

PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance:** This purchase order must be accepted in writing by Seller. If for any reason Seller should fail to accept this order in writing, the shipment of any goods ordered hereby, the furnishing of any service called for hereunder or the acceptance of any payment by Seller hereunder or any other conduct by Seller which recognizes the evidence of a contract pertaining to the subject matter hereof shall constitute an unqualified acceptance by Seller of this order and all of its terms and conditions. Any terms and conditions proposed in Seller's acceptance of Buyer's offer or in any acknowledgment, invoice, or other form used by Seller that add to, vary from, or conflict with the terms herein are hereby objected to unless specifically accepted in writing by Buyer. Any such proposed terms shall be void and the terms and conditions of this order (1) shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties, (2) shall apply to each shipment received by Buyer from Seller hereunder and (3) may hereafter be modified only by written instrument executed by the authorized representatives of both parties.
2. **Specifications:** Seller shall comply with all specifications stated in this order and (unless the goods called for by this order are standard commercial products not intended as component parts of or as equipment or as accessories for Buyer's products) with all applicable Government specifications.
3. **Inspection; Rejection:**
 - a. Seller shall provide and maintain, without additional charge to Buyer, an inspection system which complies with all specifications stated in this order and in the absence of such specifications, Seller shall be required to provide and maintain, without additional charge to Buyer, an inspection system, which is acceptable to Buyer, Buyer's customer and where applicable, the Government. Seller shall tender to Buyer for acceptance only goods that have been inspected in accordance with the appropriate inspection system and have been found by Seller to be in conformity with all requirements of this order. As part of the inspection system, Seller shall prepare records evidencing all inspections made under the system and the outcome of such inspections. These records shall be complete and made available to Buyer during performance of this order and for three (3) years after final payment. Buyer may perform reasonable reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph.
 - b. Buyer, Buyer's customer and the Government shall have the right to inspect and test the material and workmanship of all goods required under this order at all places and times during normal business hours including, when practicable, during the period of manufacture; and if any such inspection or test is made on the premises of Seller, Seller shall furnish, without additional charge to Buyer, all reasonable facilities and assistance for the safe and convenient performance of the inspection test.
 - c. Notwithstanding (i) prior inspection, (ii) payment for, (iii) use of the goods ordered hereunder, (iv) passage of title, or (v) execution of a DD-250 or other acceptance document, Buyer shall have the right to reject any of such goods which do not conform to all requirements of this order. Such right shall be exercisable within the period provided in Buyer's applicable specification, or elsewhere in this order, but in any event, not less than one (1) year following Buyer's receipt of the goods called for hereunder. All such rejected goods shall be returned to Seller at Seller's risk and expense, (transportation collect declared at full value, unless Seller advises otherwise), for full credit, replacement or refund (at Buyer's option) excepting, however, those goods which Buyer elects to repair at Seller's expense or to retain at an equitable reduction in price. Rejected goods shall not again be tendered for acceptance without disclosure of former rejection. Buyer's rights under this subparagraph shall be in addition to and shall not be deemed to diminish its rights under this paragraph or under the paragraph hereof entitled "Warranty."
 - d. Buyer reserves the right to reject all or any part of any delivery that varies from the quantity authorized by Buyer for shipment.
4. **Warranty:**
 - a. Seller warrants to Buyer, its successors, assigns, customers, and users of goods sold by Buyer that all goods provided hereunder shall be (i) merchantable; (ii) new; (iii) free from defects in material and workmanship; (iv) with regard to goods designed by Seller, free from defects in design; (v) suitable for the purposes intended whether expressed or reasonably implied; (vi) in compliance with all applicable specifications, drawings, and performance requirements; and (vii) free from liens or encumbrances on title. Delivery, inspection, test, acceptance, use of, or payment for the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranty including all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use. Seller agrees to correct defects in or replace any goods not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. Deliveries of corrected or replaced goods shall be accompanied by a written notice specifying that such goods are corrections or replacements. In the event that Seller fails to correct defects in or replace nonconforming goods promptly, Buyer, after reasonable notice to Seller, shall have the right to correct or replace such goods and charge Seller for the cost incurred by Buyer in doing so, such right to include, without limitation, Buyer's right to deduct or setoff pursuant to Paragraph 7d. hereof. Buyer's approval of Seller's samples or first articles shall not be construed as a waiver by the Buyer of any requirement of the drawings, specifications, specified performance requirements, and/or other reference descriptions applicable hereto or of any express or implied warranty.
 - b. In the event of Seller's delivery of defective or nonconforming items or Seller's breach of warranty, Buyer may, at its election and in addition to any other rights or remedies it may have at law or equity or under this order, recover from Seller any costs of removing such items from property, equipment or products in which such items have been incorporated and any additional costs of disassembly, fault isolation, failure analysis, reinstallation, reinspection, scrapping, retesting, manufacturing and remanufacturing.
 - c. If services or technical data are to be provided by Seller hereunder, Seller warrants to Buyer that such services and/or technical data have been performed or prepared in a professional and workmanlike manner.
5. **Infringement Indemnity:**
 - a. As to the goods provided hereunder, Seller shall be liable for and shall indemnify and save Buyer and each subsequent purchaser or user thereof, harmless from any infringement claim, suit or action, including proceedings alleging that the manufacture, use or sale of such goods infringes any patent, trademark, copyright, semiconductor chip product mask work right or other proprietary right; except, however, that when such alleged infringement arises as a necessary consequence of Seller's compliance with specifications or designs furnished by Buyer which describe that aspect of the goods on which such alleged infringement is based, then Buyer shall be liable and shall save Seller harmless therefrom, but this exception shall not apply if the subject matter given rise to the claim for infringement either (i) was derived from, or selected by Seller, or (ii) relates to materials or compositions, or processes relating to materials or compositions.
 - b. The party against who such infringement claim is made, or such suit or action is commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions of paragraph a. hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action if such is commenced against the other party. Insofar as its interests are affected, the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action.
 - c. Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.
6. **Shipping and Billing Instructions:**
 - a. Unless otherwise specified, standard commercial preservation, packing and packaging is acceptable. Do not make any charges for packaging or boxing since Buyer will not allow such charges. Do not combine in the same container material for different receiving locations. All items shall be packaged in accordance with good commercial practice in a manner sufficient to ensure arrival in an undamaged condition. Seller shall be responsible to Buyer for all direct and indirect costs or damages incurred by Buyer, as a result of, or caused by, improper packing, or packaging. Seller shall give notice of shipment to Buyer at the time of delivery of any shipment of items to a carrier for transportation.
 - b. Exterior containers must be marked with the following: (i) address; (ii) purchase order number; (iii) part number; (iv) prime contract number, if any; and (v) any other special markings called for by this order.
 - c. The bill of lading must reference purchase order number and, correct ship to address. When delivery point is F.O.B. Origin, make NO declaration of value on bill of lading EXCEPT where a declaration of value will result in lower total cost of shipment. The original copy of the bill of lading shall be retained by Seller for one (1) year and provided to Buyer's Traffic Department if requested.
 - d. On orders where Buyer pays for or reimburses Seller directly for shipping costs, ship in accordance with routing instructions furnished by Buyer. If such instructions are not received, Seller shall secure the least expensive transportation method consistent with good commercial practice for protection and shipment of the goods shipped. When delivery is to be in accordance with Buyer's written releases, Seller shall not procure, fabricate, assemble or ship any item except to the extent authorized by Buyer in such written releases. Seller will at its own expense ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered for any reason other than Buyer's fault.
 - e. Include with each shipment of goods a packing slip which displays (i) the purchase order number; (ii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (iii) the quantity of items.
 - f. Render a separate invoice in duplicate to Buyer's Accounts Payable Department on the day of each shipment made pursuant to this order and indicate thereon; (i) the location to which the item has been shipped; (ii) the purchase order number; (iii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (iv) the quantity of items shipped.
 - g. Address all Test Reports, when required, to the Department at the plant to which the goods are shipped. Test Reports must be in Buyer's possession at the time the goods are received.

7. Changes:

- a. Buyer may, at any time and without notice to surties (if any), unilaterally make changes within the general scope of this order. Subject to paragraph c. hereof, if any change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause, however, must be submitted in writing in the form of a complete change proposal or as otherwise to Buyer's satisfaction, fully supported by factual information, to Buyer's Purchasing Department not later than fifteen (15) days after the date of receipt by Seller of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Seller's request. No claim for an equitable adjustment hereunder shall be allowed if it is asserted after final payment in this order.
- b. No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's Purchasing Department.
- c. Notwithstanding the above or any other provision of this order, the Seller hereby agrees that no changes to the goods which may be required in order to meet the specified performance requirements of this order shall entitle the Seller to any adjustment in either price or delivery.
- d. Notwithstanding the pendency of any claim for an adjustment submitted by Seller hereunder, Seller shall diligently proceed with the performance of the order, as directed by Buyer, and nothing herein shall be construed as relieving Seller of its obligations so to perform, including without limitation the failure of the parties to agree upon Seller's entitlement to, or the amount or nature of, any such adjustment.

8. Assignment and Setoff:

- a. Performance of this order shall not be assigned by the Seller in whole or in part without the prior written consent of Buyer. Any prohibited assignment by Seller shall be null and void, shall be deemed a material breach of this order, and Seller shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations hereunder. This shall in no way affect Buyer's right to assign this order.
- b. All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

9. Buyer - Furnished Materials, Tooling and Equipment:

- a. Unless otherwise stated in this order, Seller shall supply all material, equipment, tools and facilities required to perform this order. Title to all such property furnished to Seller by Buyer, Buyer's Customer or the Government, or the acquisition of which was directed or paid for by Buyer, and any replacements thereof, or any materials affixed or attached thereto (all hereinafter collectively referred to as "Articles") shall be and remain in Buyer, Buyer's Customer or the Government as the case may be, with the right to possession in Buyer. Seller shall bear the risk of loss of all Articles while in Seller's custody or control or that of Seller's suppliers. Seller shall keep all Articles insured at Seller's expense against loss and damage in an amount equal to the cost of replacement.
- b. Seller agrees, as a material condition of this order, that it will (i) label, identify and segregate any and all material, tooling, and equipment (hereinafter referred to as "material") delivered to Seller by Buyer in connection with this order in such fashion as to clearly identify such material, as being the property of Buyer, Buyer's Customer or the Government, as the case may be, at all stages of its possession by Seller, (ii) prevent the commingling of said material with other material in the Seller's possession except in accordance with applicable buyer specifications or Buyer's written approval, and (iii) assume responsibility for all taxes with respect to said material at all times and if FOB Destination, while in the hands of carriers. The clause set forth in FAR 52.245-17 "Special Tooling," is hereby incorporated by reference and made a part of this order; provided, however, that as used therein the term "Contracting Officer" shall be deemed to refer to Buyer's authorized representative and the term "Government" shall be deemed to refer to Buyer except in paragraphs (e)(1), (i)(1) and (j)(4) where the term will be interpreted as referring to either the Government or Buyer.
- c. Seller is required to account to Buyer for the proceeds from the sale of scrap generated during the performance of this order by the processing of material furnished by Buyer. When Buyer furnishes any material, in whole or in part, for the manufacture of parts or assemblies, Seller shall not substitute material from any other source.

10. Force Majeure: Buyer may delay Seller's delivery, Buyer's acceptance or Buyer's payment for the goods when such delays are occasioned by causes beyond Buyer's control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause effecting the delay has been removed. Buyer's sole liability and Seller's sole remedy for any such delay shall be limited to Seller's direct additional costs in holding the goods or delaying performance of this order in excess of six (6) months. Causes beyond Buyer's control may include, but are not restricted to, acts of God of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

11. Compliance with Laws: In the performance of this order, Seller shall comply with all applicable federal, state and local laws, ordinances, rules and regulations. Seller hereby certifies that the goods called for by this order have been or will be produced in compliance with the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219) and, insofar as applicable to this order, the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45) and the Work Hours Act of 1962 (40 U.S. Code 327-332), and any amendments thereto, as well as with the provisions of any other federal law with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted, and with any and all rules and regulations issued under each and every such act. Seller agrees that this certification may be considered as the certificate contemplated by the amendment dated October 26, 1949, to the Fair Labor Standards Act of 1938. Seller agrees that Buyer shall have the right without incurring any liability to Seller to withhold payment of any invoices should Seller fail to materially comply with all applicable federal, state and local laws, ordinances, rules and regulations or the terms and conditions contained herein. Seller further agrees to indemnify and hold Buyer and its customer's harmless for any loss, damage or expense sustained because any certification or representation required by law or regulation made by Seller was false, inaccurate or incomplete or due to Seller's non-compliance with any applicable law regulation or term.

12. Anti-Kickback Provisions:

ANTI-KICKBACK PROCEDURES

- (a) Seller represents and warrants that it has complied with the Anti-Kickback Act of 1986 (41 U.S.C. 51-88) (the Act), which prohibits any person from:
 - (1) providing or attempting to provide or offering to provide any kickback;
 - (2) soliciting, accepting or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
- (b) In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including, without limitation, Buyer's cost, attorney's fees, or any fines or penalties assessed against Buyer, resulting from a violation of the Anti-Kickback Act of 1986 by Seller (including any of its officers, partners, employees or agents); or by any Subcontractor below Seller or Subcontractor employee.

13. FAR and DOD FAR Supplement Clauses: (applicable if a Government prime contract number is indicated on the face of the Order) The following FAR and Department of Defense FAR Supplement (DFARS) clauses as in effect, and as modified by Federal Acquisition Circulars and Defense Acquisition Circulars respectively, on the date of this order, are hereby incorporated by reference and made apart hereof:

- (a) FAR 52.203-1 "Officials Not To Benefit",
FAR 52.203-3 "Gratuities",
FAR 52.203-5 "Covenant Against Contingent Fees", in which "Government" means Buyer in paragraph (a).
FAR 52.203-7 "Anti-Kickback Procedures",
FAR 52.204-2 "Security Requirements",
FAR 52.208-1 "Required Sources for Jewel Bearings and Related Items",
DFARS 52.208-7000 "Required Sources for Miniature and Instrument Ball Bearings",
DFARS 52.208-7001 "Required Sources for Precision Components for Mechanical Time Devices",
DFARS 52.208-7002 "Required Sources for High-Purity Silicon",
DFARS 52.208-7003 "Required Sources for High Carbon Ferrochrome",
FAR 52.210-5 "New Material", in which "Contracting Officer" means Buyer's purchasing representative and "Government" means Buyer in the last two sentences of the clause.
FAR 52.210-7 "Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property",
FAR 52.212-8 "Defense Priority and Allocation Requirements",
FAR 52.215-22 "Price Reduction for Defective Cost or Pricing Data", in addition to any other remedies that Buyer may have pursuant to this clause. Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including Buyer's costs and attorney's fees, resulting from any and all determinations by Buyer's customer(s) or from Seller's failure otherwise to comply with the clauses incorporated by reference in this order.
FAR 52.215-23 "Price Reduction for Defective Cost or Pricing Data - Modifications", in addition to any other remedies that Buyer may have pursuant to this clause. Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including Buyer's costs and attorney's fees, resulting from any and all determinations by Buyer's customer(s) or from Seller's failure otherwise to comply with the clauses incorporated by reference in this order.
DFARS 52.215-7000 "Aggregate Pricing Adjustment",
FAR 52.222-1 "Notice to the Government of Labor Disputes", in which "Contracting Officer" means Buyer's purchasing representative.
FAR 52.222-4 "Contract Work Hours and Safety Standards Act - Overtime Compensation - General", (paragraphs (1) through (d) only).
FAR 52.222-21 "Certification of Nonsegregated Facilities", such certification shall be effective for all bids and orders issued by Buyer for a period of one (1) year after Seller's acceptance of this order.

- FAR 52.222-26 "Equal Opportunity", paragraphs (b)(1) through (b)(11) only;
- FAR 52.223-3 "Hazardous Material Identification and Material Safety Data",
- FAR 52.225-11 "Certain Communist Areas",
- DFARS 52.225-7001 "Buy American Act and Balance of Payments Programs",
- DFARS 52.225-7002 "Qualifying Country Sources as Subcontractors",
- DFARS 52.225-7005 "Buy American Act, Trade Agreements - Balance of Payments Program Certificate",
- DFARS 52.225-7006 "Buy American Act, Trade Agreements Act - and the Balance of Payments Program",
- DFARS 52.225-7011 "Preference for Domestic Specialty Metals (Major Program)",
- DFARS 52.225-7013 "Preference for Domestic Hand or Measuring Tools",
- FAR 52.227-8 "Reporting of Royalties (Foreign)",
- FAR 52.227-9 "Refund of Royalties",
- FAR 52.227-10 "Filing of Patent Application - Classified Subject Matter", (if patent application contains classified subject matter).
- DFARS 52.227-7013 "Rights in Technical Data and Computer Software", with Alternate 1 "Notice of Certain Limited Rights".
- DFARS 52.227-7018 "Restrictive Markings on Technical Data",
- DFARS 52.227-7028 "Requirement for Technical Data Certification",
- DFARS 52.227-7029 "Identification of Technical Data",
- DFARS 52.227-7030 "Technical Data - Withholding of Payment",
- DFARS 52.227-7032 "Rights in Technical Data and Computer Software (Foreign)",
- DFARS 52.227-7036 "Certification of Technical Data Conformity",
- DFARS 52.227-7037 "Validation of Restrictive Markings on Technical Data",
- DFARS 52.228-7006 "Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles",
- DFARS 52.228-7007 "Safety Precautions for Ammunition and Explosives",
- FAR 52.229-3 "Federal State, and Local Taxes", in which "Government" means Buyer and "Contracting Officer" means Buyer's purchasing representative.
- FAR 52.229-5 "Taxes - Contracts Performed in U.S. Possessions or Puerto Rico",
- DFARS 52.231-7000 "Supplemental Cost Principals",
- DFARS 52.235-7002 "Recovery of Nonrecurring Costs on Commercial Sales",
- DFARS 52.243-7001 "Pricing of Adjustments",
- FAR 52.245-2 "Government Property (Fixed Price Contracts)", in which
 "Contracting Officer" means Buyer's purchasing representative
 "Government" means Buyer except:
 1) the second time it appears in paragraph (b)(1)(ii), and
 2) in paragraph (c)(1).
 "Government" means Government or Buyer:
 1) in paragraph (l) and in the following phrase "its" becomes "their", and
 2) in paragraph (i) and subparagraph (i)(1).
 The fourth sentence of paragraph (h) is changed to read
 "Neither the Government nor the Buyer shall be liable..."
- FAR 52.245-18 "Special Test Equipment".
- FAR 52.246-16 "Responsibility for Supplies".
- FAR 52.247-63 "Preference for U.S. Flag Air Carriers".
- FAR 52.247-64 "Preference for Privately Owned U.S. - Flag Commercial Vessels".
- (b) If a purpose of this order is the conduct of experimental, developmental or research work, then:
 FAR 52.227-11 "Patent Rights - Retention by one Contractor (Short Form)",
 FAR 52.227-12 "Patent Rights - Retention by the Contractor (Long Form)", Excepting Paragraph (o).
 FAR 52.227-13 "Acquisition by the Government (Long Form)",
 DFARS 52.227-7034 "Patents - Subcontracts",
 The above, depending on which clause is required by the prime contract under which this order is placed.
- (c) If this order is for more than \$2,500, then:
 FAR 52.222-36 "Affirmative Action for Handicapped Workers".
- (d) If this order is for \$10,000 or more, then:
 FAR 52.222-35 "Affirmative Action for Special Disabled and Vietnam Era Veterans".
- (e) If this order is for more than \$10,000, then:
 FAR 52.214-26 "Audit Sealed Bidding",
 FAR 52.215-1 "Examination of Records by Comptroller General", excluding paragraph (c).
 FAR 52.215-2 "Audit-Negotiation", (excluding the first part of the first sentence up to and including the phrase "combination of these"),
 FAR 52.219-8 "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns",
 FAR 52.22-20 "Walsh-Healey Public Contracts Act".
- (f) If this order is for more than \$25,000, then:
 FAR 52.219-13 "Utilization of Women-Owned Small Businesses",
 FAR 52.220-3 "Utilization of Labor Surplus Area Concerns",
 FAR 52.227-1 "Authorization and Consent",
 FAR 52.227-2 "Notice and Assistance Regarding Patent and Copyright Infringement".
- (g) If this order is for more than \$100,000, then:
 DFARS 52.204-7005 "Overseas Distribution of Defense Subcontracts", excluding paragraph (c).
 FAR 52.214-28 "Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding",
 FAR 52.215-24 "Subcontractor Cost or Pricing Data",
 FAR 52.215-25 "Subcontractor Cost or Pricing Data - Modification",
 FAR 52.223-1 "Clean Air and Water Certification", wherein Seller certifies that facilities used in performance of this order are not listed on the Environmental Protection Agency List of Violating Facilities.
 FAR 52.223-2 "Clean Air and Water",
 FAR 52.248-1 "Value Engineering", in which "Contracting Officer" means Buyer's purchasing representative except in paragraph (i) sentence 3. "Government" means Buyer in paragraphs (e)(1), (g)(4) and (i)(4), and means Government and Buyer in paragraph (m), sentence 1 and in sentence 2 of the legend. Replace the share percentage figures in paragraph (l) and (i) with those the parties agree upon.
- (h) If this order is for more than \$500,000, then:
 FAR 52.219-9 "Small Business and Small Disadvantaged Business Subcontracting Plan", Seller shall submit a subcontracting plan in compliance with such clause. This clause does not apply to small business concerns.
 FAR 52.220-4 "Labor Surplus Area Subcontracting Program."
- Whenever necessary to make the context of the FAR and DFARS clauses applicable to this purchase order, the term "Contractor" shall mean Seller, the term "Contract" shall mean this order, and the terms "Government", "Contracting Officer" and equivalent phrases shall mean Buyer and/or Buyer's purchasing representative, except the terms "Government" and "Contracting Officer" do not change" (1) In the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property," (2) In the patent clauses incorporated herein or (3) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or his duly authorized representative.
14. **Inspection of Records:** Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by the Buyer or any authorized representative of any Department of the United States Government, or authorized customer of Amphenol.
15. **Sellers Financial Status:** This order shall automatically terminate without any action by Buyer if:
 (a) Seller shall consent to the appointment of a receiver, trustee, liquidator, assignee, custodian, sequestrator or similar official of itself or of all or a substantial part of its property, or Seller shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors; or

- (b) An order, judgment, or decree shall be entered in any proceeding by any court appointing, without the consent of Seller, a receiver, trustee, liquidator, assignee, sequestrator or similar official of Seller or of all or any substantial part of its property, or sequestering all or any substantial part of the property of Seller.
- (c) A petition by or against Seller in a case under any chapter of the Federal Bankruptcy Code or any other bankruptcy or insolvency laws as now or hereafter in effect shall be filed.
16. **Termination:**
- a. This Order may be terminated in whole or in part at any time for the convenience of BUYER. Upon notice of termination SELLER shall promptly stop work on the Order as directed by BUYER. Within one (1) month of the effective date of termination of the Order SELLER shall submit its termination claim in such form and with such certification as maybe requested by BUYER. The termination claim shall be limited to the actual costs incurred by SELLER through the effective date of the termination properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this Order. The termination claim shall exclude any charges for interest or material or parts which can be delivered or diverted to other orders of SELLER. In no event will SELLER be paid anticipatory profits. The total amount of such termination claim shall not exceed the pro rata portion of the Order which is cancelled. All completed or partially completed items and all material for which compensation is claimed shall be delivered to BUYER or disposed of as directed by BUYER, otherwise, BUYER shall not be obligated to make a termination payment.
- In the event his Purchase Order is being issued under a contract with the U.S. Government, the parties shall be governed by the provisions of the clause set forth in Subsection 52.249-2 of the Federal Acquisition Regulations ("FAR") as in effect on the date of this order, which clause is incorporated herein by reference, provided, however, that all references in such clause to the Government or any of its boards or officers are deleted, and all reference therein to the Government or the Contracting Officer shall mean BUYER or its designees (including the Government or its representatives if so designated by Buyer).
- b. **Default:** Buyer reserves the right to terminate this order in whole or in part by written or telegraphic notice for Seller's default (i) if Seller fails to perform in accordance with any of the requirements of this order or fails to make progress so as to endanger performance hereunder or (ii) if Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for items delivered and accepted by Buyer, payment for which can be set off against any damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited with the reasonable value thereof not to exceed Seller's cost or the contract price, whichever is less. Seller will be liable for damages caused by or resulting from its default including but not limited to excess costs of reprocurement. If, after a default termination, it is determined that Seller was not in default, the termination shall be considered to have been made pursuant to subparagraph a. of this clause.
- c. To the extent this order is not terminated pursuant to subparagraphs a. or b. above, Seller shall continue performance.
17. **Notice of Labor Disputes:** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.
18. **Stop Work Order:**
- a. Buyer may at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this purchase order for a period of 90 days after the order is delivered to Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to Seller, or within any extension of that period to which the parties shall have agreed, Buyer shall either -
- I. Cancel or let the stop-work order expire; or
 - II. Terminate the work covered by the order as provided in the Termination clause of this purchase order.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, Seller shall resume work.
19. **Insurance:** Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth or incorporated in this purchase order, with insurance carrier's acceptable to Buyer, and if no amounts are set forth, then in amounts acceptable to and approved by Buyer but in no event shall amounts be less than minimum statutory requirements, if any. Seller will, if requested by Buyer, furnish certificates of insurance from its carrier on the foregoing coverages, which shall provide that such coverage shall not be changed without thirty (30) days advance written notification to Buyer from the carrier.
20. **Indemnification:**
- a. Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer, Buyer's customer (and where applicable the government), their respective parents and affiliated companies and their respective directors, officers, employees, successors and assigns from and against any and all claims for loss, damage or injury and from and against any suits, actions, or legal proceedings of any kind brought against Buyer, or such other parties by or on account of any person, persons, or entities, or on account of any injuries received or sustained by any person, persons, or entities in any manner (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material, workmanship, services, or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of defects in the design, manufacture or materials used in the goods, or negligence in the manufacture or installation of the goods or any other services supplied hereunder.
- b. Notwithstanding the above provision, Buyer shall have the right, at its own election, and without releasing any obligation, liability, or undertaking of Seller to indemnify Buyer hereunder to cooperate in the defense of such claim; with permission of the court, to intervene in any such suit or action; and supersede Seller in the defense of any such claims, suits actions, or legal proceedings.
- c. Seller further agrees to promptly pay the settlement or judgment pertaining to all such claims, suits or actions or legal proceedings; to hold harmless and indemnify Buyer therefrom; and to promptly pay the costs of attorney's fees and all other costs and expenses incurred in any such defense either by Seller and/or Buyer, and to hold harmless and indemnify Buyer therefrom.
- d. Seller's covenants of indemnity herein shall continue in full force and effect notwithstanding the termination of this order.
21. **Drawings and Data:**
- a. **Information Furnished by Buyer** - Information and ideas disclosed to Seller in connection with this order at any time in any form (including without limitation, orally, or in drawings, specification, software, tools, gauges or goods provided hereunder) are entrusted to Seller only for use on behalf of Buyer. Seller shall keep this information in confidence and shall neither use (other than in performance under this order) nor disclose such information except as authorized in writing by Buyer. On completion of this or all subsequent related orders (as appropriate), Seller shall deliver to Buyer all material (including without limitation, documents, software, tools and goods which may be defective, partially completed or completed) embodying this information, unless otherwise instructed by Buyer.
- b. **Information Developed by Seller** - Information and ideas developed by Seller under or in the course of performing this order for Buyer shall be owned by and disclosed to Buyer and if Buyer so indicates to Seller, such information and ideas shall be treated in accordance with the provisions of paragraph a. hereof.
- c. **Data Furnished by Seller** - All data required under this order must also be delivered not later than the time specified in this order. Buyer may, at its election, so long as required data remain undelivered beyond the time so specified, withhold payment to Seller for any item previously or subsequently delivered in an amount up to ten percent (10%) of the total value of this order.
22. **Price Warranty:** Seller warrants that the prices for the articles sold Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its prices for such articles during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this order shall be complete, and no additional charges of any type including but not limited to metal surcharges shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.
23. **Delivery:** Time is of the essence of this order, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred. Substitutions will not be accepted. Overshipments may be returned to Seller at the option of Buyer at Seller's risk and expense. The supplies must be delivered by the date(s) specified, but must not be delivered earlier unless prior approval for an earlier delivery is given in writing by Buyer.
24. **Duty to Proceed:** Except as expressly authorized in writing by the Buyer, no failure of Seller and Buyer to reach any agreement provided for by the terms of this order shall excuse the Seller from Proceeding diligently with the performance of this order.
25. **Partial Invalidity:** If in any instance any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.
26. **Waiver:** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any such terms, conditions, rights or privileges or any other terms, conditions, rights or privileges, whether of the same or similar type.
27. **Attorney Fees:** In the event Buyer should bring an action for enforcement of the terms and conditions of this order, Seller agrees that Buyer shall be entitled to award of its reasonable attorney's fees and court costs associated with such enforcement proceedings.
28. **Subcontracting:** Seller agrees not to subcontract for any complete or substantially complete articles, supplies, and/or services called for by this order without the prior written approval of Buyer.
29. **Publicity:** Seller shall not, without the prior consent of Buyer, make any release of information concerning this order (other than to Seller's employees and subcontractors when required for the performance of this order) nor use the name of Buyer in any advertising or publicity.
30. **Applicable Law and Forum:** This order shall be governed by the laws of the state from which the Buyer's order is issued.
31. **Captions:** Captions, as used herein, are convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions may refer.
32. **Cumulative Remedies:** The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.