



**PURCHASE ORDER STANDARD TERMS AND CONDITIONS  
FOR COMMERCIAL ITEMS (FEDERAL)**

This is a Purchase Order between Wright State Applied Research Corporation, hereafter referred to as "Buyer," and Seller identified on the face of this Purchase Order, hereafter referred to as "Seller." This purchase order is referred to as "Order."

**1. ACCEPTANCE OF TERMS** Acceptance of this Order by Seller may be made by signing the acknowledgment copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto.

**2. TAXES** The price(s) set forth herein shall include all applicable Federal, State and local taxes and duties.

**3. NOTICE OF DELAYS** Whenever the Seller has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give written notice thereof, including all relevant information with respect thereto, to the Buyer.

**4. PAYMENT** Invoices shall contain the following information: order number, item number, description of articles, sizes, quantities, unit prices and extended totals. Invoices submitted hereunder will be paid Net 30 Days after receipt of proper invoice or acceptance of delivered items by the Buyer, whichever occurs later. Before payment, Buyer may make any adjustments to Seller's invoices to accommodate shortages, late delivery, rejections, or other failure to comply with the requirements of this Order. Payment shall not constitute final acceptance. Buyer may offset against any payment hereunder any amount owed to Buyer by Seller.

**4.1. DELIVERY** Time is of the essence in this Order. The date specified for delivery or performance is the required delivery date at Buyer's facility or other specified location (FOB Destination), unless otherwise specifically noted herein. Buyer reserves the right to refuse any goods or services and to cancel all or any part hereof if Seller fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller's deliveries will not meet agreed schedules, Buyer may require Seller to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by Seller. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding delivery to any carrier, or until orders for services have been performed, received and accepted.

**4.2. PACKAGING AND SHIPPING** Any goods purchased hereunder must be suitably packed and prepared for shipment to secure the lowest transportation rates or appropriately packed to comply with any specific transportation specifications of Buyer, and in all cases, to comply with carrier's regulations. All charges for packing, crating and transportation are included in the price for the goods set forth herein and will be paid by Seller. A Packing List shall accompany each box or package shipment showing the order number specified hereon as well as the item number and a description of the goods. In the event that no such Packing List accompanies any shipment, the count, weight or other measure of Buyer shall be final and conclusive. Buyer 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.

**5. RESPONSIBILITY FOR PROPERTY** In the case of any tools, dies, jigs, fixtures, patterns, equipment, facilities or other property (hereafter "property") of Buyer and/or Buyer's customer, which may be in the possession, or control of Seller in connection with this Order, Seller shall use such property only in performance of and as specifically authorized by this Order. Seller should take appropriate measures including clearly marking, maintaining an inventory and segregating Buyer's property to protect Buyer's rights and interests in any property provided by Buyer to Seller. Such property shall be returned to Buyer in the condition in which it was received by Seller, except for ordinary wear and tear and except to the extent that such property has been incorporated into goods delivered hereunder or has been consumed in the production of such goods. Risk of loss with respect to all such property shall be the responsibility of Seller. Seller shall indemnify, defend and hold harmless Buyer from any loss or damage to such property, which is caused by, or results from any act or omission on the part of Seller or its agents, employees or subcontractors. If Seller acquires or manufactures any property in connection with this Order and charges Buyer therefore, Buyer may, at its option upon completion or termination of this Order, elect to take title to such property and, upon receiving notice of such election, Seller shall deliver such property to Buyer.

**6. RESPONSIBILITY FOR SUPPLIES** Seller warrants title to all goods sold and bears the risk of loss or damages to the items purchased under this Order until they are delivered in conformity with this Order at Buyer's facility (or to such other place as may be designated on the face of this Order) or installed, as required by this Order, and, upon such delivery or installation, title shall pass to Buyer. Passing of title shall not constitute acceptance of the items by Buyer

**7. WARRANTY** Seller represents and warrants that: (1) all goods delivered pursuant hereto will be new, unless otherwise specified, and free from defects in material and workmanship; (2) all goods will conform to applicable specifications, drawings, and standards of quality and performance, and all items will be free from defects in design and suitable for their intended purpose; (3) the goods covered by this Order are fit and safe for consumer use, if so intended; and (4) that any services performed hereunder shall be performed in accordance with the specifications and instructions of Buyer, and with that degree of skill and judgment exercised by recognized professional firms performing services of a similar nature and consistent with best practices in the industry. All representations and warranties of Seller shall run to Buyer and Buyer's customers. Remedies under this warranty shall include, without limitation, at Buyer's option and at Seller's sole expense, prompt repair, replacement, re-performance, or reimbursement of the purchase price. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Buyer.

(b) **7.1 INSPECTION** All goods supplied and services performed shall be subject to inspection and test by Buyer, its agents and its customers at all reasonable times and places, whether during or after manufacture as to goods, or performance as to services, and notwithstanding the terms of delivery or payment or, as to goods, that title has not yet passed to Buyer or its customers. In the event goods or services are not in accordance with the specifications and instructions of Buyer, Buyer may require prompt correction, repair, replacement or re-performance thereof at Buyer's option and Seller's sole expense. If Seller is unable to accomplish the foregoing, then Buyer may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith to the extent Buyer incurs any excess costs as a result.

**7.2 ACCEPTANCE** Acceptance of any part of the Order shall not bind Buyer to accept future shipments or performance of services, nor deprive it of the right to return goods already accepted and shall not be deemed to be a waiver of Buyer's right to cancel or return all or any part of the goods 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, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages.

**8. INDEMNIFICATION**

(a) Seller shall indemnify, defend and hold Buyer and Buyer's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) negligence, gross negligence, intentional misconduct, or fraud, (ii) breach of any representation, warranty or covenant made herein; (iii) breach of the confidentiality or disclosure provisions

herein; (iv) violation of any law or regulation; or (v) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity shall survive delivery and acceptance of goods or services. Notwithstanding the foregoing, Seller's obligations under this Article shall not apply to the extent that a claim is finally determined by a court of competent jurisdiction to be caused by the negligence or willful misconduct of Buyer.

(b) Buyer shall promptly notify Seller of any claim that is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to take charge of any litigation in connection therewith.

### **8.1 INFRINGEMENT INDEMNITY**

Seller shall indemnify, defend and hold Buyer and Buyer's customers, as well as their respective officers, directors, employees and agents (collectively, the "Indemnified Parties"), harmless from and against any claim, suit or proceeding ("Claim") asserting that the goods or services, or any part thereof, furnished under this Order, or the use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by the Indemnified Parties in connection with such claim, including reasonable attorneys' fees. In the event such goods or services or use thereof are enjoined in whole or in part, Seller shall at its expense and Buyer's or its customer's option undertake one of the following: (i) obtain for Buyer and its customer the right to continue the use of such goods or services; (ii) in a manner acceptable to Buyer and its customer, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such goods or services plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.

Notwithstanding the foregoing paragraph, when this Order is performed under the Authorization and Consent of the U.S. Government to infringe U.S. patents, Seller's liability for infringement of such patents in such performance shall be limited to the extent of the obligation of Buyer to indemnify the U.S. Government.

**9. INSURANCE** In accordance with subparts (a) and/or (b) below, upon Buyer's request Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverage's are in force and providing not less than thirty days notice prior to any cancellation or restrictive modification of the policies. The below required coverages and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

(a) To the extent that Seller is performing services under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:

(i) **Workers' Compensation:** Coverage for statutory obligations imposed by laws of any State in which the work is to be performed. Employer's Liability coverage of \$1 million each accident shall also be maintained.

(ii) **Commercial General Liability:** Coverage for third party bodily injury and property damage, including products and completed operations, contractual liability, and independent contractors' liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such policy(ies) shall be endorsed to name Buyer, its directors, officers and employees, and Buyer's customer where required by Buyer's Prime Contract with its customer, as Additional Insureds.

(iii) **Business Automobile Liability:** Coverage for use of all owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 per accident combined single limit for bodily injury and property damage liability. Such policy(ies) shall be endorsed to name Buyer, its directors, officers and employees, and Buyer's customer where required by Buyer's Prime Contract with its customer, as Additional Insureds.

(iv) **Professional Liability / Errors and Omissions:** *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 or failure to perform professional services with limits of not less than \$1,000,000 per claim.

(b) To the extent that Seller is providing products under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:

(i) Commercial General Liability as described above in Section 10 (a) (ii);

(ii) Products Liability in an amount no less than \$1 Million per occurrence covering bodily injuries or property damage arising out of defective products or work completed. To the extent that coverage for Seller's products are not excluded in (i), this requirement does not apply.

## 10. Buyer FURNISHED ITEMS AND INTELLECTUAL PROPERTY

(a) All items furnished, loaned or bailed by Buyer to Seller hereunder, or purchased, or otherwise acquired by Seller for the performance of and specifically charged to Buyer under this Order (collectively, the "Items"), are the property of Buyer (or, as directed by Buyer pursuant to the terms of its prime contract, the U.S. Government). Upon completion, expiration or termination of this Order, Seller shall return all Items in good condition (reasonable wear only accepted) together with all spoiled and surplus Items to Buyer. In lieu of the return of Items to Buyer, Seller shall make such other disposition of all Items as directed in writing by Buyer. Seller agrees to replace, at its expense, all such Items not returned in accordance with this Section or returned in other than good condition. Except as provided for in any flow down clauses, Seller shall bear all risk of loss for all Items in Seller's possession or for which Seller is responsible. Seller also agrees to use any designs, data or other things contained or embodied in Items provided to or utilized by Seller under this Order in accordance with any restrictive legends placed on such Items by Buyer or any third party. If Buyer furnishes any material (including but not limited to any computer software or other data) for fabrication pursuant to this Order, Seller agrees: (i) not to substitute any other material for such fabrication without Buyer's prior written consent and (ii) that title to such material shall not be affected by incorporation in or attachment to any other property.

(b) Seller understands and agrees that each of the Intellectual Property-related clauses specified in Schedule B, which may include (but are not limited to) FAR 52.227-1, 52.227-11, 52.227-14, 52.227-15 and 52.227-16 (and/or DFARS 252.2277013, 252.227-7014 and 252.227-7015 if Buyer's prime contract is with the DOD), are incorporated herein as though fully set forth and shall take precedence over any other terms in this Order. For avoidance of doubt, Seller hereby grants to Buyer such intellectual property rights as Buyer needs in order to perform its obligations to Buyer's U.S. Government customers. Seller shall not assert any intellectual property right provided to the U.S. Government in a manner inconsistent with Buyer's contract obligations to Buyer's U.S. Government customers.

(c) To the extent that Seller provides any commercial computer software under this Agreement, the Parties agree that any normal commercial terms governing such commercial items shall govern use of such commercial items, except to the extent that such normal commercial terms shall conflict or be inconsistent with applicable federal law or regulation. In the case of any conflict or inconsistency, the applicable federal law or regulation shall take precedence over any conflicting or inconsistent commercial term. The Parties further agree that the use of any commercial terms shall be contingent upon the acceptance of any commercial computer software by the U.S. Government. In addition, the Parties agree that to the extent that the U.S. Government is the end user of any commercial computer software provided by Seller, Buyer shall have the right to perform Buyer's contract obligations to its U.S. Government Customers using that commercial computer software.

**10.1 PATENTS AND DATA** Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable, royalty-free license to reproduce, translate, publish, use and disclose, and to authorize others to do so, for any purpose, (i) any copyrighted or copyrightable material delivered or incorporated into any deliverable hereunder; and (ii) all or any part of any deliverable hereunder, including without limitation, any reports, drawings, blueprints, data, software and technical information.

**11. DISCLOSURE and CONFIDENTIALITY** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the supplies

or services hereunder, or disclose any of the details connected with this Order to any third party, except as may be required to perform this Order. Seller shall keep confidential all information designated as confidential by Buyer or reasonably known to be confidential, including, but not limited to, designs, processes, drawings, specifications, reports, data and other technical or proprietary information furnished or disclosed to the Seller by Buyer in connection with this purchase order ("Buyer's Confidential Information"). Seller shall not disclose such information to any third party without the written consent of Buyer and shall not use Buyer's Confidential Information except as contemplated in this Order. Upon completion or termination of this Order, Seller shall return all Buyer's Confidential Information to Buyer or make such other disposition thereof as may be directed and approved by Buyer and shall certify to such return or destruction.

**12. COMPLIANCE with LAWS** Seller warrants that all goods and services supplied under this Order shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances at the time of delivery or performance.

**13. COUNTERFEIT PRODUCTS** For purposes of this clause, Goods are any tangible items delivered under this Order, including without limitation the lowest level of separately identifiable items, such as parts, articles, components, and assemblies. "Counterfeit Goods" are Goods that are or contain items misrepresented as having been designed, produced, and/or sold by an authorized manufacturer and seller, including without limitation unauthorized copies, replicas, or substitutes. The term also includes authorized Goods that have reached a design life limit or have been damaged beyond possible repair, but are altered and misrepresented as acceptable.

Seller agrees and shall ensure that Counterfeit Goods are not delivered to Buyer. Goods delivered to Buyer or incorporated into other Goods and delivered to Buyer shall be new and shall be procured directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

In the event that Work delivered under this Agreement constitutes or includes Counterfeit Goods, Seller shall, at its expense, promptly replace such Counterfeit Goods with authentic Goods conforming to the requirements of this Agreement. Seller shall include equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Goods to Buyer.

**14. EXPORT CONTROL COMPLIANCE** Seller shall comply with all applicable U.S. export laws and regulations, including International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). The subject technology of this order (including data, services, software and hardware provided hereunder, defined as "Controlled Technology") may be controlled under these laws and regulations and may not be exported or re-exported without prior authorization in accordance with ITAR and EAR. Access to Controlled Technology by Foreign Persons as defined by 22CFR120.16 may require an export authorization. Seller shall have full responsibility for obtaining any export licenses or authorization required to fulfill its obligations under this order.

**15. CHANGES** Buyer may, by written notice to Seller at any time, make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications; (b) quantity; (c) time or place of delivery; (d) method of shipment or packing; and (e) the quantity of Buyer furnished property. Buyer may, for any reason, direct Seller to suspend, in whole or in part, delivery of goods or performance of services hereunder for such period of time as may be determined by Buyer in its sole discretion. If any such change or suspension causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, provided Seller shall have notified Buyer in writing of any claim for such adjustment within twenty (20) days from the date of notification of the change or suspension from Buyer. No such adjustment or any other modification of the terms of this Order will be allowed unless authorized by Buyer by means of a written modification to this Order. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

## 16. TERMINATION

### 16.1 TERMINATION FOR CONVENIENCE

(a) Buyer shall have the right to terminate this Order, in whole or in part, at any time, without cause, by providing twenty (20) days written notice to Seller. Upon receiving notice of such termination, Seller shall:

- (i) stop all work on this Order on the date and to the extent specified;
- (ii) place no further contracts hereunder except as may be necessary for completing such portions of the Order as have not been terminated;
- (iii) terminate all contracts to the extent that they may relate to portions of the Order that have been terminated; and
- (iv) protect all property in which Buyer has or may acquire an interest.

(b) Within twenty (20) days from such termination, Seller may submit to Buyer its written claim for termination charges in the form prescribed by Buyer, it being understood and agreed that only Seller's actual cost incurred and no profit shall be allowed for quantities terminated pursuant to this clause. Failure to submit such claim within such time shall constitute a waiver of all claims and a release of all Buyer's liability arising out of such termination.

(c) Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer, upon its request, all relevant books and records for inspection and audit. If Seller fails to afford Buyer its rights hereunder, Seller shall be deemed to have relinquished its claim.

### 16.2 TERMINATION FOR DEFAULT

(a) Buyer may, by written notice of default to Seller, terminate the whole or any part of this Order in any one of the following circumstances:

- (i) Seller fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
- (ii) Seller fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, and in either of the circumstances specified in this subpart (a)(ii) does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure;
- (iii) Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due; or
- (iv) Seller fails to provide Buyer, in writing, within the time specified by Buyer, adequate assurances of performance by Seller.

(b) If this Order is so terminated, Buyer may procure or otherwise obtain, supplies or services similar to those terminated. Seller, subject to the exceptions set forth below, shall be liable to Buyer for any excess costs of such similar supplies or services.

(c) Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination, such complete or partially completed articles, property, materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order, and Buyer will pay Seller the contract price for completed articles delivered to and accepted by Buyer and the fair value of the other property of Seller so requested and delivered.

(d) Seller shall continue performance of this Order to the extent not terminated. Buyer shall have no obligations to Seller with respect to the terminated part of this Order except as herein provided. Buyer's rights as set forth herein shall be in addition to any other rights in case of Seller's default.

(e) Seller shall not be liable for damages resulting from default due to causes beyond Seller's control and without Seller's fault or negligence, provided, however, that if Seller's default is caused by the default of a subcontractor or supplier at any tier, such default must arise out of causes beyond the control of both Seller and subcontractor or supplier, and without the fault or negligence of either of them and, provided further, the supplies or services to be furnished by the subcontractor or supplier were not obtainable from other sources.

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

**18. DISPUTES** Buyer and Seller agree to first enter into negotiations to resolve any controversy, claim or dispute ("dispute") arising under or relating to this Order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Buyer and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in Dayton, Ohio. The arbitrator(s) shall be bound to follow the provisions of this Order in resolving the dispute, and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

**19. ASSIGNMENTS AND SUBCONTRACTS** Seller agrees to obtain Buyer's approval before subcontracting a portion of this Order; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Further, this Order shall not be assigned or delegated by Seller without the prior written consent of Buyer, and the price quoted by Seller includes the price of any goods or services obtained from any subcontractor or supplier to Seller, unless otherwise agreed in advance by Buyer.

**20. GENERAL RELATIONSHIP** The Seller is not an employee of Buyer for any purpose whatsoever. Seller agrees that in all matters relating to this Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

**21. NON-WAIVER OF RIGHTS** The failure of Buyer 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. 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. The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of other parts thereof.

**22. ANTI-KICKBACK ACT OF 1986** By accepting this Order, Seller certifies that it has not offered, provided, or solicited and will not offer, provide, or solicit any kickback in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC §§ 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply unless this Order exceeds \$150,000. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. Seller agrees to indemnify, defend, and hold Buyer harmless from and against any losses, liabilities, offsets and expenses (including reasonable attorney's fees) arising out of or relating to Seller's failure to comply with the provisions of the Anti-Kickback Act or FAR 52.203-7.

**23. ORDER OF PRECEDENCE** In the event of an inconsistency or conflict between provisions of this Order, the inconsistency or conflict shall be resolved by giving precedence in the following order:

1. Purchase Order and any purchase descriptions contained therein.
2. These Purchase Order Standard Terms and Conditions for Commercial Items (Federal).

**24. SURVIVAL** Upon expiration of the Purchase Order, Seller shall not be relieved of those obligations contained in the following articles:

Payment	Buyer Furnished Items and Intellectual	Termination for Default
Delivery	Patents and Data	Warranty
Disclosure	Disputes	Indemnification
Compliance with Law	Infringement Indemnity	Changes
Non-Waiver of Rights	Insurance	Termination for Convenience
Order of Precedence		

**25. 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.

**26. FAR CLAUSES APPLICABLE TO THIS ORDER** The clauses in FAR Subpart 52.2 referenced in subparagraph (a), the clauses applicable in subparagraph (b), and those clauses referenced and in subparagraph (c) below, in effect on the date of this Order, are incorporated herein and made a part of this Order. To the extent that an earlier version of any such clause is included in the Prime Contract or Subcontract under which this Order is issued, the date of the clause as it appears in such Prime Contract or Subcontract shall be controlling and said version shall be incorporated herein. The extent of the flow down shall be as required by the clause:

(a) The following clauses from 52.244-6 and 52.212-5 are applicable to this Order.

(b) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained 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.

(c) To the maximum extent practicable, Seller shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Order. Seller shall insert the following clauses in subcontracts for commercial items:

52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010), 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.

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.

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements (Jan 2017).

52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

52.219-8 Utilization of Small Business Concerns (Dec 2010) (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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-21 Prohibition of Segregated Facilities (Apr 2015)

52.222-26 Equal Opportunity (Mar 2007)

52.222-35 Equal Opportunity for Veterans (Sep 2010)

52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010)

52.222-37 Employment Reports on Veterans (Feb 2016)

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

52.222-50 Combating Trafficking in Persons (Feb 2009).



52.222-55 Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

52.222-62 Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.

52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (*If order exceeds \$3,000.*)

52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) In addition, as required by the clause, the Seller shall comply with the following FAR clauses to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

FAR Clause	Title of Clause
52.203-6	Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402) ( <i>If order exceeds \$150,000</i> )
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (31 U.S.C. 6101 note) (Applies to orders over \$30,000 but not applicable to COTS items)
52.219-8	Utilization of Small Business Concerns (Nov 206)
52.222-3	Convict Labor (E.O. 11755)
52.222-17	Nondisplacement of Qualified Workers (May 2014)
52.222-19	Child Labor-Cooperation with Authorities and Remedies
52.222-21	Prohibition of Segregated Facilities
52.222-42	Statement of Equivalent Rates for Federal Hires (May 2014)
52.222-54	Employment Eligibility Verification
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts
52.223-18	Contractor Policy to Ban Text Messaging while Driving (E.O. 13513)
52.225-1	Buy American Act – Supplies (41 U.S.C. 10a-10d)
52.225-5	Trade Agreements (19 U.S.C. 2501, et. seq., 19 U.S.C. 3301 note)
52.225-13	Restrictions on Certain Foreign Purchases (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury)(June 2008)
52.239-1	Privacy or Security Safeguards (5 U.S.C. 552a)

(e) In addition to the clauses listed above, if this Order will contain Government property, the below listed clauses, are applicable

FAR Clause	Title of Clause
52.245-1	Government Property
52.245-2	Government Property Installation Operation Services
52.245-9	Use & Charges ( <i>When FAR 52.245-1 is incorporated</i> )

(f) In addition to the clauses listed above, if this Order will be performed under any contract issued by an agency of the Department of Defense, the below listed clauses, are applicable:

FAR Clause	Title of Clause
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (Sep 2015)
252.225-7001	Buy American Act and Balance of Payments Program (41 U.S.C. 10a-10d, E.O. 10582)
252-225-7002	Qualifying Country Sources as Subcontractors
252.225-7012	Preference for Certain Domestic Commodities (10 U.S.C. 2533a) ( <i>If order exceeds \$150,000</i> )
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (10 U.S.C. 2533a)

252.225-7021	Trade Agreements (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note)
252.225-7036	Buy American Act—Free Trade Agreements—Balance of Payments Program (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note) (Dec 2016)
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian
252.227-7015	Technical Data-Commercial Item
252.237-7019	Training for Contractor Personnel Interacting with Detainees (Section 1092 of Public Law 108375)
252.237-7037	Validation of Restrictive Markings on Technical Data (Sep 2016)
252.246-7003	Notification of Potential Safety Issues (Jun 2013)
252.246-7008	Sources of Electronic Parts (Oct 2016)
252.247-7023	Transportation of Supplies by Sea (10 U.S.C. 2631)
252.247-7024	Notification of Transportation of Supplies by Sea (10 U.S.C. 2631)