentation. If at any time during performance of this Order, the Seller has reason to believe that the total price to the Buyer for performing this Order will be substantially greater or less than the then stated ceiling price, the Seller shall so notify the Buyer, giving a revised estimate of the total price for performing this Order, with supporting reasons and documentation. If at any time during performance of this Order, the Buyer has reason to believe that the work to be performed in performing this Order will be substantially greater or less than the stated ceiling price, the Buyer will so advise the Seller, giving the then revised estimate of the total amount of effort to be required under the Order.

(b) **Ceiling Price:** The Buyer will not be obligated to pay the Seller any amount in excess of the ceiling price set forth on the face of this Order, unless and until Buyer notifies the Seller in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this Order. When and to the extent that the ceiling price set forth in the schedule has been increased, any hours expended by the Seller in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended had been incurred after the increase in the ceiling price. Directions, orders, notices, requests and the like issued by Buyer pursuant to the "Changes" Article or any other provision of this Order shall not be considered an authorization to the Seller to exceed the ceiling price set forth in the schedule in the absence of a statement in a unilateral modification or other modification, increasing the ceiling price.

7. **INVOICES AND PAYMENT:**

(a) No invoice shall be issued prior to performance of services or the delivery of Product or both, unless otherwise agreed to in writing by Buyer. Invoices shall be mailed in accordance with the instructions in the Order. Payment due dates, including discounts (if any), will be calculated from the date of Buyer’s receipt of an accurate and correct invoice. Payment shall not constitute acceptance of the services rendered or Products delivered.

(b) As full compensation for the performance of this Order, unless otherwise provided in the Order, Buyer shall pay Seller at the price set forth in the Order for all services actually performed hereunder by Seller. Seller represents that the rates set forth in this Order include all profit, wages, salaries, overhead, taxes and other costs and expenses.

(c) Seller’s invoice shall be submitted no later than five (5) days after the preceding month ending period (or more frequently if approved by Buyer). Seller shall submit the invoice to Buyer in the Seller’s own format which includes: Purchase Order Number, Seller’s Labor Classification, Labor Rate, Hours and Materials. The Seller’s invoice shall certify: "THE UNDERSIGNED SELLER CERTIFIES THAT THE STATEMENT OF TIME EXPENDED IS TRUE AND THAT THE SELLER HAS COMPLIED WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES AND REGULATIONS, INCLUDING EQUAL EMPLOYMENT OPPORTUNITY."

(d) At any time prior to final payment under this Order, Buyer may have the invoices audited as to validity. Payment of Seller’s invoices shall be subject to adjustment for any amounts subsequently found upon audit or otherwise to have been improperly invoiced.

(e) **Assignment and Release of Claims:** The Seller, at the time of final payment under this Order, shall execute and deliver, at the time of and as a condition precedent to final payment under this Order, a release discharging the Buyer, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Order, subject only to the following exceptions; (1) Specified claims in stated amounts or in estimated amounts if the amounts are not susceptible of exact statement by the Seller; (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Seller to third parties arising out of performing this Order, that are not known to the Seller on the date of the execution of the release, and of which the Seller gives notice in writing to Buyer not more than six (6) years after the date of the release or the date of any notice to the Seller that the Buyer is prepared to make final payment, whichever is earlier; or (3) Claims for reimbursement of costs (other than expenses of the Seller by reason of its indemnification of the Buyer against patent liability), including reasonable incidental expenses, incurred by the Seller under the terms of this Subcontract relating to patents.

(f) **Refunds:** The Seller agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Seller for which the Seller has received reimbursement, shall be paid by the Seller to the Buyer. The Seller at the time of final payment under this Order, shall execute and deliver, at the time of and as a condition precedent to final payment under this Order, an assignment to the Buyer of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to Buyer.

(g) **Interim Payments:** Interim payments for financing will be made on the thirtieth (30th) day after Buyer receives a proper payment request. In the event that the Buyer requires an audit or other review of a specific payment request to ensure compliance.
with the terms and conditions of the Subcontract, Buyer is not compelled to make payment by the specified due date.

8. INSPECTION:
(a) Seller agrees to provide access to Seller's facilities or the place of performance at all reasonable times for inspection of any Services or Products, or both, by Buyer and its customers. Seller shall provide all information, facilities, tools, and assistance reasonably necessary for inspection without additional charge. Buyer's final inspection shall be at the destination in accordance with Buyer's procedures, notwithstanding inspection at the source. Any tender of Services or Products, or both, which are nonconforming or defective as to quality, quantity, delivery schedule, design (unless Buyer provided the design), or material and workmanship shall constitute a material breach of this Order and Buyer shall have the absolute right to reject such Services or Products, or both. Buyer shall notify Seller as to such rejection within thirty (30) days after discovery and Buyer may, at its option: (a) rescind this Order; (b) require Seller to correct any nonconforming or defective Services or Products, or both, at Seller's sole cost and expense; (c) reject the nonconforming or defective Services or Products, or both, and return the nonconforming or defective Products to Seller for a complete refund; (d) accept all or part of the Services or Products, or both, at an equitable price reduction; or (e) if Seller fails to correct the nonconforming or defective Services or Products, or both, within sixty (60) days after notice by Buyer, Buyer may, by contract or otherwise, correct the nonconforming or defective Services or Products, or both, and charge the Seller for all such costs and expenses connected therewith. Seller shall provide Buyer with Seller's return authorization number and any shipping charges for returning Products to Seller shall be paid by Seller, unless otherwise agreed to in writing by Buyer. Seller shall not re-tender rejected Services or Products, or both, without disclosing the corrective action taken. This clause shall not limit Buyer's rights or Seller's obligations under any other provision of this Order or in law or in equity. Buyer's failure to inspect any of the Products shall not relieve Seller of its obligations under this Order.

(b) The Seller shall provide and maintain an inspection system acceptable to Buyer covering the material, fabricating methods, work, and services under this Subcontract. Complete records of all inspection work performed by the Seller shall be maintained and made available to Buyer during Subcontract performance and for as long afterwards as the Subcontract requires.

(c) Buyer has the right to inspect and test all materials furnished and services performed under this Subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. Buyer, through any authorized representative, may also inspect the facility or facilities of the Seller or any lower-tier subcontractor engaged in Subcontract performance. Buyer shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If Buyer performs inspection or test on the premises of the Seller or a lower-tier subcontractor, the Seller shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the Subcontract, Buyer shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during performance, but not later than six (6) months (or such other time as may be specified in the schedule) after acceptance of the services or materials last delivered under this Order, Buyer may require the Seller to replace or correct services or materials that at time of delivery failed to meet requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the “Timekeeping, Materials and Rates” Article of this Order, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Buyer shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) If the Seller fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or ceiling price as increased by Buyer), Buyer may: (1) By Subcontract or otherwise, perform the replacement or correction; charge to the Seller any increased cost, or deduct such increased cost from any amounts paid or due under this Order (or require repayment of any payments theretofore made); or (2) Terminate this Order for default.

(h) Notwithstanding paragraphs (f) and (g) above, Buyer may at any time require the Seller to remedy by correction or replacement, without cost to the Buyer, any failure by the Seller to comply with the requirements of this Order, if the failure is due to (i) fraud, lack of good faith, or misconduct on the part of the Seller, (ii) the conduct of one or more of the Seller’s employees selected or retained by the Seller.

(i) This Article 8, applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this Order.
(j) If this Order, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the work to Seller for approval, any such approval given by Seller, prior to final acceptance, shall not relieve the Seller of its responsibility for complying with the specifications and other provisions of this Subcontract. Any such approval shall not be construed as an assumption by Buyer of the responsibility that such work complies or will comply with the specifications or other provisions of this Order.

9. AUDITS AND RECORDS:
(a) As used in this Article, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form;
(b) Examination of Costs: Seller shall maintain and make available to the Buyer, or an authorized representative of the Buyer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Order. This right of examination shall include inspection at all reasonable times of the Seller's facilities, or parts of them, engaged in performing the Order;
(c) Cost or Pricing Data: If the Seller has been required to submit cost or pricing data in connection with pricing action relating to this Order, the Buyer, or an authorized representative of the Buyer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Seller's records, including computations and projections, related to: (1) The proposal for the Order, (2) The discussions and negotiation memorandum and records conducted on the proposal(s); and (3) Seller pricing, lower-tier subcontracts or modifications.
(d) Reports: If the Seller is required to furnish cost, funding, or performance reports, the Buyer or an authorized representative of the Buyer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating; (i) the effectiveness of the Seller's policies and procedures to produce data compatible with the objectives of these reports; and (ii) the data reported.
(e) Availability: The Seller shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Order, or for a period of time mutually agreed to by the Parties. In addition: (1) If this Order is completely or partially terminated, the Seller shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and (2) the Seller shall make available records relating to litigation or the settlement of claims arising under or relating to this Order until such appeals, litigation, or claims are finally resolved; (3) If this Order is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and (4) Records relating to litigation or the settlement of claims arising under or relating to this Order, shall be made available until such litigation or claims are finally resolved.

10. WARRANTIES: Seller warrants that: (1) it has the experience and skill to perform the seed to services required to be performed under this Order; (2) it shall comply with all applicable federal, state, and local laws and regulations in effect at the time the services are performed, including all professional registration requirements; (3) all services, materials and products, furnished hereunder, shall be free from defects in material and workmanship and that all items furnished or delivered will strictly conform to applicable specifications, drawings, samples, descriptions and other requirements of this Order and that services will be performed in a timely and economical manner consistent with sound business practices; (4) unless manufactured or produced pursuant to detailed design drawings furnished by Buyer, Seller assumes design responsibility and warrants the items and Products to be suitable for the purpose intended. The warranties of Seller together with its service warranties and guarantees shall run to Buyer, its assigns and each successive customer. Seller agrees to pass any warranty benefits to Buyer that Seller receives from its suppliers of any item or Product Ordered hereunder; (5) all services, materials or Products, shall be free and clear of any liens, encumbrances, or restrictions and will not infringe or violate any patents, copyrights, trademarks, trade secrets, or other proprietary rights or intellectual property rights of any third parties; and (6) if any deliverables include any computer programs or software code ("software"): (i) the software and its media shall contain no computer instructions or inappropriate functions whose purpose or result is to disrupt, damage, or interfere with Buyer's or its customer's use of or access to the software or any of their data, programs, or computer telecommunications facilities; and (ii) unless expressly authorized in writing by Buyer, such software shall not contain (a) any mechanism which electronically notifies Seller of any fact or event, or (b) any key, node lock, time-out, logic bomb, or other functions, implemented by any means, which may restrict Buyer's or its customer's use of or access to the software or any other programs, data, or equipment. Seller's warranty shall be enforceable by Buyer and its customers. Upon notice by Buyer, Seller agrees to: (1) promptly correct any nonconforming or defective services, materials or Products at no cost to Buyer and the original warranty shall be extended by the period during which the services, materials or Products were unavailable to the Buyer; (2) accept return of the nonconforming or defective materials or Products and provide Buyer with a complete refund, or (3) provide Buyer with a reduction in the price of this Order for the nonconforming or defective services,
materials or Products. Seller shall provide Buyer with Seller's return authorization number, and any shipping charges for returning materials or Products to Seller shall be paid by Seller, unless otherwise agreed to in writing by Buyer. If Seller fails to correct any nonconforming or defective services, materials or Products, within sixty (60) days after notice by Buyer, the Buyer may, by contract or otherwise, correct any nonconforming or defective services, materials or Products and charge Seller for all such costs and expenses connected therewith. This clause shall not limit Buyer's rights or Seller's obligations under any other provision of this Order or in law or in equity.

11. RISK OF LOSS, INDEMNIFICATION & INSURANCE
(a) Whenever the Seller has in its possession property of the Buyer or the Buyer’s customer, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer.

(b) Unless otherwise provided in the Order, Seller shall have title to and bear the risk of any loss or damage to the items, material or Product purchased hereunder until they are delivered in conformity with the Order at the F.O.B. point specified on the face of the Order and upon such delivery title shall pass from Seller 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 the terms of the Order. Passing of title upon such delivery shall not constitute acceptance of the items, material or Products by Buyer.

(c) Seller shall be an independent contractor and agrees to indemnify, defend and hold harmless Buyer, its officers, directors, employees and affiliates, from any cost, damage, claim, expense, cause of action, or any other loss or liability incurred or paid, arising out of or on account of claims of or lawsuits, whether in law or in equity, which may be asserted or brought against any of the indemnified parties hereunder, for property damage or destruction, personal injury or death or any other damages of whatsoever nature or kind, including claims of consequential loss or breach of contract, in any way related to Seller's services, performance, work, its material, Products or its workmanship, or the actions or omissions of the Seller or its employees, agents, or subcontractors, except for claims arising through the claimed sole and exclusive negligence of Buyer.

(d) Seller agrees to pay or reimburse Buyer for any expenditures, including reasonable attorney’s fees and amounts paid in settlement, that the Buyer may make or become liable for in connection with the investigation, settlement, defense or otherwise by reason of such claims or lawsuits and, if requested in writing by Buyer, will defend any such lawsuits with counsel acceptable to Buyer at the sole cost and expense of Seller. Seller agrees to pay and to discharge any judgement, orders or decrees rendered or entered against any of the indemnified parties for any matter indemnified hereunder. Buyer may retain any money due or to become due to Seller sufficient to reimburse Buyer against any such cost, claims, demands, expense, judgements or liability.

(e) Insurance: Seller shall maintain at all times during performance of its work related to the Order, at its own expense, the following kinds and minimum amounts of insurance with the Buyer named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California;

(1) Workers’ Compensation and Employer’s Liability Insurance: Workers Compensation and Employer’s Liability Insurance with a Waiver of Subrogation in favor of the Buyer, as required by applicable Federal and state workers’ compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer’s Liability section of the insurance policy, except when Seller operations are so commingled with the Seller’s commercial operations that it would not be practical. The Employer’s Liability coverage shall be at least $10,000,000 per occurrence except in states with exclusive or monopolistic funds that do not permit worker’s compensation to be written by private carriers. However, the Seller in fulfillment of its obligation to provide Workers’ Compensation Insurance may maintain a self-insurance program if the Seller is qualified pursuant to statutory authority to do so.

(2) Comprehensive Liability Insurance: Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than $10,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.

(f) Insurance Certificates and Endorsements: Before commencing work under this Order, the Seller shall furnish (i) certificates of insurance for the coverages specified in paragraph (e)(1) & (2) above, and (ii) an additional insured endorsement naming the Buyer as an additional insured to the Order for the coverage specified in paragraph (b)(1) & (2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the state in which this Order is to be performed; or (ii) until thirty (30) days after the insurer or the Seller gives written notice to Buyer, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Order, and (ii) be primary and non-contributing to any insurance procured by the Buyer. Should the Seller at any time neglect or refuse to provide the certificates of insurance to the Buyer prior to the start of work or should such insurance be canceled, the Buyer shall have the right to procure same and the costs thereof shall
be deducted from monies then due or thereafter to become due to the Seller.

(g) **Lower-tier Subcontracts:** The Seller shall insert the substance of subparagraphs (e) and (f), in lower-tier subcontracts in the performance of this Order. At least five (5) days prior to entering the Buyer's premises by lower-tier subcontractor personnel, the Seller shall furnish (or ensure that the lower tier subcontractor has furnished) to Buyer a current certificate of insurance meeting the requirements of subparagraphs (e) & (f) above, for each such lower-tier subcontractor.

12. **CHANGES:**

(a) Buyer may, at any time, issue a written change notice to: suspend performance of this Order, in whole or in part; or make changes in the services, quantities, delivery schedules, methods of shipment and packaging, and any Buyer-provided specifications, drawings, and designs. Whether pursuant to this clause or by mutual agreement, changes shall not be binding on Buyer until agreed to in writing by an Authorized Member of Buyer's Procurement Department. An Authorized Member of Buyer's Procurement Department has the sole authority to make contractual commitments on behalf of the Buyer, to provide contractual direction and to change contractual requirements as defined in the Order. Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Product hereunder and are deemed expressions of personal opinion only, and shall not affect Buyer's and Seller's rights and obligations hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment unless the same is in writing and stating that it constitutes a modification or change to this Order, and is signed by an authorized member of Buyer's Procurement Department.

(b) If the change results in an increase or decrease in the cost of the services or Products, or both, or the time required to perform the Services or manufacture and deliver the material or Products, an equitable adjustment shall be made in the purchase price or delivery schedule, or both, and this Order shall be modified in writing. For any change issued by Buyer, Seller may submit a written request for equitable adjustment proposal for the impact caused by the change, including all necessary documentation to substantiate its proposal. Any proposal by Seller for an equitable adjustment shall be unconditionally waived unless it is made in writing and submitted to a member of Buyer’s Procurement Department within thirty (30) days from receipt of Buyer's written change notice, except that Buyer may, at its discretion, receive and act upon any such proposal so made at any time prior to final payment. Nothing in this clause shall excuse Seller from proceeding without delay to perform this Order as changed, including the failure of the parties to agree on any equitable adjustment to be made under this clause. If Seller claims the cost of any property made obsolete or excess as a result of a change, Buyer shall have the right to acquire the property for the claimed cost or otherwise prescribe the manner of disposition of such property. Buyer has the right to examine Seller's pertinent books and records for the purpose of verifying Seller's proposal or claim, or both.

(c) The Seller shall immediately notify, in writing, the authorized member of Buyer’s Procurement Department, whenever a request, notice, authorization, direction, or order has been received from a representative of Buyer other than the authorized member of Buyer’s Procurement Department, which, but for the lack of authorization on the part of the issuing Buyer non-Procurement representative, would effect a change within the meaning of this “Changes” Article or otherwise be the basis for assertion of a claim by the Seller under any provision of the Subcontract.

13. **TAXES:** All federal, state, and local taxes billed to Buyer shall be separately stated in Seller's invoices.

14. **ACCESS TO SENSITIVE INFORMATION:**

(a) As used in this clause, "sensitive information" refers to: (1) Information that a contractor has developed and marked as proprietary, confidential, or with a limited or restricted rights notice, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged; (2) Information that is marked Buyer Proprietary, Proposal Sensitive or Business Discreet; (3) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; or (4) Information obtained directly from Buyer electronic resources, such as Buyer’s computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

(b) If performing this subcontract entails access to sensitive information, as defined above, the Seller agrees to: (1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this subcontract, and not to improve its own competitive position in another procurement nor for any other purpose; (2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure using the same standard of care as the Seller uses to protect its own confidential information, but under no circumstances less than a reasonable standard of care; (3) Maintain any restrictive markings on
sensitive information coming into its possession and on any copies thereof; (4) Allow access to sensitive information only to those employees that need it to perform services under this subcontract; (5) Preclude access and disclosure of sensitive information to persons and entities outside of the Seller’s organization; (6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this subcontract and to safeguard it from unauthorized use and disclosure; (7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this subcontract; (8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, immediately report any breaches to the authorized member of Buyer’s Procurement Department, and implement any necessary corrective actions; (9) Return to Buyer or destroy all sensitive information, and copies thereof, no later than the effective date of the termination or expiration of this subcontract. Within thirty (30) days of that effective date, the Seller shall confirm in writing to Buyer that all sensitive information received during the course of this subcontract has been returned or destroyed;

(c) The Seller will comply with all procedures and obligations specified by Buyer with regards to any actual or potential organizational conflicts of interest, (OCI);

(d) The nature of the work on this Order may subject the Seller and its employees to a variety of laws and regulations relating to ethics, COI, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this subcontract establishes a high standard of accountability and trust, Buyer will carefully review the Seller’s performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this subcontract for default, in addition to any other rights and remedies available by law Buyer or other provider of sensitive information;

(e) The Seller shall not be liable for the use or disclosure of sensitive information that the Seller can demonstrate is: (1) in the public domain other than by a breach of this clause by the Seller; (2) received by the Seller from a third party without any obligation of confidentiality; (3) known to the Seller without any limitation on use or disclosure prior to its receipt from Buyer under this subcontract; (4) independently developed by the employees of the Seller as evidenced by written documentation; or (5) generally made available to third parties by the originator of the sensitive information without restriction on disclosure;

(f) Unless otherwise specifically provided in this subcontract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information;

(g) The Seller’s obligations under this clause shall survive the expiration or termination of this Subcontract;

(h) Notwithstanding paragraph (b)(5), the Seller may submit a written request to the Authorized Member of Buyer’s Procurement Department for authorization to disclose sensitive information to its lower-tier subcontractors. If Buyer authorizes the disclosure, the Seller before making any such disclosure must include the substance of this clause, suitably modified to reflect the relationship of the parties, in any lower-tier subcontract that will involve access to sensitive information. The Seller shall also require an acknowledgement in any such lower-tier subcontract that: (1) the corresponding clause is being included for the benefit of Buyer as a third-party beneficiary, and (2) in addition to any other rights it may have, Buyer is intended to have a right of direct action against the lower-tier subcontractor, or any other person to whom that Seller has released or disclosed that sensitive information, to seek damages for any breach and/or to seek enforcement of that clause in the lower-tier subcontract..

15. DATA REMOVAL FROM COMPUTERS AND ELECTRONIC DEVICES: The Seller shall archive all data required to be retained pursuant to the terms of this Subcontract. The Seller shall completely sanitize (e.g., overwrite, degauss or destroy) all media containing data in all computers and other electronic devices and permanently delete all non-transferable licensed software before such computers or other electronic devices leave the control of the Seller by transfer or disposal. All data, including computer software, provided by Buyer, derived from Buyer data, or owned by the Buyer pursuant to this Subcontract shall be permanently deleted from Seller’s controlled computers or electronic devices before leaving the control of the Seller.

16. SELLER’S DATA: Seller retains all proprietary rights in and to all designs, engineering details, schematic drawings, models, software, and other similar data pertaining to the Services or Products, or both, supplied under this Subcontract (“Seller’s Data”), except to the extent provided by Buyer. Seller herein grants Buyer perpetual, royalty-free, fee-free, non-exclusive right and license to use, reproduce, display, publish, modify, create derivatives, allow others acting on behalf of Buyer to use, reproduce, display, publish, modify or create derivatives, Seller’s Data and any data first produced or specifically used by the Seller in the performance of this Subcontract. The Seller shall not, without prior written permission of Buyer, incorporate in data used or delivered under this Subcontract any data in which the Seller does not retain proprietary rights, unless the Seller identifies such data and grants Buyer, or acquires on Buyer’s behalf, a license of the
same scope as set forth in above, however, if such data are computer software, the Seller grants the Buyer, or acquires on Buyer’s behalf, a paid-up nonexclusive irrevocable worldwide license as set forth above. For the period of three (3) years after the termination of this Subcontract, upon the request of Buyer, Seller shall provide Buyer Seller’s Data. The rights granted to Buyer under this Article 16 shall survive termination.

17. INTELLECTUAL PROPERTY INDEMNIFICATION: If the services or Products, or both, supplied under this Order become the subject of a claim of infringement of any U.S. or foreign patents, copyrights, or other intellectual property rights, Seller agrees to defend, indemnify, and hold Buyer and its Trustees, officers, employees, agents, and customers (“Indemnified Parties”) harmless from all claims, losses, damages, or liabilities (including reasonable attorneys’ fees, court costs, and other related costs and expenses including those incurred to pursue this indemnification by cross complaint or other legal action) relating to the actual or alleged infringement, provided Buyer gives Seller prompt written notice of such claim, allows Seller to direct the defense and settlement of the claim, and cooperates reasonably with Seller as necessary for defense and settlement, all at Seller’s expense. Seller will have no liability under this clause for any infringement claim arising from the following: (a) Seller’s compliance with specifications or instructions issued by the Buyer with respect to performing the Services or manufacturing the Products; (b) where such claim or action would have been avoided but for modification by the Buyer of the Products after acceptance; or (c) Buyer’s continued use of the Products after being notified by Seller of the alleged infringement or after being notified by Seller of modifications that would have avoided the alleged infringement. If Seller fails to defend, Buyer may defend or cause to be defended such claim at Seller’s expense. If use of any Products are enjoined as a result of such claim, Seller, at no expense to Buyer, shall: (a) obtain for Buyer and its customer the right to use and sell the Products; (b) modify the Products to render them noninfringing but functionally equivalent; (c) post a satisfactory bond to permit Buyer’s continued use of the Products; (d) substitute equivalent Products acceptable to Buyer and extend this indemnity thereto; or (e) if, in Seller’s opinion, neither items (a) through (d) are feasible, accept return of the Products and refund the costs and expenses paid by Buyer. The rights and obligations of this clause shall survive completion or termination of this Order.

18. RELEASE OF INFORMATION: Except as may be required by law or to insure performance of this Order, Seller (and Seller’s subcontractors at any tier) shall not, without Buyer’s prior written consent: (a) disclose any information regarding this Order, except to Seller’s independent auditors, accountants, attorneys, or government agencies; (b) use the name and trademarks of the Buyer or any of its employees, or any adaptation thereof, in publicity, advertising, press releases, marketing activities, annual reports, in-house newspapers, promotional or sales literature, research reports, or on any website; and (c) use the Buyer or any of its employees as a reference in any manner whatsoever to promote the Seller’s Products, services, and capabilities.

19. PROPERTY FURNISHED TO SELLER BY BUYER:
(a) Buyer shall retain title and right of immediate possession to all Buyer-owned property furnished to Seller for Seller’s use in the performance of this Order (e.g., tools and tooling, designs, patterns, drawings, specifications, reports, data, and materials). Without the prior written consent of an authorized member of Buyer’s Procurement Department, the property shall not be used for any purpose other than the performance of this Order. All property furnished by Buyer shall be segregated by Seller and shall be clearly marked for identification as Buyer’s property. Seller shall keep an inventory of all property which is furnished by Buyer and shall furnish copies of such inventories to Buyer upon request. Seller shall protect, preserve, and maintain such property in accordance with accepted industrial practices. Upon Buyer’s request or upon completion or termination of this Order, all Buyer-owned property, together with all excess Buyer-furnished material shall be returned to Buyer or otherwise disposed of as Buyer may direct. Seller shall be responsible for all loss or damage to Buyer’s property, except for normal wear and tear.

(b) If Buyer furnishes any U.S. Government-owned property to Seller for Seller’s use in the performance of this Order, title and right to immediate possession shall remain with the U.S. Government. Seller shall maintain and administer a program for the protection of U.S. Government property in accordance with the applicable subpart within Federal Acquisition Regulation (FAR) part 45 and accepted industrial practices. Without the prior written consent of Buyer, such property shall not be used for any purpose other than the performance of this Order. All U.S. Government property furnished by Buyer shall be segregated by Seller and shall be clearly marked for identification as U.S. Government property. Seller shall keep an inventory of all U.S. Government property which is furnished by Buyer and shall furnish copies of such inventories to Buyer upon request. Upon Buyer’s request or upon completion or termination of this Order, all U.S. Government property shall be returned to Buyer or otherwise disposed of as Buyer may direct. Seller shall be responsible for all loss or damage to the U.S. Government’s property, except normal wear and tear.

20. TERMINATION:
(a) Buyer may, by written notice to Seller, terminate all or part of this Order for default: (i) if Seller fails to perform the Services or deliver the Products within the time specified in this Order (or time specified by written extension); (ii) if Seller fails to perform any other material obligation under this Order, or fails to make progress as to endanger performance of this Order in accordance with its terms, or fails to provide adequate assurance of
future performance; or (iii) if Seller becomes insolvent or seeks protection from creditors or has a receiver appointed for it, or otherwise proceeds under the bankruptcy laws (voluntarily or involuntarily). Seller shall have fifteen (15) days (or such longer period as Buyer may authorize in writing) to cure any such default. Seller shall continue to perform its obligations under this Order to the extent not terminated. Buyer's total liability shall be to pay the Seller for Services performed and accepted and Products delivered and accepted prior to the effective date of termination, but not already paid for under this Order. Buyer may reject Services and reject and return Products and Seller shall have no claims against Buyer for Services or Products, or both, not accepted by Buyer. In the event of default, Buyer may acquire the Services or Products, or both, from an alternative source and Seller shall be liable to the Buyer for any excess costs of re-procurement.

(b) Buyer reserves the right upon written notice to Seller to terminate all or part of this Order for its convenience. In the event of such termination, Seller shall immediately cease all work under this Order and shall immediately cause any and all of its suppliers and subcontractors to cease work. For Products specially manufactured for Buyer, Buyer's only obligation shall be to pay Seller a percentage of the price reflecting the percentage of the Products manufactured prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Buyer, using generally accepted accounting principles. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. For Products not specially manufactured for Buyer, Buyer's only obligation to Seller shall be payment of a mutually agreed upon restocking or service charge, if any. In no event shall Buyer be liable for any lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total price of this Order. Seller shall continue with all work not terminated.

21. SUBCONTRACTING AND ASSIGNMENT: This Order may not be subcontracted, assigned, or otherwise transferred in any manner without the prior written consent of Buyer. Any attempt to do so shall be void. However, Seller may assign its rights to be paid monies due, or to become due, to a financing institution, provided Buyer is promptly furnished a signed copy of the assignment reasonably in advance of the due date for payment. Amounts assigned shall be subject to the right of Buyer to make, at any time, deductions by way of setoff or recoupment for any present or future claims by Buyer against Seller. This right of setoff and recoupment shall exist whether the subject of the setoff or recoupment arose before or after the assignment or before or after any notice of assignment. Buyer shall have the right to make deductions without notice to the assignee.

22. PRICES: Seller warrants that the prices charged for the Services and any Products do not exceed the price charged by Seller to any other customers purchasing the same products in similar quantities under similar conditions.

23. GOVERNMENT CONTRACTS & GOVERNMENT CLAUSES:
(a) When a government contract number or the word "military" appears on the face of the Purchase Order Agreement Terms and Conditions or on the face of any Order, then the terms and condition for government contracts including the FAR and DFARS provisions attached hereto and incorporated herein by reference apply Purchase Order Agreement or any Order.

(b) If this Order is issued under a prime contract with the U.S. Government, the Federal Acquisition Regulations (FAR), the Defense Federal Acquisition Regulations Supplement (DFARS) and/or other clauses from Buyer's contract with its customer are incorporated herein by reference either by citation or on a supplemental attachment. If any of the clauses are not applicable by their terms they shall be self-deleting.

(c) Where necessary to derive proper meaning in a Order or subcontract when the FAR, DFARS or other special provisions or clauses are flowed down to Seller, then "Contractor" means "Seller", "Contracting Officer" means "Buyer", "Contract" means this Order and "Government" means "Buyer or the Government". However, the words "Government" and "Contracting Officer" do not change: (a) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative and (b) when title to property is to be transferred directly to the Government.

(d) As may be directed by a clause, the Seller shall either incorporate by reference or include the full text of a clause in any lower tier subcontract awarded or issued by the Seller to perform this Order.

24. COMPLIANCE WITH LAWS: Seller shall comply with all applicable Federal, state, and local laws, regulations, and orders including, but not limited to, the Foreign Corrupt Practices Act, the Immigration Reform and Control Act of 1986, the Americans with Disabilities Act, and U.S. export laws and regulations, where applicable.

25. INDEPENDENT CONTRACTOR: Each party is an independent contractor. Nothing in this Order shall be deemed or construed to create a joint venture, partnership, or employer-employee or agency relationship between the Buyer and Seller for any purpose. Seller's employees shall be paid exclusively by Seller. Buyer's employees shall be paid exclusively by Buyer. Each party shall comply with all obligations relating to its employees under Federal, state, and local laws, regulations, and orders regarding Minimum Wages, Social Security, Unemployment Insurance, and Federal and State Income Tax. Personnel supplied by Seller hereunder shall be deemed employees of Seller and shall not for any purposes be
considered employees or agents of Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while performing services under this Order. Buyer assumes no liability for Seller personnel.

26. REMEDIES, VALIDITY, WAIVER: Buyer’s remedies herein shall be cumulative and in addition to any other remedies provided by law or equity. The invalidity in whole or in part of any provision of this Order shall not affect the validity of the other provisions. A waiver of a breach of any provision of this Order shall not constitute a waiver of any subsequent breach of that provision or a breach of any other provision. Failure of the Buyer to enforce at any time, or from time to time, any provision of this Order shall not be construed as a waiver thereof.

27. APPLICABLE LAW, FORUM & DISPUTES:
(a) The Purchase Order Agreement and Order shall be deemed to be made and executed in the State and County shown in the Buyer’s address, printed on the face of the Purchase Order Agreement or Order.
(b) Irrespective of the place of performance, this Order will be construed and interpreted in accordance with the laws of the State of California (without giving effect to its conflicts of law principles) provided, however, the FAR and DFAR clauses contained in this Order shall be construed and interpreted in accordance with the Federal law of Government Contracts as enunciated and applied by judicial bodies and boards of contract appeals.
(c) Buyer may, but is not obligated to, bring an action or claim relating to or arising out of the Purchase Order Agreement, Order or any dispute hereunder in the appropriate State or Federal court in the State of California and Seller hereby irrevocably consents and submits to personal jurisdiction and venue in any such court.
(d) Prior to bringing any action, both parties agree to utilize respective internal resources, including escalation to company management to resolve disputes. Any dispute made by Seller shall be made in writing to an Authorized Member of Buyer’s Procurement Department and, unless otherwise stated in this Order, submitted within one (1) year after completion of performance of services or delivery of Products, or both. A claim by the Seller under the termination clause of this Order shall be made in writing to an Authorized Member of Buyer’s Procurement Department and, unless otherwise stated in this Order, submitted within sixty (60) days after termination. Any claim not submitted within the prescribed time limits set forth herein shall be considered invalid. In no event shall Buyer be obligated to pay Seller any amount in excess of the price of this Order.
(e) The parties will work together in good faith to resolve any disputes relating to the Order. If the parties are unable to resolve the dispute within thirty (30) days following the date one party sent written notice of the dispute to the other party, the parties may agree to participate in mediation or arbitration.
(f) Pending final resolution of any dispute, the Seller shall proceed diligently with the performance of this Order and in accordance with Buyer’s instructions.
(g) Except as may be expressly set forth in this Order or expressly permitted under a FAR or DFARS clause applicable to this Order, the Subcontractor shall not acquire any direct claim or direct course of action against the U.S. Government.

28. NOTICES: Any notice or other communication herein required or that may be given pursuant to this Order shall be deemed received:
(a) Three (3) business days after transmittal provided the correspondence is appropriately addressed, using registered mail, return receipt requested, or any of the express mail services; or,
(b) One (1) business day after transmittal by electronic mail (e-mail) or other form of electronic transmittal. Electronic transmittals shall constitute a binding and effective record of any notice or communication described herein.

29. ORDER OF PRECEDENCE: In the event of any inconsistency between any of the contract documents, the inconsistency shall be resolved by giving precedence in the following order:
(a) Change Order Document
(b) Provisions on the face of the Order;
(c) Statement of Work;
(d) Specifications or Drawings, or both incorporated by reference;
(e) These Terms and Conditions;
(f) Other referenced documents, unless otherwise specified in the Order.

30. EXPORT CONTROL: Seller shall comply with, and control the disclosure of and access to, defense articles and services, and related technical data received, disclosed, or generated under this Purchase Order in accordance with the U.S. export control laws and regulations including, but not limited to, the Export Administration Regulations (EAR), 15 C.F.R. Parts 730-774, and the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130, including the requirements to obtain an export license, as applicable. Seller is advised and acknowledges that export controlled items or related technical data (or both) may not be exported, disclosed, or transferred to foreign businesses or governments, or to any “foreign person” as defined in 22 C.F.R §120.16, whether located in the United States or abroad. Without limiting the foregoing, the Seller agrees that it will not disclose or transfer any export-controlled items or related technical data (or both) to include transfer to foreign persons employed by or associated with the Seller, or under contract to the Seller, without the authority of any export license or applicable export license exemption. The Seller shall obtain the written consent of the Buyer prior to submitting any request for authority to export.
any such export controlled items or related technical data (or both). The Seller shall defend, indemnify and hold the Buyer harmless from all claims, demands, damages, costs, fines, penalties, reasonable attorney’s fees, and all other reasonable costs and expenses arising from failure to comply with this requirement. The Seller shall include the substance of this clause in all subcontracts that are expected to involve access to or the generation of export-controlled items or related technical data (or both).

31. NON-SOLICITATION: During the term of this Subcontract, and for a period of twenty-four (24) months following termination of this Subcontract, Seller shall not, directly or indirectly, solicit for employment, employ or otherwise engage the services of employees or individual consultants of Buyer.

32. LABOR DISPUTES. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer including all relevant information including, but not limited to, nature of dispute, labor organizations involved, estimated impact on Seller’s performance of Buyer’s order and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause in subcontracts at any tier where a labor dispute might delay timely performance of this Order.

33. CLASSIFIED REQUIREMENTS: In the event this Subcontract requires access to classified information, Seller, at its sole expense, agrees to comply with all laws and regulations of the United States related to such classified requirements, including obtaining all required authorization from the U.S. pursuant to, among other requirements, those set forth in the National Industrial Security Program Operating Manual (NISPOM) and any specific agency supplements to the NISPOM or other classified requirements as directed by Buyer.

34. COUNTERFEIT GOODS:

(a) Seller shall not furnish Counterfeit Goods to Buyer, defined as goods or separately-identifiable items or components of Goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, “OEM”) item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, Goods or items that contain modifications, repairs, rework, or re-marking as a result of Seller’s or its subcontractor’s design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked without legal right to do so, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Contract.

(b) Seller shall implement an appropriate strategy to ensure that goods furnished to Buyer under this Contract are not Counterfeit Goods. Seller’s strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM’s original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item’s authenticity.

(c) If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller’s expense, such Counterfeit Goods with OEM or Buyer-approved goods that conform to the requirements of this Contract. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic goods after Counterfeit Goods have been replaced.

(d) Seller bears responsibility for procuring authentic goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.

35. ETHICS REQUIREMENTS: Buyer is committed to conducting business fairly, impartially and in an ethical and proper manner. Buyer’s expectation is that Seller will also conduct business fairly, impartially and in an ethical manner and that the seller will have (or will develop) and adhere to a code of ethical standards. In the event the Seller has cause to believe that Buyer or any Buyer employee has acted improperly or unethically under this Order, Seller shall report such conduct to the Buyer’s Ethics Hotline at 310.336.5677. Copies Buyer’s Code of Ethics are available on www.aerospace.org.