

**1. GENERAL**

Contractor shall provide the Goods and/or Services described in the Order. In return, Buyer shall pay the amounts set out in the attached purchase order. The duration of the Agreement shall be as set forth on the purchase order attached to these Terms of Purchase (the "Order"), unless terminated earlier in accordance with the terms and conditions herein. To the extent that the Order relates to the provision of Services only, the terms relating to Goods shall be disregarded, and to the extent the Order relates to the provision of Goods only, the provisions related to Services shall be disregarded.

**2. ACCEPTANCE**

By accepting the Order, Seller agrees to all the Terms of Purchase without any modifications or additions, unless such modifications or additions are specifically agreed to in writing by the Purchasing Department of the Buyer.

**3. CONSTRUCTION**

The Terms of Purchase for this transaction include: (i) these Terms of Purchase; (ii) any terms listed on the face of the Order; and (iii) any attachments thereto. The Terms of Purchase constitute the entire agreement between Buyer and Seller regarding this Order. In the event of any conflict or ambiguities between or among the documents listed above, the following order of precedence shall apply: (1) these Terms of Purchase; (2) any terms on the face of the Order, and (3) attachments to the Order, if any. The term "Seller" shall mean Seller, its employees, agents, customers, and its successors and/or assigns. The term "Buyer" shall mean Buyer, its employees, agents, any subcontractors duly approved by Buyer hereunder, and its successors and/or assigns.

**4. DELIVERY**

Time is of the essence for these Terms of Purchase. If, for any reason, Seller fails to deliver Goods or complete performance of Services at the time required by these Terms of Purchase, Buyer may, at its option and without any liability to Seller, cancel the portion or portions of the Order so affected, set a new delivery date, and/or pursue any other remedies provided herein or at law or in equity. All deliverables shall be packaged, marked and otherwise prepared in accordance with the law and good commercial practices, capable of safe delivery to Buyer at the lowest lawful transportation and insurance rates. Substitutions will not be accepted.

**5. WARRANTY**

Seller warrants that it has good title, free of encumbrances, to the Goods delivered hereunder. Seller further warrants that all Goods delivered hereunder shall (i) be free from defects in design, materials and workmanship; (ii) conform to the required specifications and all other requirements of these Terms of Purchase, (iii) be fit and sufficient for the purpose intended; and (iv) be free from "Counterfeit Work" as defined in Section 33 of these Terms of Purchase. If Seller is providing Services hereunder, Seller warrants that (i) the Services shall be provided with all due skill and in accordance with these Terms of Purchase and industry recommended standards and practices; and (ii) the personnel assigned to carry out the Services shall possess the necessary experience and training. Seller shall pass through any applicable manufacturer's warranty to the benefit of Buyer. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of Goods or Services shall not constitute a waiver by Buyer of any breach of warranty.

The warranty for Goods commences on the later of the date Buyer takes physical possession of the Goods or the Goods have been

installed by Seller and is valid for the longer of 12 months or the length of Seller's or the manufacturer's standard warranty period, and the warranty for Services commences on the day of completion of the Services and is valid for 12 months following completion of the Services. Notwithstanding the foregoing, Seller's warranty for Goods or Services shall survive such 12 month period and any termination or expiration of these Terms of Purchase if Counterfeit Work, latent defects, fraud or misrepresentation on the part of Seller exists..

Seller shall be liable for and save Buyer harmless from any loss, damage or expense that Buyer may incur as a result of Seller's breach of these warranties. Remedies shall include, at Buyer's election and at Seller's sole risk and expense, the prompt repair, replacement or reimbursement of the purchase price of the nonconforming goods and/or the prompt correction of the nonconforming services or reimbursement of the amounts paid for such services. Seller shall promptly comply with Buyer's direction to repair, rework or replace the goods, furnish any material or parts and installation required to successfully correct the nonconformance.

**6. PRICE WARRANTY**

Buyer shall not be billed at prices higher than those stated on Buyer's Order. Unless otherwise specified, the price includes all charges for taxes, packing, hauling, storage and transportation to point of delivery. Seller shall pay all delivery charges in excess of any delivery charge Buyer has agreed to pay.

**7. BUYER'S PROPERTY**

All tools, dies, molds, patterns, jigs and any other property furnished to Seller by Buyer, or specifically paid for by Buyer, for use in the performance of these Terms of Purchase, shall (i) be and remain the property of Buyer, (ii) be subject to removal at any time, upon Buyer's demand, (iii) be used only in filling orders from Buyer or its nominee, and (iv) be clearly identified as the Buyer's property. Seller assumes all liability for loss or damage of such property, other than normal wear and tear. Unless otherwise agreed to by Buyer, Seller shall insure Buyer's interest in such property against all risks of theft, loss or damage. Copies of certificates of insurance evidencing this coverage shall be furnished to Buyer on demand.

**8. INSPECTION**

All Goods and Services ordered hereunder shall be subject to inspection and test by Buyer. Final inspection shall be at Buyer's premises unless otherwise agreed in writing. It is expressly agreed that inspections and/or payments prior to delivery shall not constitute final acceptance. Any inspection by Buyer of Goods or Services shall not relieve Seller of any obligations of liability under these Terms of Purchase. In the event of nonconforming Goods or Services or a breach of warranty, notwithstanding that such defect or breach may have been discovered by Buyer after delivery or performance, Buyer, in its sole discretion and at Seller's sole risk and expense (including, without limitation, transportation and handling charges, if any), may do any or all of the following: (i) terminate the order at any time; (ii) reject and return the Goods; (iii) require the Goods to be replaced or repaired by Seller; (iv) require the services to be re-performed by Seller; or (v) require Seller to reimburse Buyer for all costs and expenses incurred as a result of the nonconformance. Without prejudice to any rights and remedies which Buyer may have hereunder or at law, in the event that Seller does not replace or repair the Goods or re-perform the Services within 30 days of receipt of notice from Buyer of the nonconformance or breach of warranty, Buyer may in its sole discretion and at Seller's sole risk and expense do any of the following: (a) purchase equivalent Goods elsewhere; (b) have defects in the Goods repaired by others; and/or (c) have the Services re-performed by others.

Buyer shall have the right to inspect all documents relating to Goods provided or Services performed by Seller under these Terms of Purchase, at all reasonable times.

**9. PATENT AND COPYRIGHT INDEMNITY**

Seller shall indemnify, defend and hold harmless Buyer against any and all claims or liabilities arising from any actual or alleged infringement of any third party patent or copyright as a result of Buyer's use of the Goods or Services as intended, except where such Goods or Services would normally be non-infringing, but are rendered infringing solely by reason of Seller's compliance with Buyer's detailed design specifications or Buyer's modification of the Product after delivery hereunder. Seller's obligation to indemnify Buyer under the above paragraph shall not apply to the extent FAR 52.227-1 ("Authorization and Consent") applies to Buyer's contract with the U.S. Government for infringement of a U.S. patent and Buyer and the U.S. Government steps in to protect Buyer from any actions for claims, damages, losses, costs and expenses, including reasonable attorney's fees by a third party.

**10. LIABILITY FOR DAMAGES; INDEMNIFICATION**

Seller shall indemnify, defend and hold harmless Buyer against any and all claims or liabilities arising in whole or in part by the Seller in the provision or performance of Goods or Services hereunder. In no event shall Buyer be liable for any damages suffered by Seller resulting from the performance of its obligations hereunder. Buyer's liability under this Agreement shall be limited to the payments due hereunder. Except with respect to Seller's indemnification obligations, and breach of warranties or applicable laws, in no event shall either party be liable to the other party for any special, exemplary, incidental, consequential, punitive or other indirect damages of any kind, even if such party has been advised in advance of the possibility of such damages, or such damages could have reasonably been foreseen by such party.

If the Order is made pursuant to a contract between Buyer and the U.S. Government or between Buyer and a prime contractor or higher tier subcontractor to the U.S. Government, and if certified cost or pricing data is required but Seller and/or its Sellers fail to comply with such requirements, Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims or liabilities arising in whole or in part from such failure including, without limitation, the amount by which these Terms of Purchase is determined by the Government to have been defectively priced and any related interest assessed by the Government.

The rights and obligations of the parties hereunder shall survive the completion, expiration and/or termination of these Terms of Purchase.

**11. TITLE, RISK OF LOSS**

Title in the Goods shall pass to Buyer when Buyer takes physical possession of the Goods or after the Goods have been installed by Seller. Transfer of title shall be without prejudice of Buyer's right to refuse or reject the Goods in case of nonconformity or defect. Seller shall bear any risk of loss or damage to the Goods while in transit until received by Buyer's Receiving Department, and shall properly insure such Goods during shipment. However, any such transfer of risk shall be without prejudice of Buyer's right to refuse or reject the Goods in case of non-conformity or defect. If Buyer rejects Goods as non-conforming or defective, or where Seller retakes possession of the Goods in accordance with the remedy provisions herein, risk of loss or of damage to those Goods shall revert to Seller upon the earlier of repossession or seven (7) days after issue of a notice to

retake possession. No charges shall be allowed for insurance premiums unless specified on the face of the Order.

**12. NO WAIVER**

Except as otherwise provided herein, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies.

**13. ASSIGNMENT**

Seller may not assign, transfer, or subcontract any of its rights or duties hereunder without the prior written consent of Buyer.

**14. SPECIFICATIONS**

In the event Seller is producing the Goods according to specifications furnished or approved by Buyer: (a) Buyer shall have the right at reasonable times to inspect the progress and quality of the work and to witness testing of the Goods and (b) unless stated to the contrary on the face of the Order, all confidential information, patent rights and inventions, and all drawings, designs, information, tools, patterns, equipment and other items relating to or arising out of the work performed by Seller, or supplied by Buyer, shall be and remain the property of the Buyer, and the same shall not be used, reproduced or disclosed to others for any purpose whatsoever except in the performance of work under these Terms of Purchase. The items shall be subject to removal at any time, without additional cost, upon demand by Buyer.

**15. COMPLIANCE**

Seller warrants that the Goods or Services purchased by Buyer hereunder have been or shall be produced or performed in compliance with all applicable federal, state and local laws, statutes, acts, regulations, rules, ordinances, government directives, and orders relating to labor relations, wages, hours of employment, equal employment opportunity, data protection, environmental matters, nonsegregated facilities, and health and safety, now in effect or hereafter enacted, and with any and all rules and regulations issued thereunder, including, without limitation, the following:

- FAR 52.203-7 Anti-Kickback Procedures (May 2014)
- FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)
- FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Applies to subcontracts funded in whole or in part with Recovery Act funds)
- FAR 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)
- FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)
- FAR 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)
- FAR 52.204-10 Reporting Executive Compensation and First Tier Subcontract Awards (Oct 2018)"
- FAR 52.219-8 Utilization of Small Business Concerns (Oct 2018)
- FAR 52.222-21 Prohibition of Segregated Facilities (Apr 2015)
- FAR 52.222-26 Equal Opportunity (Sep 2016)
- FAR 52.222-35 Equal Opportunity for Veterans (Oct 2015)

- FAR 52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014)
- FAR 52.222-37 Employment Reports on Veterans (Feb 2016)
- FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)
- FAR 52.222-50, Combating Trafficking in Persons (Jan 2019)
- FAR 52.222-50 Combating Trafficking in Persons Alt I (Mar 2015)
- FAR 52.222-55 Minimum Wages Under Executive Order 13658 (Dec 2015)
- FAR 52.222-62 Paid Sick Leave Under Executive Order 13706 (Jan 2017)
- FAR 52.224-3 Privacy Training (Jan 2017)
- FAR 52-224-3 Privacy Training Alt I (Jan 2017)
- FAR 52.225-26 Contractors Performing Private Security Functions Outside the United States (Oct 2016)
- FAR 52.232.-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)
- FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)
- DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016)
- DFARS 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Oct 2014)
- DFARS 252.227-7015 Technical Data Commercial Items (Feb 2014)
- DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (Sep 2016)
- DFARS 252.246-7003 Notification of Potential Safety Issues (June 2013)
- DFARS 252.247-7023 Transportation of Supplies by Sea - Basic (Apr 2014)
- DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (Mar 2000)

Seller shall, at all times, adhere to the highest standards of business ethics, and carefully comply with all applicable rules, laws and regulations. Seller shall obtain at its own cost permit(s) required to perform its work hereunder, if any.

Seller shall indemnify, defend and hold harmless Buyer against any and all claims or liabilities arising from Seller's violation of any applicable law, order, regulation or directive.

#### **16. FEDERAL GOVERNMENT PRIME CONTRACT CLAUSES**

If these Terms of Purchase are issued pursuant to a contract between Buyer and the U.S. Government or between the Buyer and a prime contractor or higher tier subcontractor to the U.S. Government, as indicated on face of the purchase order, certain clauses from the Federal Acquisition Regulation (FAR) and any applicable agency regulations that implement or supplement the FAR shall apply. The FAR and FAR supplement clauses that apply to the Order can be found [here](#). If any of these clauses do not apply to the Order, such clauses shall be deemed self-deleting. In addition, Seller shall be required to submit a completed Certification Form to Buyer in connection with the Order. Buyer's Certification Form can be found [here](#).

#### **17. EXPORT AND IMPORT COMPLIANCE.**

In addition to and without limiting the applicability of any agreement between the parties relating to confidentiality of information, Seller shall comply with the laws and regulations of the United States relating to exports and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). In particular, Seller shall

not disclose any technical data, nor deliver or export any Product manufactured by use of technical data, out of the United States, or to foreign entities within the United States, without proper written authorization from the United States Government.

#### **18. SET OFF**

Buyer may set off any amount due from Seller to Buyer, whether or not under the Order, from any amounts due to Seller under the Order.

#### **19. CHANGES**

Buyer may, at any time, by a written change order, without notice to any sureties, make changes in any one of the following: (i) drawings, designs or specifications, where the items to be furnished are to be specially manufactured for the Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the quantity and/or type of Goods or Services ordered; (v) the work or service schedules; and (vi) the amount of any Buyer furnished property. If any such change causes an increase or decrease in the cost of or time required for performance of these Terms of Purchase, whether or not changed by the order, an equitable adjustment shall be made in the price or delivery schedule or both and these Terms of Purchase shall be modified accordingly. No claim by Seller for adjustment hereunder shall be allowed unless made in writing for a specified amount within twenty (20) days from the date of notice of any such change is received by Seller. If Seller considers that the conduct, statement or direction of any Buyer employee constitutes a change order hereunder, Seller shall notify Buyer and take no action on the perceived change pending written approval of Buyer. Only Buyer has authority to approve a change. Any change made by Seller without such written approval shall be deemed voluntary by Seller and not compensable in the cost of or time required for performance. Nothing in this Article shall excuse Seller from proceeding with performance of these Terms of Purchase as changed. Notwithstanding the above or any other provision of these Terms of Purchase, the Seller hereby agrees that no changes to the items that may be required in order to meet the specified performance requirements of these Terms of Purchase shall entitle the Seller to any adjustment in either price or delivery.

#### **20. STOP WORK ORDERS**

Buyer may, at any time by written order, require Seller to stop all or any part of the work under these Terms of Purchase for a period of up to ninety (90) days after delivery of such stop work order, and for any further period as the parties may agree. Immediately upon receipt of such stop work order, Seller shall comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work stoppage. At any time during such period, Buyer may, in whole or in part, either cancel the stop work order or terminate the work in accordance with the "Termination" Article of these Terms of Purchase. To the extent the stop work order is canceled or expires, Seller shall resume work. If a stop work order is the sole and exclusive cause of a material change in cost or delivery, an adjustment shall be made in price (excluding profit) or the delivery schedule, or both and these Terms of Purchase modified accordingly; provided, however, that no adjustment in price or delivery shall be made under this Article if, (i) the work would have been otherwise interrupted or delayed, or (ii) such adjustment is available or expressly excluded under any other provision of these Terms of Purchase. No claim for adjustment shall be allowed unless submitted to Buyer in writing in a specified amount within twenty (20) days after the work is terminated or the stop work order expires or is canceled, whichever first occurs.

**21. USE AND RELEASE OF INFORMATION TO PUBLIC**

Seller agrees that all information furnished or disclosed to Buyer by Seller in connection with the placing or filling of these Terms of Purchase is furnished or disclosed as a part of the consideration for these Terms of Purchase, that such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary and that Seller shall assert no claims by reasons of the use or disclosure of such information by Buyer or its customers. Seller shall not use, either directly or indirectly, any data or information derived from these Terms of Purchase for any purpose other than to perform the Order without obtaining Buyer's written consent. Seller shall return all information, drawings, specifications or data to Buyer upon termination of this agreement or upon Buyer's demand. Seller shall keep confidential all information, drawings, specifications or data furnished by Buyer, or prepared by Seller specifically in connection with the performance of these Terms of Purchase, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Seller shall not, without the prior written consent of Buyer, make any release of information pertaining to these Terms of Purchase or any other information related to the Buyer (other than to Seller's employees and any Buyer-approved subcontractors as required for the performance of their duties), including providing copies of these Terms of Purchase or identifying the items sold by Seller to Buyer, nor use the name of Buyer in any advertising or publicity, except as may be necessary to comply with a subpoena or other proper mandatory legal demand.

**22. DISPUTES**

(A) Any controversy or claim that may arise out of or in connection with these Terms of Purchase that after good faith negotiations cannot be resolved to both parties' satisfaction may be resolved by submitting the claim to a court of competent jurisdiction. Irrespective of the place of performance, these Terms of Purchase shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws, provisions, except that any provision in these Terms of Purchase that is incorporated in full text or by reference from the Federal Acquisition Regulation (FAR) or any agency supplement thereto, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies and boards of contracts appeals. The rights and obligations of the Parties under this Agreement shall *not* be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended.

(B) If the Order is issued pursuant to a contract between Buyer and the U.S. Government or between Buyer and a prime contractor or higher tier subcontractor to the U.S. Government, any reference to "Disputes" in any applicable FAR Clause incorporated herein shall mean this paragraph (B). All disputes except those relating to a decision of the Contracting Officer under the prime contract shall be resolved in accordance with the paragraph (A), above. Disputes arising under these Terms of Purchase relating to any decision of the Contracting Officer under the prime contract shall be resolved as follows:

(i) Notwithstanding any other provisions in these Terms of Purchase, any decision of the Contracting Officer under the prime contract which binds Buyer shall bind both Buyer and Seller to the extent that it relates to these Terms of Purchase, provided that the Buyer notifies with reasonable promptness the Seller of such decision and the Buyer, at its sole discretion, authorizes in writing the Seller to appeal in the name of the Buyer such decision at its own expense, or if Buyer should appeal such decision, Buyer at its sole

discretion offers to the Seller the opportunity at its own expense to join Buyer in such appeal.

(ii) Any decision upon such appeal, when final, shall be binding upon the Seller and Seller shall have no recourse against Buyer for any damages that allegedly resulted from the decision of the Contracting Officer.

(iii) The Seller shall keep Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer.

(iv) The Seller shall indemnify and save harmless Buyer from any and all claims and liabilities incurred by or imputed to Buyer under the Contract Disputes Act of 1978, as amended, if Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of Seller.

(C) Pending any prosecution, appeal, or final decision or settlement of any dispute arising under these Terms of Purchase, the Seller shall proceed diligently, as directed by Buyer, with the performance of these Terms of Purchase.

(D) Nothing in this Section nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

**23. SELLER'S STATUS**

It is understood and agreed that Seller and/or its employees engaged in the performance of these Terms of Purchase by the Seller are not employees of Buyer and are not entitled to Buyer employee benefits or privileges and the Seller shall pay the salaries or expenses and applicable taxes of said employees. The Seller is and shall be deemed to be an independent contractor at all times during its performance of the work specified in these Terms of Purchase.

**24. FORCE MAJEURE AND U.S. GOVERNMENT PRIORITY**

Neither party shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.

In the event Seller notifies Buyer of any such circumstances, Buyer shall have the right, without any liability, to cancel a particular order or any part thereof in addition to any other remedy it may choose to exercise. Notwithstanding the foregoing or anything else to the contrary contained herein, Seller acknowledges and agrees that the Order may be placed by Buyer with U.S. Government funds and that in connection therewith, these Terms of Purchase shall be subject to U.S. Government Priority Ratings which require preferential treatment for the fulfillment of the order in accordance with the Defense Priorities Allocations System (DPAS). If the Order is placed by Buyer with U.S. Government funds, Buyer shall notify Seller of the applicable Priority Ratings as soon as Buyer is so informed by the U.S. Government. Seller shall be bound by such Priority Ratings.

**25. TERMINATION**

In addition to other rights hereunder, Buyer may terminate these Terms of Purchase in whole or in part at any time prior to delivery or final acceptance by written notice stating the extent and effective date of such termination. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of these Terms of Purchase and

shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to these Terms of Purchase. Upon the termination of work under these Terms of Purchase, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows: (a) as compensation to Seller for such termination, unless such termination is for the default of Seller, Buyer shall pay Seller the percentage of the total order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done, that are not recoverable in the normal course of Seller's business, as Seller's full compensation for the work completed under these Terms of Purchase; and (b) upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid shall vest in Buyer. Nothing contained in this paragraph shall be construed to limit or affect any remedies which Buyer may have as a result of default by Seller.

Buyer reserves the right, by written notice of default, to cancel these Terms of Purchase, without liability to Buyer, in the event of the happening of any of the following: insolvency by Seller, the filing or a voluntary petition in bankruptcy by Seller, the filing or an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (i) cancel these Terms of Purchase in whole or in part by written notice to Seller and Seller shall be liable to Buyer for all damages, losses, and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (ii) obtain the goods ordered herein from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative in addition to any other remedies provided at law or in equity.

Buyer or its designee shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer or Buyer's designee on request all books, records, and papers relating thereto. Termination of these Terms of Purchase for default shall be without prejudice to any other rights and remedies of the Buyer under statute or common law.

To the extent these Terms of Purchase are not terminated pursuant to the above paragraphs, Seller shall continue performance.

#### **26. NONSOLICITATION**

Seller shall not solicit Buyer's employees for employment at any time during the performance of these Terms of Purchase. The foregoing restriction shall not prohibit the placement of advertising of general circulation that may be received or viewed by Buyer's employees.

#### **27. MASSACHUSETTS RESIDENT CLAUSE**

This clause shall apply if Seller is handling "Personal Information" of Massachusetts residents, as defined in Massachusetts Information Security Regulations, 201 Code of Mass. Regs. 17.00 et seq. (the "IS Regulations"). Seller agrees that, as long as it has access to or maintains copies of Protected Information it shall: (a) comply with the IS Regulations; (b) promptly notify Buyer of any suspected or actual data breach involving Protected Information; and (c) cooperate with Buyer to investigate and remediate any suspected or actual data breach involving Protected Information.

#### **28. ENTRY ON BUYER'S FACILITIES**

In the event that Seller enters the site(s) of Buyer or its customers for any reason in connection with these Terms of Purchase, then Seller shall (a) maintain workers compensation, and commercial general liability and automobile liability insurance, both with a minimum of \$1,000,000 per occurrence limit, and such other insurance as Buyer may require, and furnish certificates of insurance evidencing this requirement and naming Buyer as an additional insured; (b) comply with all Buyer security, safety, rules of conduct, badging and personal identity, and related requirements while on Buyer's premises; (c) provide information reasonably required by Buyer to ensure proper identification of personnel; and (d) defend, indemnify and hold harmless Buyer from any claims or liabilities arising in whole or in part by the actions or omissions of Seller while on Buyer's premises. Buyer may, at its sole discretion, have Seller remove any specified employee of Seller from Buyer's premises and request that such employee not be reassigned to any Buyer premises under these Terms of Purchase.

#### **29. SEVERABILITY**

In case any one or more provisions contained in these Terms of Purchase shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **30. NOTICES AND ELECTRONIC SIGNATURES**

All correspondence and invoices covering these Terms of Purchase must be addressed to Buyer's Purchasing Department at the address indicated on the face of the purchase order. Facsimile or scanned signatures shall be accepted as original signatures, and any document created pursuant to these Terms of Purchase may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original.

#### **31. ENVIRONMENTAL HEALTH & SAFETY SERVICES**

If the Order contemplates the performance of Environmental Health & Safety (EHS) services pertaining to and performed on Buyer's property (including services involving asbestos, hazardous waste, remediation, wastewater, fire safety, and toxic gas monitoring) the terms in this Section 31 shall apply.

Seller shall perform the services under these Terms of Purchase consistent with the level of care and skill ordinarily exercised by EHS professionals under similar circumstances. Seller represents, warrants, and covenants that Seller has the capability, experience, expertise, and means required to perform the EHS services contemplated under these Terms of Purchase and that all services shall be performed using personnel, equipment, and material qualified and/or suitable to complete the services. Seller shall immediately inform Buyer of the discovery of any spill or release that, pursuant to environmental laws, must be immediately reported.

Seller shall indemnify, defend and hold Buyer harmless from liability caused by any incorrect or incomplete advice rendered by Seller in the performance of these Terms of Purchase, and upon which Buyer or its assigns reasonably relies. Such indemnification remains in full force and effect upon termination of this agreement.

Buyer acknowledges that Seller has not created nor contributed to the creation or existence of any hazardous, toxic, or otherwise dangerous substance or condition at the site. Buyer agrees to indemnify and hold Seller harmless from any and all liability, personal injury, or property damage, including environmental cleanup, arising from the performance of services under this agreement as a result of a preexisting dangerous condition of the site, excepting the negligence or willful misconduct of Seller. Seller will be solely

responsible for the disposal of any sample contaminated material taken offsite by Seller.

### 32. **AFFIRMATIVE ACTION**

Buyer is an affirmative action employer. Accordingly, this agreement incorporates the requirements of 41 CFR § 60-1.4(a)(7) and 29 CFR Part 471, Appendix A to subpart A, as applicable. Seller shall abide by the requirements of 41 CFR 60-300-5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

### 33. **COUNTERFEIT WORK**

Seller represents and warrants that it shall not deliver to Buyer any articles, components, goods, assemblies or other items that constitute "Counterfeit Work." "Counterfeit Work" means Work that is (i) an unlawful or unauthorized reproduction, substitution, or alteration that has been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM); (ii) approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; (iii) an item that does not contain the proper external or internal materials or components required by the OCM/OEM or that is not constructed in accordance with OCM/OEM specification; (v) an item or component thereof that is used, refurbished or reclaimed but is misrepresented as being a new item; (iv) an item that has not successfully passed all OCM/OEM required testing, verification, screening and quality control but is misrepresented as having met or passed such requirements; (v) an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OCM/OEM item is a genuine OCM/OEM item when it is not, including without limitation the false identification of grade, serial number, lot number, date code, or performance characteristics; or (vi) an item designated as a suspect counterfeit part by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP). Parts that have been modified pursuant to a specific Buyer purchase order requirement, such as refinished, up-screened, or up-rated parts that are properly identified as such are not considered Counterfeit Work. Seller's warranty against Counterfeit Work shall survive any termination or expiration of this Contract.

Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the OCM/OEM, or from a distributor expressly authorized by the OCM/OEM. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer.

Seller shall immediately notify Buyer if Seller becomes aware or suspects that it has furnished Counterfeit Work. Buyer may impound the Counterfeit Work for further investigation as to its authenticity, and Seller shall cooperate fully with any such investigation. Buyer shall not be required to return such Counterfeit Work to Seller during such investigation or thereafter. If, after investigation, Buyer concludes in its sole judgment that Work delivered by Seller constitutes Counterfeit Work, Buyer may report such facts to the GIDEP.

If these Terms of Purchase call for the delivery of electronic parts, the following additional requirements apply: (i) Seller shall comply with Defense FAR Supplement clause 252.246-7007, *Contractor Counterfeit Electronic Part Detection and Avoidance System (Aug 2016)*, 252.246-7008 *Sources of Electronic Parts (May 2018)* and the definition of "electronic part" therein shall apply. In the event of any

irreconcilable conflict between this clause and DFARS clauses 252.246-7007 & 7008, the latter shall have precedence. (ii) Seller shall maintain a process that complies with the most recent revision of SAE standard AS 5553 - *Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition*. (iii) If Seller is an OCM/OEM authorized distributor of electronic parts, Seller shall maintain a process that complies with the most recent version of SAE standard AS 6496 - *Fraudulent/Counterfeit Electronic Parts: Avoidance, Detection, Mitigation, and Disposition - Authorized/Franchised Distribution*. If Seller is not an OCM/OEM or an OCM/OEM authorized distributor, Seller shall comply with the most recent revision of SAE standard 6081 - *Fraudulent/Counterfeit Electronic Parts: Avoidance, Detection, Mitigation, Disposition – Distributors*.

When requested by Buyer, Seller shall provide OCM/OEM certificates of conformance and documentation that demonstrates an unbroken chain of custody of the affected items from the applicable OCM/OEM to Seller, including without limitation the name and location of any supply chain intermediaries from the OCM/OEM to the source supplying directly to Seller. Upon reasonable notice, Buyer may audit or inspect Seller's records or internal processes to determine compliance with this clause or DFARS 252.246-7007 and DFARS 252.246-7008, if applicable.

In the event that Work delivered under these Terms of Purchase constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all of Buyer's internal and external costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of these Terms of Purchase.

Seller shall include this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Buyer.