

## 1. Acceptance of Purchase Order

Agreement by Seller to furnish the materials, products or services hereby ordered, or its commencement of such performance, or acceptance of any payment, shall constitute acceptance by Seller of the Purchase Order subject to these terms and conditions. In the event that the Purchase Order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. These Standard Terms and Conditions, together with any referenced exhibits, attachments or other documents appended hereto, constitute the entire agreement between the parties with respect to the subject matter of the Purchase Order and supersede any prior or contemporaneous written or oral agreements pertaining thereto.

## 2. Definitions

Words used in the Purchase Order shall have their normally accepted meanings unless otherwise specifically defined in the Purchase Order.

(a) "Buyer" shall mean Millennium Space Systems, Inc. in the Purchase Order.

(b) "Seller" shall mean the party identified as the Seller in the Purchase Order.

(c) "Purchase Order" shall mean the Purchase Order, Subcontract or Contract, these Standard Terms and Conditions, and any special conditions appended hereto or documents incorporated herein.

(d) "Work" shall mean the goods and/or services identified and defined in the Purchase Order, which may be changed, from time to time by the mutual written agreement of the parties.

(e) "Customer" shall mean Buyer's customer(s) and shall include Buyer's direct and indirect customers such as direct sale end-users, higher-tier subcontractors, prime contractors and the ultimate user under relevant prime contract(s).

## 3. Shipping Instructions

(a) Seller shall be responsible for ensuring the proper packaging of materials hereunder. No charges will be allowed for packing, crating, freight, local cartage and/or any other services unless so specified in the Purchase Order. A packing list shall accompany each shipment of goods.

(b) Seller shall at all times comply with Buyer's written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. Seller shall submit all required shipping papers to Buyer prior to final payment.

(c) For material purchased FOB origin (to mean "F.O.B. the place of shipment" pursuant to UCC §2-319(1)(a)), Seller shall bear the risk of loss of, or damage to, the goods until the goods are put into the possession of the carrier designated by Buyer. Seller shall not insure and not declare a value except when

transportation rates are based on "released value," in which instance the Seller shall annotate on the bill of lading the lowest released value provided in applicable tariffs.

(d) For material purchased FOB destination (to mean "F.O.B. the place of destination" pursuant to UCC §2-319(1)(b)), Seller shall bear the expense of transport of, and risk of loss or damage to, the goods to the named destination.

(e) Purchase Order number(s) must be included on all correspondence, shipping labels and shipping documents, including all packing sheets, bills of lading, airbills and invoices. In addition, Seller will include the name of the transportation company, the tracking receipt number and the transportation company's website for tracking purposes.

## 4. Delivery; Notice of Delay

(a) Time is of the essence and failure to deliver in accordance with the delivery schedule under the Purchase Order, if unexcused, shall be considered a material breach of the Purchase Order. No acts of Buyer, including without limitation modifications of the Purchase Order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's orders or in advance of required schedules, and/or to defer payment on advance deliveries until scheduled delivery dates.

(b) Seller shall immediately notify Buyer in writing of any actual or potential delay to the performance of the Purchase Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies hereunder.

## 5. Termination for Convenience

(a) Buyer may, by notice to Seller in writing, terminate the Purchase Order or Work under the Purchase Order for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, Seller is not excused from performance of the non-terminated portion of Work under the Purchase Order.

(b) In the event of termination for convenience by Buyer, Seller shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit for Work performed up to the date of termination. In no event shall Buyer be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Purchase Order value. Any termination settlement proposal shall be submitted to Buyer promptly, but no later than ninety (90) days from the effective date of the termination. Buyer may take immediate possession of all Work performed upon written notice of termination to Seller.

## 6. Termination for Default

(a) Buyer may, by notice to Seller in writing, terminate the Purchase Order in whole or in part at any time for Seller's breach of any one or more of its terms hereunder, failure to make progress so as to endanger performance of the Purchase Order, failure to provide adequate assurance of future performance or in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors. In the event of partial termination under this Article 6, Seller is not excused from performance of the non-terminated portion of Work under the Purchase Order.

(b) In the event of Seller's default under this Article 6, Buyer may exercise any or all rights accruing to it, both at law and in equity, including without limitation the immediate transfer of title and delivery to Buyer of any partial goods and raw material, parts, tools, information and the like, which Seller has produced or acquired under the terms of the Purchase Order, including the assignment to Buyer of Seller's subcontracts. In addition, Seller hereby grants to Buyer a perpetual, worldwide, unconditional, transferable, fully paid up, royalty-free license to use and exploit all of Seller's Intellectual Property (as defined in Article 32) that is necessary for the performance of the terminated portion of the Purchase Order, solely to make, or have made, use, maintain and sell the Work.

(c) In the event of Seller's default under this Article 6, Seller is liable to Buyer for any excess repurchase costs incurred in acquiring goods and/or services similar to those terminated for default, and for any other damages, whether or not repurchase is affected.

## 7. Force Majeure

Except for defaults of Seller's subcontractors at any tier, Seller shall not be liable for excess re-procurement costs pursuant to the "Termination for Default" Article of the Purchase Order incurred by Buyer because of any failure to perform due to any cause beyond Seller's reasonable control and without Seller fault or negligence. Likewise, Buyer shall not be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity (including without limitation curfews mandated by local, state or federal entities), fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In the event that performance of the Purchase Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the party whose performance is so affected shall so notify the other party's authorized representative in writing within ten (10) days after the beginning of any such cause(s) and, at Buyer's option, the Purchase Order shall be completed with such adjustments as are reasonably required by the existence of Force Majeure or the Purchase Order may be terminated for convenience.

## 8. Disputes and Governing Law

(a) Pending resolution or settlement of any dispute arising under the Purchase Order, Seller will proceed diligently as directed by Buyer with the performance of the Purchase Order.

(b) The Purchase Order shall be governed by and subject to the laws of the State of Delaware without reference to the conflicts of law principles thereof. Notwithstanding the foregoing, in the event any provision of the Purchase Order is incorporated in full text or by reference from the Federal Acquisition Regulation (FAR), or from any agency regulation that implements or supplements the FAR, or that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals and quasi-judicial agencies of the federal Government. This contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

(c) Seller: (i) consents to the jurisdiction of the courts of the State of Delaware and the courts of the United States located in the State of Delaware, in connection with any lawsuit, action or proceeding arising out of or relating to the Purchase Order; (ii) waives any objection that it might now or hereafter have to the venue of any such lawsuit, action or proceeding; (iii) irrevocably submits to the jurisdiction of any such court in any such lawsuit, action or proceeding; and (iv) waives any claim or defense of inconvenient forum.

(d) Buyer and Seller shall each bear its own costs of processing any dispute hereunder. In no event shall Seller acquire any direct claim or direct course of action against the U.S. Government. The rights and remedies of Buyer are cumulative and in addition to any other rights and remedies provided by law or in equity.

## 9. Remedies; No Waiver

(a) Except as otherwise provided herein, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory or threatened breach of the Purchase Order by Seller with respect to its delivery of the Work to Buyer.

(b) Notwithstanding anything to the contrary hereunder, in the event Buyer brings an action or asserts a counterclaim for enforcement of the terms and conditions of the Purchase Order, Seller agrees that Buyer shall be entitled to an award of its reasonable attorneys' fees and court costs associated with any such enforcement or counterclaim proceedings. Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or

may have arising out of the Purchase Order or other transactions between Buyer and Seller.

## 10. Confidentiality

Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Seller by Buyer are proprietary to Buyer ("Proprietary Information"), shall be used only for purposes of providing goods or services to Buyer pursuant to the Purchase Order and shall not be disclosed to any third party without Buyer's express written consent. Seller shall exercise the same degree of care over any Proprietary Information that Seller uses for its own confidential information, but not less than reasonable care. Further, Seller shall not reverse engineer, decompile or disassemble any software or hardware provided hereunder to obtain Proprietary Information, nor remove or alter any copyright or confidentiality markings, nor file a patent application using them. All Proprietary Information shall be promptly provided to Buyer on request or upon completion of the Purchase Order. Notwithstanding the above, Seller may disclose Proprietary Information in response to a subpoena or court order duly issued in a judicial or legislative process, provided that Seller shall (unless prohibited by law) give Buyer prompt written notice and sufficient opportunity to object to such disclosure, or to request confidential treatment. Seller may provide Proprietary Information to its subcontractors as required in connection with the Purchase Order, provided each such subcontractor first agrees in writing to substantially the same obligations imposed upon Seller under this Article 10. Seller's nonuse and nondisclosure obligations do not apply to Proprietary Information that Seller can establish by written records to have been: (i) public knowledge at the time of such disclosure by Buyer to Seller, and not as a result of wrongful acts attributable to Seller; (ii) rightfully known by Seller prior to disclosure by Buyer; (iii) disclosed to Seller on an unrestricted basis from a third party not under a duty of confidentiality to Buyer; or (iv) independently developed by Seller's employees or agents without access to or use of Proprietary Information.

## 11. Buyer's Property

(a) All drawings, tools, jigs, dies, fixtures, materials and other property supplied or paid for by Buyer shall be and remain the property of Buyer. In the event Seller fails to return such property upon Buyer's demand, Buyer shall follow normal legal process to reclaim property.

(b) All such items shall be used only in the performance of Work under the Purchase Order unless Buyer consents otherwise in writing.

(c) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.

(d) Seller shall keep current and accurate records of all Buyer's property in its control, which shall be made available to Buyer upon request. Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be

responsible for all loss or damage to said property, except for normal wear and tear. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries and their respective directors, officers, employees and agents for any such loss, destruction or damage. At all times, Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof. For Work performed pursuant to U.S. Government contracts, Seller's responsibility for loss or damage to Government-provided property shall be determined in accordance with FAR 52.245-1, FAR 52.245-1 Alternate I or FAR 52.245-1 Alternate II, as applicable.

(e) At the completion or termination of the Purchase Order, Seller shall request disposition instructions for all such property and shall make such property available to Buyer per Buyer's request, including preparation, packaging and shipping as directed. Expense for preparation for shipment shall be for Seller's account and shipment shall be made FOB origin. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of Seller.

## 12. Release of Information

Seller shall not, and shall require that its subcontractors at any tier shall not, publish, distribute or use any information developed under or about the existence of the Purchase Order, or use the Millennium Space Systems, Inc. company name (or the name of any division, affiliate or subsidiary thereof), logo, trademark, service mark or trade dress for the purpose of advertising, making a news release, creating a business reference, creating website content or for products or service endorsements without prior written approval of Buyer. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.

## 13. Order of Precedence

(a) Any inconsistency among the Purchase Order components shall be resolved by giving precedence in descending order:

- i. The International Traffic In Arms Regulations (ITAR) or any other applicable law;
- ii. The FAR (or any agency regulation that implements or supplements the FAR);
- iii. The principal Purchase Order, as amended (excluding any attachments);
- iv. These Standard Terms and Conditions, as amended;
- v. Any other attachments to the Purchase Order not identified herein (the order of precedence among such attachments, if any, shall be set forth in the Purchase Order).

Further, any modification to a provision or provisions of the Purchase Order as required by this Article 13 shall be to the extent (but only to the extent) necessary to remove any such

conflict and permit compliance with such laws, terms and restrictions, and as so modified the Purchase Order shall continue in full force and effect.

(b) In the event of conflict among specifications, drawings, samples, designated type, part number or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer, and samples over designated type, part number or catalog description. In cases of ambiguity in the specifications, drawings or other requirements of the Purchase Order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final.

#### 14. Warranty

(a) Seller warrants the materials delivered pursuant to the Purchase Order shall be new, be free from defects in workmanship, materials and design, and be free from liens or encumbrances and conform to all the requirements of the Purchase Order. Seller further warrants the Work shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door or other software code or routines designed to: (i) damage, destroy, alter or permit any unauthorized access to any software or hardware, (ii) reveal, damage, destroy or alter any data or (iii) disable any computer program automatically. Seller further warrants the Work shall not contain any third-party software (including software that may be considered free or open source software) that may: (A) require any software to be published, accessed or otherwise made available without the consent of Buyer, (B) require distribution, copying or modification of any software free of charge, (C) require disclosure, license or redistribution of source code, (D) require the grant of rights in excess of those granted by Buyer's parent company in its standard end user license agreements, (E) require that others have the right to modify the codes or (F) impose additional requirements on redistribution such as inclusion of additional license agreements for specific code modules. However, in the event that this Article 14(a) should conflict with the provisions of any patent rights or data rights clause of the Purchase Order, the latter shall control. Seller further warrants that the performance of the Work and any services pursuant to the requirements of the Purchase Order shall conform to professional standards. All warranties shall survive inspection test and acceptance of, and payment for, the Work. 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 the Purchase Order. If any nonconformity of the Work appears within that time, Buyer shall give Seller notice after discovery of a defect or nonconformance and Seller shall promptly repair, replace or re-perform the Work, at Buyer's option. All costs associated with the above shall be at Seller's expense. Work required to be corrected or replaced shall be subject to this Article 14 in the same manner and to the same extent as Work originally delivered under the Purchase Order.

(b) Seller further warrants that none of the Work supplied by Seller hereunder is counterfeit. Seller's warranty against counterfeit items shall survive any termination or

expiration of the Purchase Order. All parts used in the Work shall be purchased directly from the original equipment manufacturer (OEM) or original component manufacturer (OCM), or through an OEM/OCM-franchised distributor. Documentation must be available that authenticates traceability to the applicable OEM/OCM. Independent distributors (brokers) shall not be used without written consent from Buyer. A "counterfeit" item is an item, or any component thereof, produced, altered or otherwise misrepresented to resemble another item, or any part thereof, without authority or right to do so, including without limitation any item that is produced or altered to result in Buyer being misled or defrauded through the presentation to Buyer of such item as original, new, genuine or otherwise from a source other than the actual source of such item. Counterfeit items also include items that have been re-worked, re-marked, re-labeled, repaired, refurbished or otherwise modified from the OEM design but are represented as OEM authentic or as new, or any parts that are designated as suspect by the U.S. Government. Documentation must be available that authenticates traceability to the applicable OEM including but not limited to Certificates of Conformance and/or Material Certifications that provide the manufacturer's name, part number, date codes, lot codes, serializations, and/or any other batch identifications. If Buyer, in its sole discretion, determines that any items or components received from Seller are, or may be, counterfeit ("Suspected Counterfeit Parts"), Buyer shall notify Seller in writing of such determination. Seller agrees that within ten (10) days after Seller's receipt of such notice, Seller shall remit to Buyer all payments previously made to Seller for such Suspected Counterfeit Parts. Alternatively, Buyer may elect to have Seller offer a replacement item in lieu of remitting all previous payments associated with Suspected Counterfeit Parts.

(c) Seller further warrants that all work, materials, services, equipment, parts and other items provided by Seller pursuant to the Purchase Order, which are not of Buyer's design, shall be free from claims of infringement (including misappropriation) of third-party intellectual property rights and that any use or sale of such items by Buyer or any of Buyer's Customers shall be free from any claims of infringement. Any Work produced under the Purchase Order is to be deemed a work-for-hire to the extent permitted by law, and, to the extent not so permitted, shall be assigned to, and shall be, the exclusive property of the Buyer.

(d) This warranty entitlement shall inure to the benefit of Buyer and its successors, assigns and Customers. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller did not breach this warranty, the parties shall equitably adjust the Purchase Order price.

#### 15. Inspection, Acceptance and Rejection

(a) All material and workmanship shall be subject to inspection and test at mutually agreed-to dates and times during



the course of the Purchase Order by Buyer or Buyer's Customer before, during and up to sixty (60) days after delivery. The Buyer may require Seller to repair, replace or reimburse the purchase price of rejected material or Buyer may accept any materials and upon discovery of nonconformance, may reject or keep and rework, or obtain replacement materials from another source for any such materials not so conforming. Cost of repair, rework, replacement, replacement from another supplier, inspection, transportation, repackaging and/or reinspection by Buyer shall be at Seller's expense. Buyer's acceptance of work and services shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud or misrepresentation on the part of Seller exists. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed as Buyer's authorized representative may reasonably direct.

(b) If inspection and test are made on the premises of Seller or Seller's lower-tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Article 15 are supplementary to and not in lieu of the provisions of Article 14(a) above.

(c) Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Purchase Order. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Purchase Order or impair any rights or remedies of Buyer, including revocation of acceptance.

(d) Seller and its suppliers shall establish and maintain a quality control and inspection program that complies with all requirements under the Purchase Order (the "Quality Control Program"). Buyer shall have the right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the Work is being performed. Seller shall flow this requirement down to its sub-tier supply chain suppliers as a condition of the Purchase Order. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities and assistance for the safety and convenience of Buyer in the performance of its duties.

(e) Seller shall keep and maintain inspection, test and related records (including without limitation calibration records of any test and measurement equipment used in the performance of the Purchase Order), which shall be available to Buyer. All records related to the above shall be retained for a period of seven (7) years following the final payment on the subject Purchase Order unless otherwise notified in writing by Buyer.

## **16. Rights of Buyer's Customers and Regulators to Perform Inspection, Surveillance and Testing**

Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and

configuration control shall extend to Buyer's Customers that are departments, agencies or instrumentalities of the U.S. Government, including the Federal Aviation Administration (FAA) and any successor agency or instrumentality of the U.S. Government. Buyer may also, at Buyer's option, by prior written notice from Buyer's authorized representative, extend such rights to other Customers of Buyer and to agencies or instrumentalities of foreign governments equivalent in purpose to the FAA. Seller shall cooperate with any such U.S. Government-directed or Buyer-directed inspection, surveillance, test or review without additional charge to Buyer. Nothing in the Purchase Order shall be interpreted to limit U.S. Government access to Seller's facilities pursuant to law or regulation.

## **17. Changes**

(a) Buyer shall have the right by written order to suspend work or to make changes from time to time in the services to be rendered or the Work to be furnished by Seller hereunder or the delivery date. Seller shall resume work whenever a suspension is canceled. If such suspension or changes cause an increase or decrease in the cost of performance of the Purchase Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Article 17(a) must be asserted in writing within twenty (20) business days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse Seller from proceeding with the Purchase Order as changed pending resolution of the claim.

(b) Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's purchasing representative and which states it constitutes an amendment or change to the Purchase Order.

## **18. Conflict of Interest**

To the best of Seller's knowledge and belief, there is no actual or potential conflict of interest with respect to the performance of Work under the Purchase Order; or, Seller has notified Buyer in writing of such a conflict of interest and received written authorization from Buyer to continue performance under the Purchase Order. If in the performance under the Purchase Order Seller becomes aware of an actual or potential conflict of interest, Seller will immediately notify Buyer in writing.

## 19. Payments; Taxes

(a) Unless otherwise provided, terms of payment shall be Net Thirty (30) business days after receipt of payment from Buyer's prime contractor (Seller's proper invoice required).

(b) Payment will be made in United States dollars unless otherwise agreed to by specific reference in the Purchase Order.

(c) Seller is, and shall remain, an independent contractor during the performance of the Purchase Order.

(d) Unless the Purchase Order specifies otherwise, the price of the Purchase Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by the Purchase Order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption. To the extent that Buyer is required to do so under applicable United States law or tax regulations, Buyer may deduct from any payments due to Seller pursuant to the Purchase Order such taxes as Buyer is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that Buyer provides Seller with relevant tax receipts or other suitable documentation evidencing the payment of such taxes promptly after such taxes are paid.

## 20. Financial Records and Audit

(a) Record Retention. Seller shall retain all financial records and documents pertaining to the Work for a period of no less than three (3) years after final payment. Such records and documents shall date back to the time the Purchase Order was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates and inventory records.

(b) Audit of Pricing. (i) Certified Cost or Pricing Data. To the extent the Purchase Order, or any modification thereof, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4 and is not otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall provide to Buyer for the Purchase Order or modification to the Purchase Order, as the case may be, the certified cost or pricing data required by Table 15-2 of FAR 15.408. Buyer shall have the right to examine, reproduce and audit such Seller records. (ii) Other than Cost or Pricing Data. To the extent the Purchase Order, or any modification thereof, does not exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4 or is otherwise exempt from the certified cost or pricing data requirements in accordance with FAR 15.403-1(b), Seller shall support and demonstrate to Buyer the reasonableness of any Seller proposals or pricing for the Purchase Order or modification to the Purchase Order, as the case may be, in accordance with FAR 15.402 and FAR 15.404-3(c)(2). Seller shall provide to Buyer such information other than cost or pricing data and any other information necessary to satisfy obligations Buyer may have to its Customer demonstrating price reasonableness for proposals and

pricing. Buyer shall have the right to examine, reproduce and audit such Seller records.

(c) Audit of Claims and Invoices. Seller shall provide to Buyer all information supporting Seller's claims pertaining to incurred costs, including, but not limited to, Seller's invoices for cost reimbursement, claims arising out of a termination or partial termination of the Purchase Order or out of some other dispute, and Seller's proposals under Article 17(a) that involve unique claims (e.g., obsolescence costs), which must be verified by audit. Buyer shall have the right to examine, reproduce and audit all such Seller records.

## 21. Assignments and Organizational Changes

(a) Seller may not assign any rights or interest, delegate any of its obligations due or to become due or subcontract for all or substantially all of its performance under this Purchase Order without the prior written consent of Buyer. Any purported assignment or delegation by any means by Seller without such consent shall be void and the parties' rights or obligations hereunder shall not be affected. Buyer may assign the Purchase Order to (i) any affiliated company, (ii) any successor in interest or (iii) Buyer's Customer.

(b) This Article 21 does not limit Seller's ability to purchase standard commercial supplies or raw material in connection with its performance of the Purchase Order.

(c) Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name or ownership changes, mergers or acquisitions.

## 22. Government Contracts

(a) For each lower-tier subcontract awarded in support of and charged to a U.S. Government prime contract, Buyer shall provide Seller the appropriate flow-down clauses as an attachment to the Purchase Order to include a list or lists of clauses of the FAR and/or any agency regulation that implements or supplements the FAR, identified, if applicable, in the Purchase Order.

(b) If Seller, its subcontractors or prospective subcontractors fail to submit accurate, complete and current cost or pricing data, and, as a result, the Government reduces the price of Buyer's U.S. Government prime contract and/or imposes a penalty on or charges Buyer interest, Buyer may recover from Seller an amount equal to the price reduction of the prime contract and the amount of interest or penalty. If Buyer is a higher-tier subcontractor, "Government" shall mean higher-tier subcontractor and "prime contract" shall mean the higher-tier subcontract. Seller will not raise as defenses the matters listed in FAR 52.215-10(c)(1) (AUG 2011) or FAR 52.215-11(d)(1) (AUG 2011).

(c) For orders placed in support of and charged to a U.S. Government prime contract or subcontract thereunder procuring an item meeting the definition of a Commercial item as contained in FAR 2.101, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of said prime contract are incorporated by reference. In all clauses listed herein the terms

“Government” and “Contractor” shall be revised to identify properly the contracting parties under the Purchase Order. The Seller shall include the terms of this Article 22, including this Article 22(c), in all purchase orders or subcontracts awarded under the Purchase Order.

1. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity 52.203-8
2. Price or Fee Adjustment for Illegal or Improper Activity 52.203-10
3. Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items 52.212-5
4. Small Business Subcontracting Plan 52.219-9 (\$750,000 threshold)
5. Service Contract Act Labor Standards 52.222-41 (if applies to prime contract)
6. Employment Eligibility Verification 52.222-54 (not applicable to contracts for COTS items)
7. Stop-Work Order 52.242-15 (use Alt I for cost-reimbursement contracts)
8. Government Delay of Work 52.242-17
9. Changes—Fixed-Price 52.243-1 (for fixed-price supply contracts; Alt I for services contracts w/no supplies; Alt II for services contracts w/supplies; Alt V research and development contracts)
10. Changes—Cost-Reimbursement 52.243-2 (for cost-reimbursement supply contracts; Alt I for services contracts w/no supplies; Alt II for services contracts w/supplies; Alt V for research and development contracts)
11. Changes—Time-and-Materials or Labor-Hours 52.243-3 (for time-and-materials or labor-hour contracts)
12. Subcontracts for Commercial Items 52.244-6
13. Preference for Domestic Commodities (DoD Contracts) 252.225-7012
14. Notification of Potential Safety Issues 252.246-7003
15. Transportation of Supplies by Sea (DoD Contracts) 252.247-7023
16. Notification of Transportation of Supplies by Sea (DoD Contracts) 252.247-7024

## 23. Responsibility and Insurance

Seller shall be responsible for the actions and failure to act of all parties retained by, through or under Seller in connection with the performance of this Purchase Order. Seller shall also carry and maintain and cause its subcontractors to carry and maintain throughout the period when Work is performed and until final acceptance by Buyer the following:

(a) **Commercial General Liability.** Commercial General Liability insurance with available limits of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability and goods and completed-operations insurance for a minimum of twenty-four (24) months after final

acceptance of the work by Buyer. Such insurance shall not be maintained on a per-project basis unless the respective Seller or subcontractor thereof does not have blanket coverage.

(b) **Automobile Liability.** If licensed vehicles will be used in connection with the performance of the Work, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

(c) **Workers' Compensation and Employers' Liability.** Cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation (and Employers' Liability with limits not less than \$1,000,000 per incident) with respect to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.

(d) **Certificates of Insurance.** Prior to commencement of the work, Seller shall provide for Buyer's review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs (a), (b) and (c). Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Buyer and shall provide for thirty (30) days advance written notice to Buyer in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein or failure of Buyer to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of Seller's or subcontractors' obligations hereunder.

(e) **Self-Assumption.** Any self-insured retention, deductibles and exclusions in coverage in the policies required under this Article 23 shall be assumed by, for the account of and at the sole risk of Seller or the subcontractor that provides the insurance and, to the extent applicable, shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.

## 24. Indemnification

(a) Seller shall indemnify, hold harmless and (at Buyer's request) defend Buyer, its officers, directors, Customers, agents and employees against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Work and/or goods and services provided under the Purchase Order (including without limitation the performance thereof by Seller, any subcontractor thereof or other third parties within the control or acting at the direction of Seller, or any of their respective employees), including, without limitation: (i) the breach of any warranty contained herein; (ii) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs; (iii) Seller failing to satisfy the Internal Revenue Service's

guidelines for an independent contractor; (iv) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, subcontractors, employees or anyone acting on behalf of Seller; (v) any claim based on any Suspected Counterfeit Parts; and, (vi) any claim by a third party against Buyer or Buyer's Customers alleging that the Work and/or goods and services provided under the Purchase Order, the results of such Work and/or goods and services, or any other products or processes provided under the Purchase Order, infringe a patent, copyright, trademark, trade secret or other proprietary or Intellectual Property right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees.

(b) Should Buyer's use, or use by its distributors, subcontractors or Customers, of any Work and/or goods and services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense and at Buyer's option, either: (i) substitute fully equivalent non-infringing Work and/or goods and services; (ii) modify the Work and/or goods and services so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for Buyer, its distributors, subcontractors and/or Customers the right to continue using the Work and/or goods and services; or, (iv) refund all amounts paid for the infringing Work and/or goods and services.

(c) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Workers' Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

(d) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all Workers' Compensation or Occupational Disease laws claims for Bodily injury including death to employees of Seller brought forth by the Seller's employees and/or their families arising out of or in connection with the Purchase Order.

## 25. International Transactions

(a) Payment will be in United States dollars unless otherwise specifically agreed to in the Purchase Order. All reports, correspondence, drawings, notices, marking and other communications shall be in the English language.

(b) Seller agrees that Buyer, its subsidiaries, affiliates or its designees may exclusively use the value of the Purchase Order to satisfy any international offset obligations that Buyer may have with Seller's country, subject to the offset qualifying laws, rules and regulations of that country.

## 26. Export Compliance

(a) Seller is advised that its performance under the Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 U.S.C. 2751-2796 (Arms Export Control Act) and 22 CFR 120-130 (International Traffic in Arms Regulations [ITAR]) or 50 U.S.C. 2401-2420 (Export Administration Act) and 15 CFR 730-780 (Export Administration Regulations [EAR]) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either (i) a U.S. person as that term is defined in the Export Laws and Regulations, or (ii) that it has disclosed to Buyer in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses (including attorneys' fees) that may be imposed on or incurred by Buyer in connection with any violations by Seller of Export Laws and Regulations, and any license(s) issued thereunder.

(c) Buyer's obligations under the Purchase Order are subject to and shall be modified if and to the extent required to conform to applicable Export Laws and Regulations, and any license(s) issued thereunder.

## 27. Severability

If any provision of the Purchase Order or application thereof is found invalid, illegal or unenforceable by law, the remainder of the Purchase Order will remain valid, enforceable and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.

## 28. Standards of Business Ethics and Conduct

(a) By the acceptance of the Purchase Order, Seller represents that it has not participated in any conduct in connection with the Purchase Order that violates Buyer's Subcontractor Code of Ethics and Business Conduct (available at [https://uploads-ssl.webflow.com/61a5a79b208f0147b9dbce51/623cc061e4de404757689fe8\\_mss\\_coe\\_26-05-2015\\_updated%20logo.pdf](https://uploads-ssl.webflow.com/61a5a79b208f0147b9dbce51/623cc061e4de404757689fe8_mss_coe_26-05-2015_updated%20logo.pdf)). If, at any time, Buyer determines Seller is in violation of the Code of Ethics and Business Conduct, Buyer may cancel the Purchase Order upon written notice to Seller and Buyer shall have no further obligation to Seller.

(b) Compliance with Laws. Seller warrants that Seller and the Work shall comply with all applicable statutes and government rules, regulations and orders including without limitation (i) all applicable country laws relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" or other anti-corruption/anti-bribery convention; (ii) the requirements of the Foreign Corrupt Practices Act, as amended (FCPA) (15 U.S.C. §§78dd-1, et. seq.),



regardless of whether Seller is within the jurisdiction of the United States, and Seller shall not, either directly or indirectly, pay, offer, give or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery; (iii) procuring all licenses/permits, paying all fees and other required charges in performance of the Purchase Order; and (iv) the Toxic Substances Control Act (15 U.S.C. §2601 et seq.) (the Act) as amended in that each chemical substance constituting or contained in products sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Act. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

(c) **Gratuities.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing the Purchase Order or securing favorable treatment under the Purchase Order.

(d) **Code of Basic Working Conditions and Human Rights.** Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, Buyer has adopted a Code of Basic Working Conditions and Human Rights (Boeing Code) setting out in detail the measures it takes to ensure this commitment is fulfilled. This code may be downloaded at <https://www.boeing.com/principles/human-rights.page>. Buyer strongly encourages Seller to adopt and enforce concepts similar to those embodied in the Boeing Code, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under the Purchase Order.

(e) **Environmental Health and Safety Performance.** Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system (EMS) appropriate for its business throughout the performance of the Purchase Order. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver Work that contains any asbestos mineral fibers.

(f) **Seller Facility.** Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the Work or moving tooling or other equipment utilized in the manufacture of the Work to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer's prior written approval.

(g) **Buyer Policies.** Seller agrees that Buyer's internal policies, procedures and codes are intended to guide the internal management of Buyer and are not intended to, and do not, create

any right or benefit, substantive or procedural, enforceable at law or in equity, by Seller against Buyer.

(h) **Conflict Minerals.** Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered any goods to Buyer, under the Purchase Order or otherwise, complete and provide to Buyer a single and comprehensive Conflict Minerals Reporting Template, using the form found at <http://www.responsiblemineralsinitiative.org/reporting-templates/cmrt/>. Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of this Article 28(h).

(i) **Subcontracting.** Seller agrees that no subcontract placed under the Purchase Order will provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) **Ethics and Compliance Program.** Seller acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of the Purchase Order. Seller shall publicize to its employees who are engaged in the performance of work under the Purchase Order that they may report any concerns of misconduct by Buyer or any of its employees or agents. Seller shall convey the substance of this clause to its suppliers.

(k) **Seller and Sub-Tier Supplier Information.** In addition to requirements set forth elsewhere in the Purchase Order, Seller will, when reasonably requested by Buyer, provide sub-tier supplier information related to performance under the Purchase Order. Such information may include but is not limited to Seller's subcontract management plans, Buyer programs supported, Seller assessment of sub-tier supplier's capability including financial health and performance issues.

## 29. Survivability

All of the provisions of the Purchase Order shall survive the termination (whether for convenience or default), suspension or completion of the Purchase Order unless they are clearly intended to apply only during the term of the Purchase Order.

## 30. Travel

Any travel authorized and undertaken in the performance of the Purchase Order shall be pursuant to and in compliance with Buyer's Travel Reimbursement Rules (available at [https://uploads-ssl.webflow.com/61a5a79b208f0147b9dbce51/636949a3988cdcbee69b7500\\_Travel%20and%20Expense%20Policy%20-%20Oct%2018%202022.pdf](https://uploads-ssl.webflow.com/61a5a79b208f0147b9dbce51/636949a3988cdcbee69b7500_Travel%20and%20Expense%20Policy%20-%20Oct%2018%202022.pdf)).

### 31. Telecommunications Prohibitions

Seller is prohibited from providing any equipment, system or service under this Purchase Order that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system pursuant to FAR 52.204-25, but excluding paragraph (b)(2).

### 32. Intellectual Property Rights and Ownership

(a) Any work, writing, idea, discovery, improvement, invention (whether patentable or not), trade secret, technical data, computer programs (including source code and object code) or other intellectual property (collectively, "Intellectual Property") developed by Seller independently of the Purchase Order and made available by Seller under the Purchase Order ("Seller's Preexisting IP") shall remain the property of Seller. All Intellectual Property developed by Buyer independently of the Purchase Order and made available by Buyer under the Purchase Order ("Buyer's Preexisting IP") shall remain the property of Buyer. If the Purchase Order is placed under a U.S. Government prime contract or subcontract, ownership of any and all Intellectual Property conceived, made or developed under the Purchase Order by Seller ("Seller Foreground IP") shall remain the property of Seller. If the Purchase Order is not placed under a U.S. Government contract or subcontract, then Buyer shall own Seller Foreground IP, and Seller agrees to assign, and upon creation of such Seller Foreground IP, Seller hereby automatically assigns to Buyer, all right title and interest, including all Intellectual Property rights, in and to such Seller Foreground IP.

(b) If a third party's Intellectual Property, including proprietary information or data ("Third-Party IP"), is used in providing the Work and/or any goods and/or services hereunder, said Third-Party IP shall be clearly marked as such and Seller shall give Buyer prior notice for its use and must have prior written authorization from Buyer to use Third-Party IP in performance of the Work. Seller shall obtain for Buyer at least the license rights granted in paragraph (e) of this Article 32 in such Third-Party IP, at no additional cost to Buyer and hereby grants such rights to Buyer.

(c) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless (i) otherwise required by the U.S. Government Regulations referred to below in Article 32(d), or (ii) the Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.

(d) U.S. Government Procurement Regulations incorporated into the Purchase Order shall, when applicable, take precedence over any conflicting provision of this Article 32 to the extent that such Regulations so require. The rights in subject inventions, copyrights, software and similar Intellectual Property granted hereunder are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any

greater rights that Seller may have previously granted to Buyer pursuant to prior agreements between Buyer and Seller.

(e) Seller hereby grants to Buyer, and to Buyer's subcontractors and Customers, an irrevocable, non-exclusive, perpetual, paid-up, worldwide, sublicensable license to make, have made, use, have used, sell, have sold, offer for sale, import, reproduce, distribute copies of, perform publicly, display publicly or make derivative works from Seller's Preexisting IP (whether domestic or foreign) included in or provided with Work performed under the Purchase Order as reasonably required by Buyer or Buyer's subcontractors and Customers to test, qualify, install, operate and/or otherwise make use of the Work and/or to exploit the Seller Foreground IP assigned to Buyer hereunder. Seller hereby grants to Buyer a perpetual, exclusive, paid-up worldwide license to exploit any Seller Foreground IP to which Seller retains ownership in any manner now known or hereafter devised.

(f) If Seller Foreground IP assigned to Buyer includes inventions, discoveries or improvements that are or may be patentable ("Inventions"), Seller shall disclose to Buyer in writing any such Inventions and cooperate, at Buyer's expense, in obtaining patent protection on such Inventions. Seller further agrees to execute assignments to Buyer of any associated patents or patent applications. Seller shall not, unless otherwise authorized in writing by Buyer, disclose to anyone other than Buyer any Inventions or other data developed under the Purchase Order and assigned to Buyer hereunder, or any data disclosed to Seller by Buyer, and shall not use such Inventions or data for any purpose other than in connection with the Work and performance of the Purchase Order.

END OF STANDARD TERMS AND CONDITIONS