


AS9100 Rev D ISO 9001:2015  	<b>General Provisions</b>	Control Number: <b>KT-FRM-9011</b>
		Revision: C
		Effective Date: <b>1/27/2020</b>
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## GENERAL PROVISIONS

This is an Agreement between KORD TECHNOLOGIES, LLC, hereafter referred to as "Kord Technologies" or "Buyer" and Seller identified on the face of this Agreement, hereafter referred to as "Seller." This Agreement is referred to as "Agreement" or "Purchase Order."

### Formation of Contract and Terms and Conditions

(a) This Contract is Buyer's offer to Seller. Seller's signature on the Contract, acknowledgment, acceptance of payment, or Commencement of performance shall constitute Seller's unqualified acceptance of this Contract. Seller's acceptance of this Contract creates a binding Contract between Buyer and Seller, which shall be governed by the provisions of this Agreement.

(b) This Agreement integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.

### 1. ACCEPTANCE OF TERMS.

This Order is expressly conditioned on Seller's acceptance of all the terms and conditions set forth herein. Seller may accept this Order by signing the acknowledgment copy hereof and returning to Kord Technologies or by commencing performance. Kord Technologies expressly objects to any additions, deletions or differences in the terms or conditions in Seller's quotation, proposal or acknowledgment (whether or not such additions, deletions or differences materially alter this Order). No change, modification or revision of this Order shall be valid unless agreed to in writing by Kord Technologies.

Any proposal for additional or different terms or any attempt by Seller to vary, in any degree, any of terms in this offer in Seller's acceptance or acknowledgement shall not operate as a rejection of this offer, and this offer shall be deemed accepted by the Seller without said additional or different terms. Seller shall notify the Buyer in the event of nonconforming processes, products or services prior or after delivery and obtain Buyers' approval for their disposition. Seller shall notify the Buyer of changes to processes, products or services, including changes to external providers or location of manufacture, if relevant, and obtain Buyer's approval.

**2. PACKING AND SHIPPING.** The products delivered hereunder are to be F.O.B. to the location designated on the face of this Order and packed to comply with any specific transportation specifications of Kord Technologies, and in all cases, to comply with carrier's regulations. Charges for preparation for shipment (including packing and crating) and freight charges are included in the price for the products set forth herein. An itemized Packing List shall accompany each shipment. Kord Technologies' count, weight or other measure shall be final and conclusive on all shipments not accompanied by a Packing List. Kord Technologies shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.

**3. DELIVERY.** Time is of the essence in the performance of this Order and if delivery of items is not made in the quantities and at the times specified, Kord Technologies reserves the right, without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (a) direct expedited routing of items, with any difference in cost caused by such change to be paid by Seller; and/or (b) terminate this Order by notice as to stated items not yet shipped. Seller shall promptly advise Kord Technologies of any delay or anticipated delay in delivery or performance of this Order. Delivery shall not be deemed to be completed until products have been actually received and accepted by Kord Technologies, notwithstanding delivery to any carrier. Seller shall bear the risk of loss of, or damage to, the products covered by this Order until, delivered to the location designated on the face of this Order and accepted by Kord Technologies

**4. INSPECTION and TESTS.** All products purchased and services hereunder shall be subject to inspection and test by Kord Technologies at all reasonable times and places, whether during or after manufacture, and notwithstanding the terms of delivery or payment, or that title has not yet passed to Kord Technologies or its customers, and in any event, prior to final acceptance. No inspection made prior to final acceptance shall relieve Seller from responsibility for defects or other failure

to meet the requirements of this Order. In the event the products are not in accordance with Kord Technologies' specifications and instructions, Kord Technologies may require Seller to promptly correct, repair or replace the nonconforming products, at Kord Technologies' option and Seller's sole expense. Kord Technologies' approval of designs furnished by Seller shall not relieve Seller of its obligations hereunder.

**5. PAYMENT.** Invoices shall include the following information: order number, item number, description of articles, sizes, quantities, unit prices and extended totals. Error free invoices submitted hereunder will be paid Net 10 days after receipt of payment from the customer and after acceptance of delivered items by Kord Technologies. Any adjustments in Seller's invoices due to shortages, late delivery, rejections or other failure to comply with the requirements of this Order may be made by Kord Technologies before payment. Payment shall not constitute final acceptance. Kord Technologies may offset against any payment hereunder any amount owed to Kord Technologies by Seller.

Invoices should be submitted to [ap@kordtechnologies.com](mailto:ap@kordtechnologies.com) between the fifth but no later than the tenth of the month or as otherwise stated within the Agreement.

**6. INTERCHANGEABILITY.** All items furnished pursuant to this Order under the part number specified shall be fully interchangeable with, and equal in function and quality to, items heretofore furnished under the same part number.

**7. CHANGES.** Kord Technologies may, by written notice to Seller at any time, make changes to any one or more of the following: (a) drawings, designs, specifications or statement of work; (b) quantity or delivery schedules or both; (c) method of shipment or packing; and (d) place of inspection, acceptance, or point of delivery, and/or time of delivery (e) amount of Buyer-furnished property; (f) and if agreement includes services; (g) description of services to be performed; and (h) quantity of services (i.e., hours to be worked). Seller shall comply immediately with such direction. For any reason, Kord Technologies may also direct Seller to suspend, in whole or in part, delivery of products hereunder for such period of time as may be determined by Kord Technologies to be necessary or desirable. If any such change or suspension causes an increase or decrease in the cost of, or the time required for, the performance hereunder, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Any claim for adjustment by Seller shall be deemed waived unless asserted in writing within twenty (20) days from the receipt by Seller of the change. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this Order. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

**8. WARRANTY.** In addition to Seller's standard warranty, Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. If Seller knows or has reason to know the particular purpose for which Kord Technologies intends to use the products, Seller warrants that such products shall be fit for such particular purpose. Seller further warrants that it has title to the products. All warranties shall survive inspection, test and acceptance of, and payment for, the Work. All warranties shall run to Buyer and its successors, assigns, and customers. The warranty shall extend for a period of one (1) year after Buyer's final acceptance unless a different period is set forth elsewhere in this Contract. If any nonconformity of the Work appears within that time, Seller shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work, return of nonconforming Work, and repeat performance of Work shall be at Seller's expense. Work required to be corrected or replaced shall be subject to this provision and the Inspection and Acceptance provision of this Contract in the same manner and to the same extent as Work originally delivered under this Contract.

**9. INDEMNIFICATION.** The Seller hereby agrees to indemnify, defend and hold harmless the Buyer and its officers, agents and employees from and against all claims, including third party claims, liability, loss, costs, damage or expenses, fines, amounts paid in settlement, and reasonable legal fees and expenses (collectively "Claims"), arising out of or related to any of the following: (i) Seller's breach of this Agreement; (ii) the negligence, bad faith, intentional or willful misconduct of Seller or Seller's subcontractors or their respective employees or other representatives; or (iii) bodily injury, death or damage to personal property arising out of or relating to Seller's performance under this Agreement.

**10. DISPUTES.** Any controversy, claim or dispute ("Dispute") arising out of or relating to this Order shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Before commencing any such arbitration, the parties agree to enter into negotiations to resolve the Dispute. If the parties are unable to resolve the Dispute by good faith negotiation, either party may refer the matter to arbitration. The arbitration shall take place in Alabama. The arbitrator shall be bound to follow the provisions of this Order in resolving the Dispute, and may not award punitive damages or any damages excluded by this Order. The decision of the arbitrator shall

be final and binding on the parties, and any award of the arbitrator may be entered or enforced in any court of competent jurisdiction.

**11. SUBCONTRACTS AND ASSIGNMENTS.** Seller is an independent contractor and nothing contained in this Order shall be deemed or construed to create a partnership, joint venture, agency or other relationship other than that of supplier and customer. Seller agrees to obtain Kord Technologies' approval before subcontracting this Order or any portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Seller agrees that all applicable requirements that are invoked or applied to the customer's purchasing document shall be flowed down to the Seller's sub-tier suppliers. Further, this Order shall not be assigned or delegated by Seller without the prior written consent of Kord Technologies. It is further agreed that both parties are strictly prohibited from directly soliciting employees of the other party throughout the duration of this agreement and are restricted from the hiring of employees from the other party for a period of 1 year after the close out of this agreement. This in no way prohibits an employee from seeking employment through normal means of advertisement.

**12. TAXES.** The price(s) set forth herein shall exclude all applicable Federal, State and local taxes, as well as duties, tariffs, and similar fees imposed by any government, all of which shall be billed separately on the invoice. Prices shall not include any taxes, impositions, charges, or exaction for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

**13. PUBLICITY AND DISCLOSURE.** Seller shall not use the name or logo of Kord Technologies or Kord Technologies' customer in any news release, public announcement, advertisement, or other form of publicity, or disclose any of the terms or subject matter of this Order to any third party except as may be required to perform this Order, without securing the prior written consent of Kord Technologies.

**14. CONFLICT OF INTEREST.** Seller shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with Kord Technologies or Kord Technologies' customer's best interests in connection with this Order. This obligation shall apply to the activities of Seller's employees and agents in their relations with Kord Technologies' employees, their families, vendors and third parties arising from this Order and accomplishing work hereunder. Seller's efforts shall include, but shall not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations for any purpose whatsoever.

**15. NON-WAIVER OF RIGHTS.** The failure of Kord Technologies to insist upon strict performance of any of the terms and conditions in this Order or to exercise any rights or remedies shall not be construed as a waiver of its rights to assert any of same or to rely on any such terms or conditions at any time thereafter. Acceptance and/or payment of any part of the Order shall not bind Kord Technologies to accept future shipments nor deprive Kord Technologies of the right to return products already accepted or for which Kord Technologies has made payment. Acceptance or payment shall not be deemed to be a waiver of Kord Technologies' right to cancel or return all or any part of the products because of failure to conform to the Order or by reason of defects, whether latent or patent, or other breach of warranty, or to make any claim for damages of any and all kind.

**16. REMEDIES.** Any rights and remedies specified under this Order shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law or equity.

**17. GOVERNING LAW.** This Order shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict or choice of law provisions.

**18. ENTIRE AGREEMENT.** This Order, including all documents incorporated herein by reference, shall constitute the entire agreement and understanding between the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.

**19. INSURANCE (SERVICES ONLY).**

(a) In accordance with subpart (b) below, upon Kord Technologies' request, Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverage are in force and providing not less than thirty days' notice prior

to any cancellation or restrictive modification of the policies. Further, the required insurance coverage below shall be primary and non-contributing with respect to any other insurance that may be maintained by Kord Technologies. The below required coverage and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

(b) Seller agrees to purchase and maintain at its own expense the following insurance coverage with minimum limits as stated:

(i) Statutory Workers' Compensation and Employers' Liability in an amount no less than \$1 million per occurrence covering its employees, including a waiver of subrogation obtained from the carrier in favor of Kord Technologies

(ii) Commercial General Liability in an amount no less than \$1 million per each occurrence and \$2 million in the aggregate covering bodily injury, broad form property damage, personal injury, products and completed operations, contractual liability, and independent contractors' liability. Kord Technologies, its officers and employees shall be included as Additional Insured and a waiver of subrogation shall be obtained from the carrier in favor of Kord Technologies

(iii) Automobile Liability in an amount no less than \$1 million combined single limit for bodily Injury covering use of all owned, non-owned, and hired vehicles. Kord Technologies, its officers and employees shall be included as Additional Insured on the policy.

(iv) Professional Liability if seller is performing any professional services, coverage for damages (including financial loss) caused by any acts, errors and omissions arising out of Seller's performance of professional services with limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate.

**20. EQUAL EMPLOYMENT OPPORTUNITY.** Kord Technologies is an Equal Opportunity Employer. When a job vacancy is filled, every good faith effort is made to provide equal employment opportunity (EEO) for all employees or applicants without regard to race, color, religion, gender, age, handicap, disability, national origin, or veteran status or any other protected classification under federal, state, or local law. This policy extends to all suppliers and potential suppliers with Kord Technologies and to all aspects of the contractual relationship with existing suppliers. All Kord Technologies suppliers are expected to cooperate with the equal employment opportunity policy. Those suppliers responsible for personnel and employment practices will keep the goals in mind of furthering and implementing the principles of equal employment opportunity. Procurement Agreements will be periodically reviewed to insure compliance with these principles. Where there may be a conflict or variance, the provisions of the Equal Employment Opportunity Policy as set forth above take precedence over any provisions of other company policies and procedures which may be in effect. Where there may be a conflict or variance with state or local regulations, the pertinent regulation will take precedence.

This contractor and subcontractor shall abide by the requirements of 41 CFR subsection 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

## **21. TERMINATION.**

### **(1) Termination for Convenience**

Kord Technologies may, in accordance with FAR 52-249, terminate performance of work under this agreement in whole, or in part if Kord Technologies determines that the termination is in the best interest of Kord Technologies. Kord Technologies shall terminate by delivering to the Seller a Notice of Termination specifying the extent of termination and the effective date. Upon termination, Seller shall be entitled to reasonable termination charges consisting of a percentage of the purchase order price reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expenses. Any termination costs will be proposed and negotiated by the parties.

### **(2) Termination for Default**

Kord Technologies may, by written notice of default to the Seller, terminate this agreement in whole or in part if the Seller fails to—

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this agreement (but see paragraph (a) (2) of this clause); or

(iii) Perform any of the other provisions of this agreement (but see paragraph (a) (2) of this clause).

(a) Kord Technologies assumes the right to terminate this agreement under subdivision (2) of this clause, if Seller does not cure such failure within 10 days (or more if authorized in writing by the Kord Technologies Contracts Manager) after receipt of the notice from the Kord Technologies Contracts Manager specifying the failure.

(b) Intentionally omitted.

(c) Seller shall not be liable for any excess costs if the failure to perform the agreement arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the purchased supplies or services were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.

(e) If this agreement is terminated for default, Kord Technologies may require the Contractor to transfer title and deliver to Kord Technologies, as directed by the Kord Technologies Contracts Manager, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this agreement. Upon direction of the Kord Technologies Contracts Manager, the Seller shall also protect and preserve property in its possession in which Kord Technologies has an interest.

## **22. FAR 52.244-6 – SUBCONTRACTS FOR COMMERCIAL ITEMS.**

As prescribed in FAR 44.403, insert the following clause:

Subcontracts for Commercial Items (Jul 2013)

(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-development items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d) (2) and (3)), if the subcontract offers further subcontracting opportunities, If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million 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 (Mar 2007) (E.O. 11246)

(v) 52.222-35, Equal Opportunity for Veterans (Jul 2014) (38 U.S.C. 4212(a));

(vi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. 7104(g)).

(ix) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(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), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

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.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract. (End of clause)



**23. COMMUNICATION with Buyer CUSTOMER.**

Buyer shall be solely responsible for all liaison and coordination with the Buyer customer, including the U.S. Government, as it affects the applicable prime contract, this Contract, and any related contract.

**24. COMPLIANCE WITH LAWS.**

Seller agrees to comply fully with all applicable laws, ordinances, rules, regulations, and orders of all foreign nations (or governments subdivision thereof) and all applicable domestic (United States of America) federal, state, and local laws, ordinances, rules, regulations, and orders pertaining to the production and sale of the products or services ordered, and, upon request, Seller shall furnish Buyer certificates of compliance. These laws shall include, without limitation, the following: The Fair Labor Standards Act of 1938, as amended; Federal and State OSHA requirements; the equal opportunity clause in §202 of Executive Order #11246 as amended; Veterans Employment and Readjustment Act of 1972 (amending the Vietnam Era Veterans Readjustment Assistance Act of 1972); the rules and regulations of the Office of Federal Contract Compliance; §503 of the Rehabilitation Act, Toxic Substances Control and The Federal Hazardous Substances Act. With specific references to the Toxic Substances Control Act, Seller warrants that each chemical substance delivered under this order shall be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to §8 of the Toxic Substances Act. If this order is placed, directly or indirectly, under a contract to which the United States or any state or other government authority is a party, then all terms and conditions required by law or regulation or contained in the government contract with respect to this order are incorporated herein by reference. Seller expressly agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products from any costs, losses, expenses, damages, claims, suits, fines, penalties, or any liability whatsoever, including attorney's fees, resulting from the failure of Seller to comply, in the furnishing of products or services under this order, with all applicable foreign or domestic federal, state, or local laws, ordinances, rules, regulations, or orders as set out hereinabove.

**25. CONFIDENTIALITY.**

Information provided by Buyer to Seller remains the property of Buyer. Seller agrees to comply with the terms of any confidential disclosure agreement with Buyer and to comply with all proprietary information markings and restrictive legends applied by Buyer to anything provided hereunder to Seller. Seller agrees not to use any Buyer-provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of Buyer.

**26. CONTRACT DIRECTION.**

Only the Buyer Procurement Representative has authority to amend this Contract. Such amendments must be in writing.

Buyer engineering and technical personnel may render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change or modification under the Changes clause of this Contract and shall not be the basis for equitable adjustment.

Action or direction by any Buyer customer shall not be deemed to be a change under the Changes clause of this Contract and shall not be the basis for equitable adjustment.

Except as otherwise provided herein; all notices to be furnished by the Seller shall be sent to the Buyer Contracts or Procurement Representative.

**27. DEFINITION.**

The following terms shall have the meanings set forth below:

"Contract" means the instrument of contracting (e.g. PO, Purchase Order, or other such designation), including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term "Contract" shall also mean the release document for the Work to be performed.

"FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of the Federal Regulations.

"Buyer" means Company.

"Buyer Procurement Representative" means the person authorized by Buyer's cognizant procurement organization to

administer this Contract.

“PO” or “Purchase Order” as used in any document constituting a part of this Contract shall mean this Contract.

“Seller” means the Party identified on the title page of the Contract, with whom Buyer is contracting.

“Work” means all required articles, materials, supplies, products, and services constituting the subject matter of this Contract.

## **28. EQUIPMENT, BUYER'S PROPERTY.**

All equipment, tools, materials, vehicles, and/or other articles required for Seller's performance of this order shall be furnished by Seller, maintained in good condition, and replaced when necessary at Seller's expense. Title to and a right of immediate possession of any property of any nature whatsoever furnished or paid for by Buyer shall remain in Buyer's possession.

## **29. EXPORT CONTROL.**

Seller agrees to comply fully with all applicable U.S. export control laws and regulations as they may apply to any hardware, software, information, or direct product of such information furnished Seller under this Contract. Seller agrees that it will not permit the re-export of any the above—including to foreign nationals employed by, associated with, or under contract to Seller or Seller's lower-tier suppliers—without the authority of an Export License or applicable License Exception.

Seller agrees to notify Buyer if export control laws or regulations restrict any deliverable Work under this Contract.

Seller shall immediately notify the Buyer Procurement Representative if Seller is listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. At Buyer's request, Seller will provide Buyer with all data Buyer may need to apply for and obtain an Export License or applicable License Exception.

## **30. FORCE MAJEURE.**

In the event of fire, accidents, abnormal weather conditions, acts, strikes or other labor disputes, Acts of God, war, riots, and other civil disturbances, or any other conditions beyond either party's reasonable control which prevent manufacture, transportation, delivery, acceptance, or Buyer's prompt utilization of the products or services covered by this order, the affected party may, without any liability or penalty, delay delivery, manufacture, transportation, acceptance, or utilization by written notice effective when received by the other party until such event and the consequences of such event of force majeure have terminated. Said notice of an event of force majeure shall cause the reason for any delay which the notifying party considers to be an event of force majeure under the provisions of this paragraph. An event of force majeure shall not include events within the total or partial control of the party giving notice, including, but not limited to, poor business judgment or estimates, material or labor shortages, or unanticipated engineering or technical difficulties. To be excused from performance under this clause, the affected party shall submit, within ten (10) calendar days of the start of the qualifying event, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the party's control.

## **31. FURNISHED PROPERTY.**

Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

Buyer or its customer shall retain title to Furnished Property. Seller shall clearly mark (if not already marked) all Furnished Property to show ownership.

Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage of Furnished Property while in Seller's possession, custody, or control. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall promptly notify Buyer of any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

## **32. INTELLECTUAL PROPERTY.**

- (a) All of Seller's Intellectual Property rights shall be governed by the Data Assertion Rights Agreement and any required prime flow down clauses as applicable to any resultant Purchase Order.
- (b) If Seller and Buyer agree that performance under this Contract requires the provision or use of any proprietary programs of Seller or of Seller's suppliers then, absent agreement of Buyer and Seller to the contrary, Seller shall specifically identify such proprietary programs to Buyer and shall grant to Buyer a limited license to use, such proprietary programs in connection with any products sold hereunder. Upon request by Buyer, Seller shall provide all documentation supporting such licensing rights, including copies of licenses granted by Seller's suppliers to Seller. Seller shall defend and hold Buyer harmless from any and all claims arising in whole or in part from Seller's failure to comply with this section.
- (c) Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify, and hold harmless Buyer and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based on a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- (d) Unless otherwise specified in this Contract, commercial off-the-shelf software delivered hereunder shall be the most recent revision issued by Seller. If Seller issues a new version within 120 days after delivery to Buyer, Seller shall provide to Buyer at no additional charge a usable copy of the new version and an equivalent license.

### **33. LANGUAGE and STANDARDS.**

All reports, correspondence, drawings, notices, markings, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing, all documentation and Work shall use the units of U.S. standard weights and measures.

### **34. LIMITATION OF FUNDS.**

(Applicable if this Contract is incrementally funded.)

- (a) The Parties estimate that performance of this Contract will not cost Buyer more than the estimated cost specified in the Schedule. The Seller agrees to use its best efforts to perform the Work specified in the Schedule and all obligations under this Contract within the estimated cost.
- (b) The Schedule specifies the amount presently available for payment by Buyer and allotted to this Contract, the items covered, and the period of performance that the allotted amount is estimated to cover. The Parties contemplate that Buyer will, from time to time; allot additional funds to the Contract up to the full estimated cost specified in the Schedule, inclusive of any fee. The Seller agrees to perform, or have performed, Work on the Contract up to the point at which the total amount, including fee, paid and payable by Buyer under the Contract approximates but does not exceed the total amount actually allotted by Buyer to the Contract.
- (c) The Seller shall notify Buyer in writing whenever it has reason to believe that the costs it expects to incur under this Contract plus allocable fee in the next sixty (60) days, when added to all costs previously incurred and allocable fee, will exceed seventy-five percent (75%) of the total amount then allotted to the Contract. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.
- (d) Sixty (60) days before the end of the period specified in the Schedule, the Seller shall notify Buyer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Contract or for any further period specified in the Schedule or otherwise agreed upon and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Seller's written request, Buyer will terminate this Contract on that date in accordance with the provisions of the Termination clause of this Contract (FAR 52.249-6).

### **35. NEW MATERIALS.**

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, reconditioned, remanufactured, or of such age as to impair usefulness or safety).

Unless otherwise specified, all Work is to be packed in accordance with good commercial practice to prevent damage and deterioration during shipping, handling, and storage.

A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Company Agreement number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include the Agreement number.



### **36. PATENT AND INTELLECTUAL PROPERTY RIGHT INDEMNIFICATION.**

Seller shall indemnify and save harmless Buyer, its successors, assigns, customers or users of its products, or Buyer's officers, employees, and agents, from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including reasonable attorney's fees, resulting from any claim that the manufacture, use sale or resale of any products or services supplied under this order infringe any patent, copyright, trademark or other intellectual property rights; provided that Buyer provides seller with prompt notice of any claim, the Buyer tenders control of the defense of such claim and any related settlement discussions to the Seller, and Buyer reasonably cooperates with and assists the Seller in its efforts to defend the claim.

**37. PRECEDENCE** – Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Agreement or schedule or Purchase Order (which shall include continuation sheets and any data rights assertions made), as applicable, including any special terms and conditions and Government Prime Flow Down Clauses; (2) any master agreement, such as corporate or blanket agreement; (3) these General Provisions; and (4) Statement of Work.

### **38. PRIORITY RATING.**

If so identified, this Contract is a "rated order," certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

### **39. QUALITY MANAGEMENT SYSTEM.**

When the Agreement/Contract requires;

- (a) Seller shall provide and maintain a Quality Management System (QMS) to a recognized QMS standard for the Work covered by this Contract, e.g., ISO 9001:2015, AS9100:2016, etc.
- (b) Records of all QMS inspection or testing by Seller shall be kept complete and made available to Buyer and its customers during the performance of this Contract or for such longer periods if specified in the Purchase Order.
- (c) NonConformance Reporting (NCR): Nonconformance of products and services shall be reported to Buyer's Contracts Department within 48 hours of discovery. Seller shall ensure that the product or service which does not conform to purchase requirements is identified and controlled to prevent unintended use or delivery. NCR Data shall include: (1) a detailed description of the nonconformance and exact callout of the violation by specification; (2) Type of inspection that revealed the NC; and (3) Any subsequent actions taken prior to disclosure
- (d) Corrective Action: Seller shall implement containment action, investigate root cause and provide Seller with documentation of Corrective Action taken to prevent recurrence of delivery of NC product or services to Buyer.
- (e) Certificates of Conformance (CoC): Upon Buyer request, the Seller shall provide certification(s) with each deliverable submitted attesting that the products or services conform to the Order requirements. CoC shall include but are not limited to part number, name/address of manufacturer(s), quantity and unit of measure, proof of competency of personnel responsible for deliverable, and records used to determine acceptability prior to delivery.
- (f) Record Retention: Documented information related to products and services shall be retained by the Seller for a period not less than three (3) years from date of delivery.
- (g) Prevention of Counterfeit Parts: All materials shall be procured only through Original Equipment/Component Manufacturers (OEM/OCM) or their franchised distributors unless pre-approval is granted by Buyer. Seller's employees will report any suspect counterfeit parts immediately to supervision upon suspicion or discovery. Seller management will report counterfeit parts to Buyer immediately upon notification by employee, per paragraph 39.c above.
- (h) Statistical Techniques/Process Control: Seller shall identify statistical and process controls as directed by the Buyer and will establish and maintain documented information processes to support the controls.
- (i) Design and Development Control: Seller shall identify the requirements for design, test, inspection, verification, validation and techniques for product acceptance of critical items. Buyer reserves the right to designate requirements for test specimens in design approval, inspection/verification and acceptance.
- (j) Awareness of Personnel: Seller shall ensure that personnel employed and performing work under Seller's control are aware of (1) personal contribution to product and/or service conformity, (2) contribution to product/service safety and (3) the importance of ethical behavior. Personnel awareness includes the responsibility to report suspect or actual concerns or situations involving safety and ethical behavior.

### **40. RELEASE OF INFORMATION.**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller without the prior written approval of Buyer.

**41. SEVERABILITY.**

The terms and conditions of this order are severable, and if any terms and conditions or portions of any terms and conditions herein are stricken or declared illegal, invalid, or unenforceable for any reason whatsoever, the legality, validity, or enforceability of the remaining terms and conditions shall not be affected thereby.

**42. SOURCE SURVEILLANCE.**

In addition to inspections as otherwise provided in this Contract, and at no increase in Contract price, Buyer may assign product assurance Representatives to Seller's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability. Seller likewise shall reserve such right to Buyer with respect to Seller's lower-tier subcontractors. If such examination is made, Seller shall provide, and require its subcontractors to provide, such Representatives with reasonable facilities, equipment, and unescorted access (except in areas where proprietary processes or data are located, in which case access shall be on an escorted basis) to all areas essential to the proper conduct of the above described activity.

**43. STOP WORK ORDER.**

Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as the Parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage.

Within such period, Buyer shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment, in accordance with the principles of the Changes clause, shall be made to price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

**44. SURVIVABILITY.**

If this Contract is terminated for default or convenience, Seller shall not be relieved of those obligations contained in this Contract for the following provisions:

- (a) Applicable Laws, Clause, Confidentiality, Export Control, Insurance or Entry on Buyer Property, Intellectual Property, Release of Information, Warranty, and
- (b) Those U.S. Government flow down provisions that, by their nature, should survive.

**45. USE OF INFORMATION.**

Buyer will protect and not disclose any information which Seller considers to be confidential or proprietary, except for information: (a) which is already known to Buyer through Buyer's own development prior to Buyer's first receipt of information relating to Seller's development from Seller, (b) which is or generally becomes available to the public through no fault of Buyer, or (c) which is properly obtained from a third party who has the right to make such disclosure.

**46. MINIMUM LABOR QUALIFICATIONS.**

Seller shall ensure the individuals supporting this effort meet the minimum labor qualifications as required within the Prime Contract. To support this, Seller shall provide resumes' of all individuals proposed and certify to this when submitting billing requests by including the following language on all invoices:

Seller has reviewed the qualifications of the individuals whose labor costs are being invoiced hereunder and hereby certifies that all individuals meet the minimum labor category qualification requirements for the specific labor categories for which his or her work is being invoiced. I further certify that any Travel, Material, or Other Costs included in this invoice are for actual incurred expenses and full supporting documentation, including timesheets reflecting the labor categories and hours expended for the period being invoiced, are maintained for DCAA review and audit, and that all boxes checked certifies that the employee meets all labor category requirements

**Amendments Required by Prime Contract**

Contractor agrees that upon the request of Buyer it will negotiate in good faith with Buyer relative to amendments to this

Contract to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable prime contractor with the provisions of amendments to such prime contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

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