

TERMS AND CONDITIONS

DIRECTIONS TO SELLER/SUBCONTRACTORS:

- a) This subcontract has been issued on the basis of the subcontract type denoted on the face of the Purchase Order. Invoices for any additional costs over and above the total cost denoted on the Purchase Order will be rejected and returned unpaid.
- b) Invoices shall be issued by Contract Line Item Number (Purchase Order Line Item) detail.
- c) Where required, time sheets for individuals must be provided to support all hours charged and must designate hours applied to each Contract Line Item Number. Originals (or certified copies) of receipts for all such expenses must be included with Invoice.
- d) Itemized material cost, when applicable, must be included with Invoice.
- e) Invoices will be rejected unless proper documentation (as designated in items b, c, & d above) is received.
- f) Invoices which do not reference the correct Purchase Order Number and correct Company Name as set forth in "Invoice To" on the face of the Purchase Order shall be rejected and returned unpaid.

1. **AGREEMENT:** This Purchase Order represents the entire agreement between Buyer and Seller and is a binding contract upon the terms and conditions herein set forth. No change, modification or revision to this Purchase Order shall be binding upon Buyer unless made in writing and signed by one of Buyer's authorized representatives.
2. **PRICES:** Buyer shall not be billed at prices higher than stated on this Purchase Order. Seller warrants that the price charged for the items or services covered by this Purchase Order are the lowest prices charged by Seller to buyers of the same class as Buyer under conditions similar to those specified in this Purchase Order and that prices comply with applicable Government regulations in effect at time of quotation, sale or delivery. Seller agrees that any price reduction made in the items or services covered by this Purchase Order subsequent to its placement but prior to payment therefore will be applicable to it. Unless otherwise provided herein, Seller shall bear the cost for cartage, boxing or storing of the items covered by this Purchase Order.
3. **DELIVERY:** All deliveries shall be at the place or places specified herein at the risk and expense of Seller. Time is of the essence hereof. The delivery of the items or rendering of the services covered hereunder must be at the time or places herein or in other written instructions issued by Buyer. Buyer may from time to time change or temporarily suspend delivery schedules. In the event of late delivery of any items or late performance of any services covered hereunder, Buyer may, at its option and without any further liability hereunder, terminate this Purchase Order, partially terminate this Purchase Order, vary delivery terms hereunder, or obtain the items or services from other sources. Any losses sustained or costs incurred by Buyer as a result of late delivery shall be paid by Seller to Buyer.
4. **ENVIRONMENTAL PACKAGING:** Packaging utilized by Seller shall be designed to minimize environmental impact. Seller shall ensure compliance with applicable regulations regarding source reduction, heavy metals and noxious substances, and recoverability requirements. Seller shall utilize packaging that poses no risk to either safety or health. Seller shall encourage the use of renewable energy, post consumer recycled content, and design packaging that can be captured as a resource after the product contained in the package has been consumed. To further minimize the generation of waste, Seller shall, at Buyer's request, review Buyer's provisioning practices to determine the optimum packaging for products to be provided to Buyer.
5. **INSPECTION:** Buyer shall have a reasonable time after delivery or performance to inspect the items delivered or the services performed. All such items or services must conform to the specifications, instructions, drawings and data set forth on the face hereof or incorporated herein by reference and/or to samples whether furnished by Seller or Buyer as well as to all Seller's warranties (express or implied) and Buyer may reject and refuse acceptance of any items or services which do not so conform. Buyer shall notify Seller of such rejection by either notice in writing or by the return to Seller of the rejected items at Seller's expense and risk. If rejection is by notice in writing, Buyer may thereafter either hold the rejected

items for Seller. Shipment, in whole or in part, may be returned to Seller at its expense and risk. The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of its obligations under this contract nor excuse or constitute a waiver of any defects or nonconformities in any articles or services furnished under this Contract or change, modify or otherwise affect any of the provisions of this Contract, including, but not limited to, the prices and delivery schedules contained herein.

6. **WARRANTIES:** Seller expressly warrants that the items and services covered hereunder shall be free from defects in workmanship and shall strictly conform to applicable specifications, instructions, drawings, data and samples, if any, including performance specifications and, if of Seller's design, will be free from design defects and that items furnished hereunder will be fit for the use intended by Buyer. These warranties shall be in addition to all warranties, express, implied or statutory. Neither inspection nor payment by Buyer shall constitute a waiver of any breach of any warranty. All warranties shall run to Buyer, its customers and subsequent owners of the items or services covered hereunder or the end products of which they are a part. Seller agrees, at its expense and at Buyer's option, to defend or assist in the defense of any action against Buyer which action, in whole or in part, whether by way of claim, counterclaim or defense, is based upon an alleged breach of any of Seller's warranties. Seller agrees to indemnify Buyer, its customers or subsequent owners for all liability, loss, costs and expenses, including reasonable attorney's fees, resulting from any of said warranties. Notice of any breach of warranty shall be given by Buyer to Seller within ninety (90) days after discovery thereof by Buyer. All warranties shall be construed as conditions as well as promised and shall not be deemed to be exclusive.
7. **NEWS INFORMATION AND ADVERTISING:** Seller shall not, without first obtaining the written consent of Buyer, in any manner, advertise, publish, disclose, make news release of or publicly announce the fact that Seller has contracted with buyer to furnish the items or render the services herein ordered nor any of the details connected with this Purchase Order to any third party except as herein specified and except as may be required to perform this Purchase Order. For failure to observe this provision, Buyer shall have the right, in addition to any other rights and remedies provided by law to cancel this Purchase Order without any duty to accept deliveries after the date of such cancellation or to make further payments hereunder except for items delivered prior to such cancellation.
8. **BUYER'S PROPERTY:** All property used by Seller in connection with this Purchase Order which is owned, furnished, charged to or paid for by Buyer, including, but not limited to materials, tools, dies, jigs, molds, patterns, fixtures, equipment and any replacement thereof, shall be and remain the property of Buyer subject to removal and inspection by Buyer at any time without cost or expense to Buyer and Buyer shall have free access to Seller's premises for the purpose of removing such property. All such property shall be identified and marked as Buyer's property, used only for this Purchase Order and adequately insured by Seller at its expense for Buyer's protection. Seller shall assume all liability for and maintain and repair such property and return the same to buyer in its original condition, reasonable wear and tear excepted. Buyer shall not be obligated to pay any invoices for tooling until the first article produced there from shall have been received and accepted. Seller shall not use Buyer's property for its design or production on items for any other party.
9. **INFORMATION:** Drawings, data, design, inventions and other technical information supplied by Buyer shall remain Buyer's property, and shall be held in confidence by Seller. Such information shall not be reproduced, used or disclosed to others by Seller without Buyer's prior written consent and shall be returned to Buyer upon completion by Seller of its obligations under this Purchase Order or upon demand. Buyer does not grant indemnity to Seller for infringement of any patent, trademark, and copyright or data rights.
10. **CHANGES:** Buyer shall have the right at any time to make changes in the drawings, design, specifications, quantities, delivery schedules, methods of shipment or packaging and place of inspection, acceptance, and/or point of delivery of any items to be furnished or service to be rendered under this Purchase Order. No change shall be effective unless authorized in writing by the Buyer. If such changes result in delay or an

increase or decrease in expense to Seller, Seller shall notify Buyer immediately and negotiate an equitable adjustment provided, however, that Seller shall, in all events proceed diligently to supply the items or perform the work or services contracted for under this Purchase Order as so changed. No claim by Seller for such equitable adjustment shall be valid unless submitted to Buyer in writing within fifteen (15) days from the date of such notice of change accompanied by an estimate of charges resulting from such changes, provided, however, that Buyer may, at its discretion, receive and act upon any such claims so made at any time prior to final payment under this Order.

11. **COMPLIANCE WITH LAWS:** On request, Seller shall furnish Buyer certificates of compliance with all applicable laws, orders and regulations of the federal or any state or municipal government or agency thereof, which apply to this Purchase Order. Seller covenants to exonerate and hold Buyer harmless from and against any and all costs, damages and expenses, including necessary attorney's fees suffered or occasioned by Buyer directly or indirectly through any failure of Seller to comply with any such applicable law, regulation or order. Seller shall at time of delivery or invoicing, certify that goods sold hereunder were manufactured or produced in full compliance with the Fair Labor Standards Act of 1938, as amended, to the date of certification and all applicable United States Department of Labor Regulations promulgated there under.
12. **LIENS:** All items to be furnished hereunder and all property to be returned to Buyer shall be free and clear of any and all liens and encumbrances whatsoever. If requested by Buyer, Seller will execute an appropriate agreement waiving all liens against Buyer's property.
13. **PAYMENT:** Invoices will be paid according to discount terms, or if no discount is offered, within forty-five (45) days after receipt and acceptance of the items or completion and acceptance of services. Discount periods will be computed from either the date of delivery plus three days allowance for inspection or the date of receipt of correct invoices, prepared in accordance with the terms of Buyer's Purchase Order, whichever date is later.
14. **TITLE AND RISK OF LOSS:** Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by Seller to Buyer shall pass to Buyer at the F.O.B. point designated on the face of this Order. Cost of all return shipments, for whatever reason returned, shall be borne by Seller with title and risk of loss passing at Buyer's plant or point of shipment, unless otherwise specified by Buyer at the time of return.
15. **PATENT INDEMNITY:** If the items furnished hereunder are not manufactured to a detail design supplied solely by Buyer, Seller shall indemnify and hold harmless Buyer and its assigns and customers against all loss, expense, claims and liability of any nature resulting from actual or alleged patent infringement, domestic or foreign, in the use or sale of any items, or any part thereof furnished hereunder. In case the use or sale of said items or any part thereof is enjoined, Seller shall at its own expense and its option with the approval of Buyer (which shall not be unreasonably withheld), either (a) procure for Buyer and its assigns and customers the right to continue to sell and use said items, or part; or (b) modify said items, or part so that they become non-infringing; or (c) accept return of said items and refund the purchase price and the transportation and installation costs, if any, thereof.
16. **ENGINEERING AND DESIGN SERVICE:** If this Purchase Order, in whole or in part, calls for the performance of engineering or design services, including research and development work, the Purchaser's Supplementary Terms and Conditions covering engineering and design services, a copy of which is either annexed hereto or may be obtained from Buyer upon request, apply to this Purchase Order.
17. **TERMINATION:** Buyer shall have the right to terminate this Purchase Order or any part thereof at any time: (a) Without Cause- In case of termination by buyer of all or any part of this Purchase Order without cause, any termination claim must be submitted to Buyer within sixty (60) days after the effective date of termination. The provisions of this subparagraph shall not limit or affect the right of Buyer to terminate this

Purchase Order for cause and shall not apply to a termination with cause, (b) For Cause-If Seller fails to make any delivery in accordance with the agreed delivery date or schedule or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this Purchase Order, or fails to make progress so as to endanger performance of this Purchase Order, or in the event of any proceedings by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided in this Purchase Order by law, terminate all or any part of this Purchase Order by telegraphic or other written notice to Seller without any liability by Buyer to Seller on account thereof. Buyer may require a financial statement from Seller at any time during the term of this Purchase Order for the purpose of determining Seller's financial responsibility. In the event of termination for cause, Buyer may produce or purchase or otherwise acquire supplies or services elsewhere on such terms or in such a manner as Buyer may deem appropriate and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer.

18. EQUAL OPPORTUNITY CLAUSE: (As used in this Paragraph 18, the terms "contract" and "contractor" mean respectively "this Purchase Order" and "Seller") If this Purchase Order is subject to Executive Order 11246, Seller agrees as follows: During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and report required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contract or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and provision of paragraphs (1) through (7) in every subcontract or purchase contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 Executive Order 11246 of September 24, 1965 so that provisions will be binding of each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase contract as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

19. **TAXES AND OTHER EXACTIONS:** Seller agrees to assume exclusive liability under all laws that impose taxes or other exactions on the manufacture or sale of the items to be furnished hereunder, or any component part thereof, or on any process or labor involved, therein, or on any services to be rendered by Seller, and to pay any and all such taxes except those Buyer specifically agrees or is by law required to pay. Any taxes to be paid by Buyer shall be separately stated on the invoice. Prices shall not include any taxes for which Seller can obtain, or Buyer can furnish exemption.
20. **REMEDIES:** The rights and remedies reserved to Buyer herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further rights and remedies provided by law or equity. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.
21. **ASSIGNMENT:** Neither this Purchase Order nor any rights or obligations herein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without, in either case, Buyer's prior written consent. The terms and conditions of this Purchase Order shall bind any permitted successors and assigns of Seller. Any consent by Buyer to assignment shall not be deemed to waive Buyer's right to recoupment and/or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to permitted successor and assigns.
22. **FORCE MAJEUR:** Either party to this Purchase Order shall be free from liability for failing to perform hereunder if such failure is caused due to acts of God, labor difficulties, fires or other causes beyond the reasonable control of the affected party. In the event that Seller is unable to perform for such reasons beyond its reasonable control, Buyer shall have the right to either continue the delivery dates until Seller is able to perform or terminate this Purchase Order.
23. **CONSTRUCTION:** This Purchase Order is to be construed and interpreted according to the laws of the state of Texas. The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.
24. **DISPUTES:** In the event of disputes over price, quantity or quality, Buyer shall have the right to audit Seller's records in order to resolve the dispute. Pending resolution of the dispute, amicably or otherwise, Seller shall proceed diligently with the performance of this Purchase Order as directed by Buyer.
25. **INDEMNITY:** Seller agrees to indemnify, defend and hold Buyer harmless from any and all losses, damages, or liability arising out of any defects in the goods or services provided under this Purchase Order, even if said losses, damages or liability are contributed to by Buyer's joint or concurrent negligence.
26. **THE VESSEL TO WHICH GOODS OR SERVICES ARE BEING PROVIDED IS A PUBLIC VESSEL OF THE UNITED STATES AND NOT SUBJECT TO LIENS UNDER THE MARITIME LIEN ACT. SHOULD SELLER SUBCONTRACT THIS PURCHASE ORDER OR ANY PART OF IT, SELLER MUST INFORM ANY RETAINED SUBCONTRACTOR THAT NO LIENS WILL BE ATTACHED TO THE VESSEL. IN ADDITION, THE FOLLOWING FEDERAL ACQUISITION REGULATION (FAR) FLOW DOWN CLAUSES ARE INCORPORATED BY REFERENCE INTO THE CONTRACT AND APPLY AS FULLY AS SET FORTH AT LENGTH.** Contractor shall include these clauses in any subcontract which Contractor may employ to complete the agreed Work under this Purchase Order:

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2006)

- (a) Definitions. As used in this clause -
“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.
- (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
- I. 52.203-13 Contractor Code of Business Ethics and Conduct (Dec 2008)
 - II. 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. (Mar 2009)
 - III. 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - IV. 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - V. 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
 - VI. 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - VII. 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).
 - VIII. 52.222-41 Service Contract Act of 1965, as prescribed in 22.1006(a), as Amended (JUL 2005).
 - IX. 52.222-50 Combating Trafficking in Persons. (Feb 2009)
 - X. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

Contractors and subcontractors will adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned, leased or rented vehicles (GOV), or while driving privately owned vehicles (POV) when on official Government business or when performing any work for or on behalf of the Government.

Federal contractors and subcontractors as described in this section will conduct initiatives of the type described in section 3(a) of the E.O.

E.O. 13513 and DOT Order 3902.10,

CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING

a) Definitions. The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O.

"Driving"-

(1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. (See definition in DOT Order 3902.10)

(b) In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, contractors and subcontractors are encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving--

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as-

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts that exceed the micro-purchase threshold, other than subcontracts for the acquisition of commercially available off-the-shelf items.

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