

**GENERAL DYNAMICS  
ORDNANCE AND TACTICAL SYSTEMS  
TERMS AND CONDITIONS - COMMERCIAL  
(October 22, 2020)**

**1. DEFINITION:**

Unless otherwise specified, as used herein:

“Materials” means all articles, goods, equipment, and services to be delivered or provided under this Purchase Order.

**2. ACCEPTANCE OF PURCHASE ORDER:** Acceptance of this Purchase Order by Seller is expressly limited to the terms and conditions contained in this Purchase Order. Any term or condition stated by the Seller in any prior proposal, on Seller’s acknowledgment form, or in otherwise acknowledging or accepting this Purchase Order is deemed by Buyer to be a material alteration of this Purchase Order and is hereby rejected unless Buyer specifically agrees otherwise in writing. Acceptance of the Materials covered by this Purchase Order will not constitute acceptance by Buyer of Seller’s terms and conditions. Any of the following acts by Seller will constitute acceptance of this Purchase Order and all of its terms and conditions: signing and returning a copy of this Purchase Order, delivering any of the Materials ordered, commencing performance or informing the Buyer in any manner of commencement of performance, or returning Seller’s own form of acknowledgment.

**3. PRICE:** Seller shall furnish the Materials in accordance with the prices and delivery schedule stated on the face of this Purchase Order. Buyer shall not be billed at prices other than stated on this Purchase Order unless authorized by a Purchase Order Change Notice issued and signed by Buyer. Seller warrants that the prices charged for the Materials covered by this Purchase Order are the lowest prices charged by the Seller to any customers purchasing similar Materials in the same or similar quantities and under like circumstances.

**4. DELIVERY:**

a. Time is of the essence in the performance of this Purchase Order. If Seller fails to make shipment or delivery when due, or if any shipment or delivery is made which is not in all respects in accordance with this Purchase Order (including time of shipment or delivery), Buyer reserves the right to reject such delivery, and, if Buyer so elects, Buyer may treat this Purchase Order as repudiated by Seller and cancel it or any outstanding deliveries hereunder, without prejudice to Buyer’s rights to claim damages or to enforce any other remedy provided by law. All expenses of transportation and storage, if any, resulting therefrom shall be for Seller’s account.

b. Any provisions herein for shipment or delivery of Materials or the rendering of services by installments shall not be construed as making the obligation of Seller severable and Seller acknowledges that a default with respect to any one installment shall impair the value of the whole contract. Shipments sent C.O.D. without Buyer’s written consent will not be accepted and will be at Seller’s sole risk and expense.

c. Invoices shall not be issued nor payments made prior to delivery. Individual invoices must be issued for each shipment under this Purchase Order. Discount invoices will be payable based on applicable discount period computed from the date of scheduled or actual delivery of the items ordered or the date of receipt of the correct invoice, whichever is later. Unless freight and other charges are itemized, any discount will be taken on full amount of invoice. All payments are subject to adjustment for shortage or rejection.

**5. INSPECTION:**

a. All items covered by this Purchase Order may be subjected to inspection and test by Buyer and its customer at all times and places including the place and period of manufacture. The Buyer or his representative may inspect the plant or plants of the Seller or of any Seller’s subcontractors engaged in the performance of this Purchase Order. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests. Any such inspection or test by Buyer or its customer shall be performed in such a manner as not to unduly delay the work. No inspection, test, approval (including design approval), or acceptance of items ordered shall relieve Seller from responsibility for defects or other failures to meet the requirements of this Purchase Order. All items are subject

to final inspection and acceptance by Buyer at destination notwithstanding any prior payment or inspection at source and such inspection will be made within a reasonable time after delivery.

b. Buyer shall have the right to reject, require correction or accept with an equitable adjustment in price any goods delivered or services performed hereunder which are defective or otherwise not in strict conformance with the requirements of this Purchase Order. Buyer shall notify Seller of such rejections or other actions and at Buyer's election and Seller's risk and expense such items shall be held by Buyer or returned to Seller for credit, refund, repair, rework, or placement as directed by written instructions from Buyer. No replacements or correction of defective items shall be made by Seller unless agreed to in writing by Buyer.

## **6. WARRANTY:**

a. In addition to all other express or implied warranties, Seller represents and warrants that any Materials (including packaging) provided under this Purchase Order shall: (1) conform to the description in the Purchase Order; (2) be free from defects in Materials and/or workmanship; (3) conform to Buyer's instructions, specifications, drawings and data; (4) be merchantable; (5) be free from defects in design and be fit for the purpose intended; and (6) conform to all warranties, express or implied by law. Seller warrants all Materials furnished and/or installed hereunder to be new and not used or reconditioned (unless otherwise specified in this Purchase Order). Seller warrants that it will perform this Purchase Order with the degree of skill and judgment which is normally exercised by recognized firms with respect to Materials of a similar nature, and this will be provided in a good, competent and workmanlike manner. These warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance, and payment.

b. In addition to the warranties above, if Seller supplies, or incorporates into Materials supplied under this Purchase Order, Materials that are manufactured by a third-party, Buyer shall have the benefit of warranties extended to Seller by the third-party to the extent they exceed Seller's warranties in scope or duration.

c. Seller's warranties shall run to Buyer and its customers.

d. At Buyer's option, Seller shall repair, replace, or return for credit all defective or nonconforming items and the payment of all packing and transportation costs attributable to accomplishment of the above, all at Seller's expense. Upon failure to do so within a reasonable time, after three (3) days prior written notice, Buyer may do so at Seller's sole expense.

**COUNTERFEIT GOODS** – In addition to all other warranties provided under this Purchase Order, Seller warrants that any and all Goods delivered hereunder are new and not refurbished or used, are being supplied by the Original Manufacturer (OM) (Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), Contract Manufacturer) or their expressly authorized dealers (Authorized Aftermarket Manufacturer, Authorized Dealer, Authorized Supplier, as defined in DFARS 252.246-7007 and 252.246-7008), agent or distributor, and that Seller has documented traceability of the Goods or components to the aforementioned sources.

Seller must have a counterfeit avoidance program and process (including inspection, testing, and authentication) in conformance with AS5553. Seller shall maintain a documented system (Standard Practice, procedure, or other documented approach) that provides for prior notification and Buyer approval before parts/components are procured from sources other than OMs or the OMs authorized dealers. Seller must provide the following with shipment of the items upon request of Buyer:

- (1) Certificate of Conformance (C of C), certifying the items are genuine and meet all Purchase Order and original manufacturer requirements.
- (2) Traceability information to original manufacturer.
- (3) Results from any additional inspections, tests, and examinations as required by this Purchase Order.

Any Goods for which the above requirements are not met shall be considered defective under this Purchase Order and may be rejected by Buyer. Seller must replace any Goods that are not genuine, new and unused items and any counterfeit items will not be returned to the Seller which is a requirement of counterfeit parts DFARS provisions.

Buyer reserves the right to quarantine any and all suspect counterfeit parts it receives and to notify the Government Industry Data Exchange Program (GIDEP) and other relevant government agencies. Seller shall not return any counterfeit Goods to the supply chain and shall ensure these Goods are stored for inspection. All counterfeit parts received by Seller must be reported to Buyer immediately.

Seller shall be liable to Buyer for any damages, costs, penalties, judgments, or fines against Buyer to the extent caused by Seller's failure to meet all requirements of this Clause and, at Buyer's election, Seller may also be required to deliver suitable replacement Goods traceable to the OM, meeting all OM specifications. The remedies in this section shall apply regardless of whether the warranty period or guarantee period has ended, and are in addition to any remedies available at law or in equity. Seller shall include the substance of this clause in all of its sub-tier contracts with its suppliers providing electronic parts, assemblies containing critical items, electronic parts, or performing authentication testing, in support of this Purchase Order.

If the procurement of materials under this contract is pursuant to, or in support of, a contract, subcontract, or task order for delivery of goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with this contract may be punishable, as a Federal felony, by up to five years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a Federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.

This Counterfeit Goods section shall survive termination, expiration or cancellation of this contract.

**CONFLICT MINERALS** – In addition to all other warranties provided under this Purchase Order, Seller warrants that the Materials delivered hereunder are free from Gold, Tungsten (Wolframite), Tantalum (Columbit-Tantalite) or Tin (Cassiterite), hereafter referred to as "Conflict Minerals", that have originated in the Democratic Republic of Congo, Central African Republic, Angola, Burundi, Rwanda, South Sudan, Tanzania, Uganda or Zambia, hereafter referred to as "DRC". For purposes of this Clause, Conflict Minerals purchased from scrap or recycled sources are not considered to have originated from the DRC. Seller is required to review all materials and components which are necessary for the functionality or production of the Materials being sold under this Purchase Order and disclose annually whether any of the Conflict Minerals are present, and if so, those that originated in the DRC, and to provide a chain of custody if the Conflict Minerals do originate from the DRC. The Seller shall determine the country of origin (where the materials were originally mined and processed) or whether the minerals originated from scrap or recycled sources. Seller must provide the following prior to shipment of the items upon request of Buyer:

- (1) Country of Origin Inquiry (17 CFR 250 and 249B) documentation certifying that items are free from Conflict Minerals that have originated in the DRC.
- (2) Traceability information on raw material sub-tier suppliers.
- (3) To the extent an audit has been performed, results from any independent private sector audit; certifying that such an audit was obtained, including the audit report as part of the Country of Origin Inquiry and identifying the auditor.

Any Materials for which the above requirements are not met shall be considered defective under this Purchase Order and may be rejected by Buyer or returned. Seller shall be liable to Buyer for any damages, costs, penalties, judgments, or fines against Buyer to the extent caused by Seller's failure to meet all requirements of this Clause and, at Buyer's election, Seller may also be required to deliver suitable replacement Materials at Seller's cost.

Seller shall include the substance of this clause in all of its sub-tier contracts with its suppliers providing components in support of this Purchase Order.

**7. NO WAIVER; SEVERABILITY:** The failure of Buyer to insist upon the performance of any provision of this Purchase Order, or to exercise any right or privilege granted to the Buyer under this Purchase Order or by law, shall not be construed as waiving such provision or any other provision of this Purchase Order, and the same shall continue in full force and effect. Where this Purchase Order provides rights and remedies to Buyer, such rights and remedies shall be in addition to any other rights and remedies provided at law or elsewhere in this Purchase Order and shall not be construed as Buyer's exclusive rights or remedies.

**8. COMPLIANCE WITH LAWS:** In the performance of this Purchase Order, Seller shall comply with all applicable laws, ordinances, rules and regulations, Federal, State and Local, including without limitation the Arms Export Control Act, the International Traffic in Arms regulations, and the Foreign Corrupt Practices Act, and such compliance shall be a material requirement of this Purchase Order. Seller certifies to Buyer that the Materials ordered were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938 (FLSA), as amended, including the requirements as to records. The Seller will comply with the Equal Opportunity for Workers with Disabilities regulation as prescribed by 41 CFR 60-741.5(a), and the Equal Opportunity for Veterans regulation as prescribed by 41 CFR 60-300.5(a), and Seller agrees to submit reports, certificates, and other documents required of subcontractors by the aforementioned regulations and relevant orders issued under the authority of any of the foregoing. Seller agrees that all Materials supplied hereunder shall comply with all applicable requirements and specifications of the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations adopted thereunder. Seller covenants to hold Buyer harmless from, and to reimburse Buyer for, all costs, damages and expenses (including attorney's fees) incurred by Buyer as a result of any failure of Seller to comply with any applicable law, regulation or order.

Seller shall provide a current withholding certificate, executed on the latest version of the applicable Internal Revenue Service ("IRS") form, to document Seller's status for purposes of both Foreign Account Tax Compliance Act ("FATCA") and non-resident alien ("NRA") withholding. Generally, the withholding certificate will be in the form of a W-9 (if a U.S. individual, partnership, or a corporation), a W-8BEN (if a foreign individual), a W-8BEN-E (if a foreign entity), or a W-8ECI (if a foreign entity with effectively connected U.S. income). The most current form applicable to Seller's situation may be obtained from the IRS at <http://www.irs.gov>. Seller's failure to provide a current U.S. withholding certificate may result in potential delays of payment processing and/or U.S. tax withholding under FATCA or NRA provisions which otherwise may be unnecessary.

**9. ORDER OF PRECEDENCE:** Any inconsistency in this Purchase Order shall be resolved by giving precedence in the following order: (a) the face of this Purchase Order; (b) Special Provisions, if any; (c) these Terms and Conditions; (d) Attachments, Exhibits, or Annexes, if any; and (e) the Statement of Work. Notwithstanding the foregoing, no term shall conflict with any required FAR/DFARS provisions, in which case the required FAR/DFARS clause(s) shall take precedence.

**10. EXCUSABLE DELAYS:**

a. Neither party shall be liable for any delay or failure of performance due solely to strikes, or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall give written notice thereof to the other as soon as same could be anticipated, and if it could not be anticipated, promptly following the commencement thereof. Seller's delay or failure of performance must also be due to causes beyond the control of and without the fault or negligence, of all of Seller's subcontractors, for Seller to escape liability pursuant to this provision.

b. If Seller should be unable, due to such cause, to meet all its delivery commitments for the Materials ordered hereunder as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such Materials. Seller shall use its best efforts to anticipate the effects of such cause, to mitigate the effect of such cause and to make deliveries as expeditiously as possible.

c. If Buyer believes that the delay or anticipated delay in Seller's deliveries may impair Buyer's ability to meet Buyer's production or delivery schedules or may otherwise interfere with Buyer's operations, Buyer may, at its sole option, and without liability to Seller, cancel outstanding deliveries hereunder wholly or in part.

**11. TITLE AND RISK OF LOSS:** Title to, and risk of loss of, Materials purchased under this Purchase Order shall remain with Seller until such Materials are delivered at the F.O.B. point specified in the Purchase Order, or at such other point specified in this Purchase Order where title is to pass. If no such point is given, then until the Materials are delivered to a public carrier consigned to Buyer or delivered to Buyer, whichever delivery shall occur first, title and risk of loss remain with Seller. In the case of deliveries by barge or ship, however, title and risk of loss will pass when the Materials are unloaded into Buyer's tanks, bins, or other storage facilities.

**12. INDEMNITY:**

a. Seller agrees to indemnify, defend, and hold harmless Buyer from all losses, claims, demands, suits (including those from Seller's employees), expenses, damages and costs including, but not limited to, all reasonable attorney's fees incurred or suffered by Buyer as the result of:

- (1) Seller's breach of warranty;
- (2) The injury to or death of any person, or damage to or destruction of property arising out of the failure of Materials hereunder to meet the warranties set forth herein;
- (3) Defect in the Materials purchased under this Purchase Order;
- (4) The failure of Seller or any of the Materials to comply with all applicable Federal, State, and Local laws and ordinances;
- (5) The negligent acts or omissions of Seller, irrespective of Buyer's negligence in any degree.

b. If this Purchase Order covers the performance of labor and/or supervision of installation on Buyer's premises or within facilities owned or controlled by Buyer, Buyer's customer, or any other entity, Seller shall be solely responsible for the safe conduct of such work and the protection of the premises or facilities, and of any persons on the premises or facilities. Seller agrees to defend, indemnify, hold harmless, and protect Buyer against all losses, claims, damages, suits, including those suffered or brought by Seller's employees, liabilities, cost, and attorney's fee for injury to or death to any person, or damage to or destruction of property arising out of the performance of this Purchase Order, irrespective of Buyer's negligence in any degree.

c. If Materials purchased are of an explosive, flammable, toxic, hazardous or otherwise dangerous nature, Seller shall fully indemnify and hold Buyer harmless against any claims asserted against Buyer on account of any personal injury, property damages, or violation of law or regulation caused by such Materials, or by the transportation, manufacture, sale, handling, or disposal thereof, prior to the completion of unloading at Buyer's plant, warehouse, or facility, regardless of the passage of title or responsibility for risk of loss.

d. Seller shall save Buyer, its agents and customers, and users of its products harmless from all loss, damage and liability, which may be incurred on account of infringement or alleged infringement of any United States or foreign patent, copyright, trademark, trade name or trade secret arising out of the manufacture, sale or use of such items by Seller, Buyer, Buyer's agent or customers, or users of its products and Seller shall, at its own expense, defend all claims, suits and actions against Buyer, its agents or customers, or users of its products in which such infringement is alleged, provided Seller is duly notified of such claims, suits and actions.

**13. INTELLECTUAL PROPERTY:** Seller warrants that it has all right and title to the intellectual property required to perform its obligations and deliver Materials for Buyers intended use. Seller shall indemnify and defend Buyer for and against any claims, demands, judgments, suits, costs, fees, including without limitation attorney fees, or damages of any kind resulting from Seller's violation or breach of any third party's intellectual property rights in the performance of this Purchase Order.

**14. PACKING:** Buyer is not responsible for any charge for packing, boxing, storage or cartage.

**15. INSURANCE:** Seller shall not insure the Materials for Buyer's account unless the terms of this Purchase Order so require. Seller also agrees to furnish Buyer on request a certificate from Seller's insurance carriers, showing that it carries adequate workman's compensation (if Seller is self-insurer, Seller shall arrange to have the Department of Labor, or other appropriate agency, in the state in which such labor is to be performed, furnish a certificate of same to Buyer), public liability, automotive liability, and property damage insurance, and showing the amount of coverage, number of policy and date of expiration. Seller also agrees that its employees, agents, and subcontractors, will comply will all of Buyer's safety and other rules covering outside contractors while on Buyer's premises.

**16. TAXES:** Prices shown on this Purchase Order do not include taxes. Seller shall add taxes as a separate line item on the Seller's invoice, if applicable. Refer to the face of this Purchase Order for tax status.

**17. DESIGN, TOOLS, DIES, ETC.:**

a. Unless otherwise agreed herein, Seller at its sole cost shall supply all material, equipment, designs, drawings, tools and facilities required to perform this Purchase Order.

b. Any Materials, equipment, designs, drawings, tools or other property furnished by Buyer or specifically paid for by Buyer shall be Buyer's property, shall be used only in filling orders from Buyer and may on Buyer's demand be removed by Buyer without charge. Seller shall use such property at its own risk and shall be responsible for all loss of or damage to the same or to any person while property is in Seller's custody. Seller shall, at its sole cost, store and maintain all such property in good condition and repair. Buyer makes no warranties of any nature with respect to any such property, which is furnished "AS IS".

c. Graphics arts and packaging materials: All film negatives, positives, engravings, electrodes and dies made by Seller for the production of Material of this Purchase Order will become the property of Buyer and be delivered to Buyer at the completion of work under this Purchase Order.

d. Notwithstanding anything herein to the contrary, the provisions of this paragraph 17 do not apply to property owned by the United States Government. Disposition and use of United States Government property shall be governed by applicable United States Government regulations.

**18. SURVIVAL:** Seller shall not be relieved of its obligations under the following clauses (or under any applicable Special U.S. Government Provision that, by its nature, requires continuing obligations on Seller to achieve its intended effect) because of the termination, expiration, or completion of this Purchase Order:

- Inspection
- Warranty
- Intellectual Property
- Compliance with Laws
- Indemnity
- Insurance
- Amendments and Governing Law
- Publicity
- Changes
- Pricing of Adjustments
- Disputes
- Designs, Tools, Dies, Etc.

**19. ASSIGNMENT:** No assignment of this Purchase Order by Seller or of monies due or to become due hereunder shall be made without the prior written consent of Buyer. No Materials to be delivered under this Purchase Order shall be procured by Seller from a third party in completed or substantially completed form without Buyer's prior written consent.

**20. INSOLVENCY:** Buyer may terminate this Purchase Order for cause if Seller files a voluntary petition under any Federal or State bankruptcy act, is adjudicated a bankrupt, or if Seller becomes insolvent or commits an act of bankruptcy or engages in any act which reasonably causes Buyer to deem itself insecure. In the event the Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Seller agrees to furnish written notification of the bankruptcy to the Buyer listed on the Purchase Order within five (5) days of initiation of the proceedings related to bankruptcy filing.

**21. TERMINATION:**

a. **Convenience.** Buyer may, at any time, terminate this Purchase Order in whole or in part for its convenience by written or telegraphic notice, or oral notice confirmed in writing.

(1) Upon termination for convenience of Buyer, settlement shall be made in accordance with the following principles:

(a) If the materials covered by the Purchase Order are shelf items, then Buyer shall be liable to Seller only for the difference between Purchase Order price and the fair market price or the amount received on disposal of the items, whichever price or amount is higher. In no event shall Buyer be liable for an amount in excess of 15% of the Purchase Order price.

(b) If the materials covered by the Purchase Order are special order items or services, then Buyer shall be liable only for costs of direct materials, direct labor and variable overhead incurred prior to the date of termination that relate directly to the materials covered in the Purchase Order, less any salvage value. In no event shall Buyer be liable in an amount more than the Purchase Order price for the terminated Materials.

(2) In the event that this Purchase Order is issued to support a United States Government contract and an alternate Termination for Convenience clause for application between Seller and Buyer is attached or referenced in an accompanying document thereto, such Termination for Convenience clause shall prevail.

b. **Default.** If Seller fails to make delivery of the Materials, in accordance with the delivery dates specified in this Purchase Order, fails to perform any of the requirements or to perform any of the other provisions of this Purchase Order, or fails to make progress so as to endanger performance of this Purchase Order in accordance with its terms and does not cure such latter failure within ten (10) days after notice from the Buyer, Buyer may (in addition to any other right or remedy provided by this Purchase Order or by law) terminate all or any part of this Purchase Order by written notice to Seller without liability and purchase substitute goods elsewhere, and Seller shall be liable to Buyer for any excess cost occasioned Buyer thereby. Seller shall continue performance of this Purchase Order to the extent not terminated pursuant to this Clause 21(b). Except with respect to defaults of subcontractors at any tier, Seller shall not be liable to Buyer for any excess costs if the failure to perform this Purchase Order arises out of causes beyond the control and without the fault or negligence of the Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both the Seller and subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable for any excess costs for failure to perform to Buyer, unless the Materials to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the requirements of this Purchase Order.

If this Purchase Order is terminated as provided in this Clause 21(b), the Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and deliver to the Buyer: (i) any completed Materials, and (ii) such partially completed Materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as the Seller has specifically produced or specifically acquired for performance of this Purchase Order.

If, after notice of the termination of this Purchase Order "with cause," it is determined that the failure to perform is due to causes totally beyond the control and totally without the fault or negligence of the Seller, such notice of default shall be deemed to have been issued pursuant to Clause 21(a) hereof, and the rights and obligations of the parties hereto shall be governed by Clause 21(a).

**22. BUYER'S LIMITATION OF LIABILITY:** In no event shall Buyer be liable, for any reason or arising from any cause whatsoever, for special, incidental, or consequential damages.

**23. AMENDMENTS AND GOVERNING LAW:** No agreement or understanding to modify this Purchase Order shall be binding upon the Buyer unless in writing and signed by Buyer's authorized agent. All specifications, drawings, and data submitted to Seller with this Purchase Order are hereby incorporated herein and made a part hereof. The validity and construction of this Purchase Order shall be governed by the laws of the State of Florida, except for its conflicts of law provisions.

**24. ANTI-TRAFFICKING VIOLATIONS:** Seller represents and warrants that it and its officers, employees, agents and representatives will comply with all laws and regulations prohibiting trafficking in persons and/or the use of forced labor, and further that, Seller will, if this Purchase Order is in support of a U.S. Government program, comply with the following FAR and DFARS clauses associated with Combating Trafficking in Persons including, but not limited to: FAR 52.222-50, FAR 52.244-6, DFARS 252.203-7004, DFARS 252.222-7007, and DFARS 252.225-7040. Seller hereby agrees to defend and indemnify Buyer from and against any liability that Buyer may incur as a

result of violation of any relevant law or regulation.

If applicable, Seller acknowledges it is aware of and in full compliance with California's Transparency in Supply Chains Act (Cal. Civ. Code §1714.43), and will continue to be in compliance throughout the duration of this Purchase Order. If Seller does any business in the State of California, whether under this Purchase Order or otherwise, Seller shall assume this Act applies.

**25. PUBLICITY:** Seller shall not make or authorize any news release, advertisement, or other disclosure (except as required by law) that denies or confirms the existence of this Purchase Order without prior written consent of Buyer.

**26. CHANGES:** Buyer may, at any time, by written instruction from Buyer's Procurement Department to Seller, make changes in the work to be performed or the items to be furnished hereunder in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; (c) time and/or place of inspection, delivery, or acceptance of the Materials; and (d) the quantity of items ordered. If such changes cause an increase or decrease in the amount due under the Purchase Order or the time required to perform, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly; provided however, that any equitable adjustment in price to which Seller may be entitled as a result of an increase in the quantity of items ordered shall not exceed the unit price established for such items herein. Any claim hereunder must be asserted in writing within fifteen (15) days from the date the change is ordered. Nothing contained herein shall excuse Seller from proceeding without delay with the Purchase Order as changed, including failure of the parties to agree upon any equitable adjustment. Changes shall not be binding upon Buyer, except when confirmed in writing by a member of Buyer's Procurement Department.

**27. DISPUTES:** Any dispute arising under this Purchase Order which is not settled by agreement of the parties hereto shall be resolved by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under or in connection with this Purchase Order, Seller shall proceed diligently with the performance of this Purchase Order in accordance with the decision and instructions of Buyer.

Except as expressly set forth in this Document, in the associated Purchase Order, or as expressed in writing by the Buyer's Representative, and only if Buyer has received the U.S. Government Contracting Officer's consent, the Seller shall not make any direct claims or take direct course of action against the U.S. Government. **THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS ORDER.**

**28. ORDER OF PRECEDENCE:** Any inconsistency in this Purchase Order shall be resolved by giving precedence in the following order: (a) the face of this Purchase Order; (b) Special Provisions, if any; (c) these Standard Terms and Conditions; (d) Attachments, Exhibits, or Annexes, if any; and (e) the Statement of Work. Notwithstanding the foregoing, no term shall conflict with any required FAR/DFARS provisions, in which case the required FAR/DFARS clause(s) shall take precedence.

**29. COMPLETE AGREEMENT:** This Purchase Order constitutes the entire contract between the parties. Acceptance is limited to the terms hereof and Buyer hereby objects to any additional or revised terms proposed by Seller. No revision, addition or supplement to this Purchase Order or of any of its terms and conditions shall be effective (whether or not in Seller's acknowledgment or other form) unless agreed to in writing by Buyer. Shipment of any of the Materials constitutes acceptance of all the terms and conditions hereof whether or not Seller has acknowledged this Purchase Order

**30. RETENTIONS:** In addition to any other rights Buyer has, Buyer may, at its sole option, withhold payment of up to ten percent (10%) of the total value of this Purchase Order or individual invoices until Seller provides all required objective quality evidence, submits required data items, and satisfactorily fulfills all other reporting and documentation requirements.

**31. RECORDS RETENTION:** Seller shall retain all inspection, acceptance, quality, financial and contractual records, documents, and supporting information required for the performance of this Purchase Order for a period of six (6) years after final payment.



**32. UNITED STATES GOVERNMENT SUBCONTRACTS:** If this Purchase Order is issued under a United States Government prime contract or subcontract issued to Buyer, then the following Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses are incorporated herein by reference and shall be applicable to this Purchase Order:

**INCORPORATION OF FEDERAL CLAUSES** - The following clauses incorporated by reference shall be those in effect on the effective date of the Government Prime Contract (as amended) with Buyer to which this Order, subcontract, Purchase Order, or agreement relates. The FAR and Supplements thereto are obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Portions of the FAR are also accessible at <http://www.arnet.gov/far/>.

(B) Any reference in the following clauses to the “Disputes” clause shall mean the Article entitled “Disputes Under A Government Prime Contract” of the Order to which these Terms and Conditions are attached.

(C) Seller shall insert the following provisions in lower tier subcontracts, either verbatim or in substance, and by incorporation-by-reference or otherwise as appropriate.

(D) Wherever used, the terms “Contract” and “Contractor” shall mean this Order (or subcontract, Purchase Order, or agreement) and Seller (including Seller as Bidder or Offeror), respectively. The terms “Government,” “Contracting Officer,” and equivalent phrases shall mean Buyer except where further clarified or modified and except that the clauses identified by \* shall have their original meaning as written in the FAR, and when identified by \*\* shall not only have their original meaning as written in the FAR, but also shall mean Buyer. “Subcontractor,” however, shall mean “Seller’s Subcontractor.”

#### **I. FAR Clauses**

**52.203-14 Display of Hotline Posters (6/2020)**

**52.204-16 Commercial and Government Entity Code Reporting (8/2020)**

**52.204-18 Commercial and Government Entity Code Reporting Maintenance (8/2020)**

**52.204-21 Basic Safeguarding of Covered Contractor Information Systems (6/2016)**  
(Applicable in all subcontracts, including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items, in which the subcontractor may have Federal contract information residing in or transiting through its information system. When applicable, the language of this clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)

**52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (8/2020)**  
(The Seller shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunication equipment or services”).

By accepting this Purchase Order, Seller represents that it DOES NOT use covered telecommunications equipment or services, or use any equipment system, or service that uses covered telecommunications equipment or services, AND, WILL NOT provide covered telecommunications equipment or services to GD-OTS and/or the U.S. Government in the performance of this contract, subcontract, or other contractual instrument.

If the Seller does use covered telecommunications equipment or services OR will provide covered telecommunication equipment or services, then disclosure must be made through GD-OTS per 52.204-24(e.)

- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment** (8/2020) (The language of this clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)
- 52.204-26 Covered Telecommunications Equipment or Services-Representation** (12/2019) (By accepting this Purchase Order, Seller represents it does not provide covered telecommunications equipment or services as a part of its offered products or services to GD-OTS or the U.S. Government in the performance of any contract, subcontract, or other contractual instrument.)
- 52.209-7 Information Regarding Responsibility Matters** (10/2018) (Applicable in subcontracts greater than \$550,000. When applicable, and if the Seller has current active Federal contracts and grants with a total value greater than \$10,000,000, the Offeror, by acceptance of a Purchase Order, agrees to comply with the requirements of this FAR clause.)
- 52.209-12 Certification Regarding Tax Matters** (12/2016) (Applicable in subcontracts exceeding \$5,000,000. When applicable, by acceptance of a Purchase Order, Offeror certifies that it has filed all Federal tax returns required during the three years preceding award, that it has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and that it has not, no more than 90 days prior to award, been notified of any unpaid Federal tax assessments for which the liability remains unsatisfied.)
- 52.219-8 Utilization of Small Business Concerns.** (10/2018), (Applicable only if this Order offers further subcontracting opportunities)
- 52.222-56 Certification Regarding Trafficking in Persons Compliance Plan** (5/2015)
- 52.222-50 Combating Trafficking In Persons** (10/2020) Paragraph (h) of this clause is applicable to portions of the subcontract that are for supplier, other than commercially off-the-shelf items, acquired outside of the United States, or services to be performed outside the United States; and has an estimated value that exceeds \$550,000. If paragraph (h) is applicable, the Seller shall submit a certification to the Buyer prior to award of the subcontract and annually thereafter. Certification shall cover the items listed in paragraph (h)(5) of this clause.
- 52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States** (5/2020) (Applicable in all subcontracts that require personnel to perform outside the United States (1) in a designated operational area during contingency operations, humanitarian or peacekeeping operations, or other military operations, or (2) when supporting a diplomatic or consular mission. When applicable, the clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)
- 52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran – Representation and Certifications** (6/2020)
- 52.227-14 Rights in Data – General** (5/2014)
- 52.229-11 Tax on Certain Foreign Procurements – Notice and Representation** (6/2020) (Applicability is defined in FAR 29.402-3(a). When applicable, by Offerors acceptance of a Purchase Order, Offeror certifies that it is not a foreign person. If the Offeror is a foreign person and exemptions under this clause do not apply, FAR 52.229-12 will then apply, the Offeror shall submit the IRS form W-14, and the Offeror will be subject to withholding in accordance with clause 52.229-12.)
- 52.232-40 Providing Accelerated Payments to Small Business Subcontractors** (12/2013) (Applicable if Buyer receives accelerated payments from the U.S. Government. When

applicable, the clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)

**52.244-6 Subcontracts for Commercial Items (6/2020)** (This clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)

## II. DFARS Clauses

**252.203-7002 Requirement to Inform Employees of Whistleblower Rights (9/2013)** (This clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)

**252.203-7004 Display of Hotline Posters (8/2019)**

**252.204-7004 Antiterrorism Awareness Training for Contractors (2/2019)** (Applicable in subcontracts, including subcontracts for commercial items, when subcontractor performance requires physical access to a Federally-controlled facility or military installation. When applicable, this clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)

**252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (12/2019)** (Applicable in subcontracts for operationally critical support or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. When applicable, this clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)

SUBCONTRACTORS NOT COMPLIANT WITH DFARS 252.204-7012 SHALL NOT STORE, SEND, RECEIVE OR CREATE ANY COVERED DEFENSE INFORMATION (CDI) OR CONTROLLED UNCLASSIFIED INFORMATION (CUI) ON SUBCONTRACTOR'S COVERED INFORMATION SYSTEMS INCLUDING DIGITAL PHOTOGRAPHS OR COPIES. SUBCONTRACTORS SHALL REPORT ANY BREACH OF DFARS REQUIREMENT TO BUYER WITHIN TWENTY-FOUR (24) HOURS OF ANY BREACH OR POTENTIAL BREACH OF THIS PROTOCOL.

Subcontractor must notify Contractor when submitting a request to vary from a NIST SP 800-171 security requirement, in accordance with paragraph (b)(2)(ii)(B) of this clause.

Subcontractor must provide the incident report number, automatically assigned by DoD, to the Contractor as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause

**252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (12/2019)**

**252.204-7019 Notice of NIST SP 800-171 DoD Assessment Requirements** (Applicable for any subcontractor that has access to, processes, stores, or transmits Controlled Unclassified Information, CUI. This clause must be flowed down to all subcontractors at all tiers)

**252.204-7020 NIST SP 800-171 Assessment Requirements** (Applicable for any subcontractor that has access to, processes, stores, or transmits Controlled Unclassified Information, CUI. This clause must be flowed down to all subcontractors at all tiers)

- 252.204-7021 Cybersecurity Maturity Model Certification Requirements**  
(Applicable for any subcontractor that has access to, processes, stores, or transmits Controlled Unclassified Information, CUI. This clause must be flowed down to all subcontractors at all tiers)
- 252.209-7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism. (5/2019.)**
- 252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (10/2015)** (Applicable when subcontractor personnel are supporting U.S. Armed Forces deployed outside of the United States in (1) Contingency Operations; (2) Peace operations consistent with Joint Publication 3-07.3; or (3) Other military operations or military exercises, when designated by Combatant Commander or as directed by the Secretary of Defense. When applicable, this clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (6/2013)** (This clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)
- 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (8/2016)**  
(Applicable in purchases for electronic parts or assemblies containing electronic items. When applicable, this clause, in its entirety, is hereby flowed down as if the language of the clause is contained within this document.)

### **III. ADDITIONAL FAR/DFARS CLAUSES**

GD-OTS reserves the right to add FAR/DFARS clauses and other contract terms in Section III of the subject Terms and Conditions in addition to any special provisions that may be required to be flowed down from its customer.