



## GOVERNMENT (FFP)

### TELEPHONICS STANDARD TERMS AND CONDITIONS

#### 1. **FORMATION OF CONTRACT.**

The Purchase Order shall be deemed conclusively to be accepted by the Seller upon Seller's acknowledgment and acceptance of the Purchase Order or by shipment of goods or commencement of any performance herein. By acceptance of the Purchase Order, Seller agrees to comply with all terms and conditions and specifications in the purchase order documents, including those contained in all documents incorporated into the Purchase Order or any other contract document by reference. The terms set forth herein, and in those documents referenced herein, constitute the entire agreement and supersede all previous verbal or written representations, agreements and conditions. No revision of this order shall be valid and binding unless and until any such revision is in writing and is signed by an authorized representative of the Telephonics Corporation (hereinafter "Buyer") and no conditions stated by Seller in accepting, acknowledging, or amending this Order shall be binding upon Buyer unless expressly accepted in writing by Buyer. To the extent that the conditions set forth in the Purchase Order document are in conflict with these Standard Terms and Conditions, they shall supersede these Standard Terms and Conditions. Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (i) Purchase Order document; (ii) Special Terms and Conditions, including any applicable supplementary provisions; (iii) These Standard Terms and Conditions (including required FAR and DFARS flowdowns); (iv) Statement of Work; (v) Specifications; and, (vi) Drawings. The Purchase Order price is firm fixed price, unless indicated to the contrary elsewhere in the Purchase Order.

#### 2. **PRIORITY RATING.**

If so identified or communicated to Seller, the Purchase Order is a "rated order" certified for national defense, emergency preparedness, and energy program use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

#### 3. **ELECTRONIC CONTRACTING.**

The parties agree that if this Purchase Order is transmitted electronically neither party shall contest the validity of this Purchase Order, or any acknowledgment thereof, on the basis that this Purchase Order or acknowledgment contains an electronic signature.

#### 4. **PACKING, BAR CODING AND SHIPPING.**

Unless otherwise provided herein, no charge shall be made by Seller for containers, crating, boxing, storage or other packaging requirements. Seller shall be responsible for ensuring the proper packaging, BAR Coding and shipping of Product hereunder in accordance with Buyer's Supplementary Purchase Order and Vendor Consignment Notice Packing, Bar Coding, and Shipping Instructions Form TCX1138 which is incorporated herein by reference and available on the Buyer's Website, <https://Telephonics.com>. Damage resulting from improper Product packaging will be charged to Seller and failure to comply with BAR Code instructions will delay payments to the Seller due to extended processing time.

#### 5. **INVOICE AND FREIGHT BILL.**

Seller shall send a separate invoice for each shipment and shall include the following information taken from Buyer's Purchase Order: (i) Purchase Order number; (ii) item number; (iii) part serial number (if serialized); (iv) part number; (v) unit of measure; (vi) unit price; and (vii) unit ECCN or ITAR classification. Seller's invoice shall also include: (viii) Seller's phone number and address; (ix) invoice number; (x) date prepared; (xi) item quantity; (xii) extended item price; and (xiii) total invoice value. If Seller's "remit to" address is different than the address indicated on the Order, clearly identify the "remit to" address on the invoice. No invoice shall be issued prior to shipment of Products. Seller shall also provide documentation to support its invoice as Buyer may reasonably require. For each shipment made at Buyer's expense (i.e., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice. Buyer reserves the right to return invoices failing to comply with these instructions for re-submittal of a correct invoice.



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### 6. DELIVERY, TITLE.

- A. The FOB point shall be as designated in the Purchase Order. Title shall pass to Buyer upon acceptance (except as otherwise specified within this Purchase Order); however, passing of title shall not relieve Seller of any other obligations under this Purchase Order.
- B. Time is of the essence for this Purchase Order. As a result, Purchase Order delivery schedules must be strictly adhered to without early/late and/or over/under quantity deliveries. Buyer reserves the right to return over-shipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of over-shipments and early shipments.
- C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements or by Seller's delay shall be borne by Seller.
- D. If Seller is unable to meet the required delivery schedules for any reason, it shall promptly notify Buyer and, other than for delays directed by Buyer, Buyer shall have the option to (i) terminate this Purchase Order, or (ii) fill such Purchase Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer, or (iii) accept late delivery and recover from Seller any costs Buyer incurs caused by the late delivery. This condition shall not limit buyer's rights under the default clause contained herein.
- E. All Parties expressly agree that time is and shall remain a material element of this Purchase Order and no acts of Buyer, including without limitation, modifications to this Purchase Order or acceptance of late deliveries, shall constitute a waiver of this provision.

### 7. ACCEPTANCE AND REJECTION.

If any of the goods are found to be defective in material or workmanship, counterfeit or otherwise not in conformity with the requirements of this Purchase Order at any time within one (1) year after delivery, Buyer, in addition to any other rights which it may have under warranties or otherwise, shall have the right to (i) accept all or part of the defective or non-conforming goods at an equitable price reduction; (ii) reject and return all or part of such goods at Seller's expense (including Buyer's handling charges), and/or to require that such articles or materials be corrected or replaced promptly with satisfactory materials or workmanship conforming goods; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such goods to comply in all respects with the Purchase Order requirements; or (iv) terminate this Purchase Order for default in whole or in part. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Purchase Order or otherwise. Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed as Buyer's Authorized Procurement Representative may reasonably direct.

### 8. CHANGES.

- A. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Purchase Order in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; (vi) terms and conditions of this Purchase Order required to meet Buyer's obligations under Government prime contracts or subcontracts; and, if this Purchase Order includes services, (vii) description of services to be performed; (viii) time of performance (e.g., hours of the day, days of the week, etc.); and (ix) place of performance. Seller shall comply promptly with such direction.



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Except for the rights granted to Buyer under this provision, a change pursuant to this provision shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Purchase Order.

- B. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.
- C. If such change increases or decreases the cost or time required to perform this Purchase Order, Seller shall immediately notify Buyer and Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Purchase Order in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within 10 days after Seller's receipt of such direction and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 45 days, after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

### 9. **RIGHT OF ACCESS.**

Authorized representatives of Buyer and its Customer and/or Government, when accompanied by the Buyer's representative, shall be allowed reasonable access to all work and work-in-progress, and all data and information related to this Purchase Order, and all facilities thereof, including Seller's subcontractors' locations, for purposes of observation, inspection, examination and evaluation, and to conduct surveys, audits and reviews at any reasonable time prior to final acceptance or termination.

### 10. **INSPECTION.**

All supplies furnished hereunder must conform strictly to the specifications set forth in this Purchase Order. Buyer and its customers may inspect and test material, work in progress and supplies at all reasonable times and places, including Seller's subcontractors' locations, during manufacture. If inspection and test are made on Seller's or its subcontractor's premises, Seller without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Inspections and test by Buyer, and its customers, shall be performed in such manner as not to delay the work unduly. All supplies furnished hereunder shall be subject to inspection at destination notwithstanding any previous source inspection. The performance of any inspection or test shall in no way relieve the Seller of its obligation to furnish all supplies or materials in strict accordance with the terms and provisions of this Purchase Order. Seller shall maintain all records of inspection in connection with this Purchase Order and such records shall be available to Buyer, and its customers, at all reasonable times. Payment or receipt thereof shall not be deemed a waiver of inspection or the right to reject goods and seek damages.

### 11. **PARTS OBSOLESCENCE.**

Buyer may desire to place additional Purchase orders for items purchased hereunder. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any items purchased under this Purchase Order.

### 12. **WARRANTIES.**

In addition to, and without prejudice to, all other warranties both express and implied, Seller warrants that the supplies or services furnished hereunder will be (i) free from defects in material, workmanship and manufacturing processes (ii) in compliance with all requirements of this Purchase Order and all applicable drawings, specifications, samples, representation or other descriptions, (iii) to the extent such supplies or services are not furnished pursuant to detailed designs provided by Buyer, free from defects in design or specification, (iv) suitable for the purposes intended, and (v) free of all liens and

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encumbrances. All warranties both express or implied including the above, shall constitute conditions precedent and, shall survive inspection, acceptance and payment. If any supplies or services fail to comply in any respect to the warranty set forth above, Seller, at Buyer's option, shall promptly repair or replace the supplies or services. Transportation of replacement supplies and return of nonconforming supplies shall be at Seller's expense. If repair or replacement is not timely, Buyer may elect to return, repair, replace, or re-procure the nonconforming supplies or services at Seller's expense. All warranties shall run to Buyer and its customers. Buyer's approval of any documentation prepared by Seller or Buyer's participation in inspection, design reviews or first provision approval process or similar reviews shall not relieve Seller of any obligation under this warranty. Buyer's rights under this provision shall, at Buyer's option, be assignable to and enforceable by its successors and customers. The rights of Buyer set forth in this provision shall be in addition to, and not in lieu of, any other right Buyer may have under this Purchase Order, or in law or equity.

### 13. **FORCE MAJEURE.**

Seller shall not be liable for excess re-procurement costs pursuant to the "Cancellation for Default" provision of this Purchase Order incurred by Buyer because of any failure to perform this Purchase Order under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are: (i) acts of God or of the public enemy; (ii) acts of the Government in either its sovereign or contractual capacity; (iii) fires; (iv) floods; (v) epidemics; (vi) quarantine restrictions; (vii) strikes; (viii) freight embargoes; and (ix) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the Seller's failure is caused by the failure of a subcontractor of Seller and if such failure arises out of causes beyond the reasonable control of both, and if such failure is without the fault or negligence of either, Seller shall not be liable for excess re-procurement costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause(s). In all cases, Seller shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the goods required by the Purchase Order from other sources; otherwise Seller shall be liable for excess re-procurement costs.

### 14. **NON WAIVER.**

The failure of the Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor of the right to Buyer thereafter to enforce each and every such provisions.

### 15. **CANCELLATION FOR DEFAULT.**

- A. Buyer may, by written notice to Seller, cancel all or part of this Purchase Order: (i) if Seller fails to deliver the conforming goods within the time specified by this Purchase Order or any written extension; (ii) if Seller fails to perform any other provision of this Purchase Order or fails to make progress, so as to endanger performance of this Purchase Order, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or (iii) 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.
- B. Seller shall continue work not canceled. If Buyer cancels all or part of this Purchase Order, Seller shall be liable for Buyer's excess re-procurement costs.
- C. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Purchase Order rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this

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Purchase Order. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.

- D. Buyer shall pay the Purchase Order price for goods accepted. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" provision of this Purchase Order, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Purchase Order any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- E. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Purchase Order had been terminated according to the "Termination for Convenience" provision of this Purchase Order.

### 16. TERMINATION FOR CONVENIENCE.

Buyer may at any time terminate all or any part of this Purchase Order in accordance with the provisions of Federal Acquisition Regulation ("FAR") 52.249-2, entitled "Termination for Convenience of the Government (Fixed-Price)", which clause is hereby incorporated herein and made a part hereof by this reference, except that the term "contract" therein shall mean this Purchase Order, the term "Contracting Officer" therein shall mean "Buyer's authorized representative" the term "Government" therein shall mean "Buyer" except that in subparagraph (b) (8) and at the first occurrence thereof in paragraph (h) it shall mean Buyer or the "Government" and in paragraph (n) it shall mean "Buyer and the" Government", the term "Contractor" therein shall mean "Seller", paragraphs (d) and (j) thereof are deleted, the period "120 days" in paragraph (c) is changed to "60 days", the period "1 year" in paragraph (e) is changed to "3 months" and the period "90 days" in paragraph (l) is changed to "45 days"; provided, however, that if this Purchase Order is a first-tier subcontract under a U.S. Government prime contract, the period "1 year" in paragraph (e) is changed to "180 days."

### 17. TOOLS AND MATERIAL.

All materials, tools and equipment required to fill this Purchase Order shall be furnished by Seller unless otherwise specified. Materials, tools and equipment furnished to Seller by Buyer on other than a charge basis or specifically paid for by Buyer shall be held by Seller as Buyer's property and shall not be used except for the purpose of Seller's performance under this Purchase Order. All such materials, tools and equipment shall be satisfactorily marked, segregated or otherwise clearly identified by Seller as the property of the Buyer and shall be kept by Seller in good condition and repair and shall be returned by Seller at Buyer's request in as good a condition as when received, reasonable wear and tear excepted, except to the extent that any such materials, tools and equipment have been incorporated in supplies furnished to Buyer under this Purchase Order or have been properly consumed in the normal performance of work thereunder. Buyer shall have the right to remove its materials, tools and equipment upon receivership, bankruptcy or other default of Seller or upon termination of this Purchase Order. All risks of loss or damage to such materials, tools and equipment shall be upon Seller until the materials, tools and equipment have been delivered to Buyer. Seller shall, at its sole cost, maintain insurance covering any loss or damage to Buyer materials, tools, and/or equipment for the full replacement value, and protecting against all perils normally covered in an "all-risk" policy including but not limited to fire, windstorm, hurricane, tornado, sandstorm, explosion, riot, civil commotion, aircraft, earthquake, flood or other acts of nature during such time as they remain in Seller's possession. The Seller shall require its subcontractors, who are responsible for developing or manufacturing any of the deliverable equipment under the terms of this purchase order, to comply with the provisions contained in this provision. The Government Property Clause contained in clause 52.245-1 of the Federal Acquisition Regulations shall apply in lieu of this clause with respect to Government-furnished property, or property to which the Government may take title under this Purchase Order.

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### 18. INFORMATION OF BUYER AND SELLER.

- A. Unless expressly stated otherwise herein, the exchange of information under the Purchase Order shall be governed by the Purchase Order and, in particular this provision 18, which supersedes any prior agreement between Buyer and Seller to protect information relating to the purpose of the Purchase Order.
- B. Each Party agrees to keep confidential and not to disclose to any other person (unless permitted below or elsewhere in this Purchase Order) any proprietary information received from the other Party in connection with this Purchase Order. Proprietary Information shall be all information exchanged under this Purchase Order in written or other permanent form which is clearly and conspicuously marked as being proprietary using an appropriate legend. Proprietary Information shall also include information originally disclosed in some other form (e.g., orally or visually) to the extent that the disclosing Party: (i) identifies the information as proprietary at the time of original disclosure; (ii) summarizes the Proprietary Information in writing; (iii) marks the writing clearly and conspicuously with an appropriate proprietary legend; and (iv) delivers the writing to the receiving party within thirty (30) days of the original disclosure. The foregoing limitation on disclosure and use shall not apply to data or information which (v) was in the rightful possession of a receiving Party without restriction, prior to the first receipt from the disclosing Party; or (vi) now or hereafter, through no act or failure to act on the part of a receiving Party, becomes generally known and available to the public without restriction; or (vii) is hereafter disclosed and made available to a receiving Party without restriction by others having the right to make such disclosure.
- C. If this Purchase Order is issued under a U.S. Government contract, Seller agrees to use Buyer's Proprietary Information only for purposes necessary for performing this Purchase Order, without first obtaining Buyer's written authorization. Seller further hereby grants to Buyer a non-exclusive, irrevocable, worldwide, right and license to copy, modify, use and disclose to the U.S. Government or any higher tier contractor, any information received from Seller, including Proprietary Information, for the performance of this Purchase Order and any higher tier Purchase Order from which this Purchase Order is issued.
- D. All documents and other tangible media (excluding Products) transferred in connection with this Purchase Order, together with any copies thereof, are and remain the property of Buyer.

### 19. INTELLECTUAL PROPERTY RIGHTS UNDER GOVERNMENT CONTRACTS.

Seller shall be subject to and shall provide the Buyer's Government customer with all Intellectual Property and rights in data, software, information, or materials required by: (a) any prime contract clauses provided to the Seller; (b) the Purchase Order; or (c) any attachment hereto, addressing intellectual property rights. Seller agrees that Buyer shall have a fully paid up, unlimited, royalty-free, irrevocable, perpetual, worldwide, non-exclusive, right and license to use in connection with the performance of Buyer's contract, with the right to sublicense, any Seller data and any and all Intellectual Property conceived, developed, generated or delivered in the performance of this Purchase Order for the performance of the Buyer's contract. For the purpose of this provision, the term "Intellectual Property" means designs, methods, concepts, layouts, software, inventions (whether or not patented or patentable), copyrights, trademarks, discoveries, improvements, maskworks, ideas, works of authorship, derivative works, improvements, processes and similar proprietary matter. The right to "use" includes the rights to make, have made, sell, offer for sale, execute, reproduce, display, perform, distribute (internally or externally) copies of and prepare derivative works from Seller data and Intellectual Property, and some or all of the foregoing.

Further, Seller shall not deliver technical data or computer software that contains Nonconforming Markings. On behalf of the Government, Buyer may notify Seller of such a Nonconforming Marking. If Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, notwithstanding any other provision of this Provision, ignore or, at Seller's expense, remove or obliterate, any such Nonconforming Marking as may be on technical data or computer software delivered by Seller. As used in this provision, "Nonconforming Marking" means any confidential, proprietary, or other restrictive-use markings that are not expressly permitted by applicable FAR,



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DFARS, NASA FAR Supplement or other U.S. Government agency acquisition clauses incorporated into this Purchase Order.

### 20. INFRINGEMENT INDEMNIFICATION.

- A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will defend, indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under the Purchase Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.
- B. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.
- C. If the use or sale of the product is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the product or shall substitute an equivalent product acceptable to Buyer and extend this indemnification thereto.
- D. Seller's obligation shall not apply to products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under the Purchase Order, which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of products in combination with products not delivered by Seller if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.
- E. Notwithstanding the foregoing, when the Purchase Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under the Purchase Order shall be coextensive with Buyer's liability.

### 21. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS).

- A. This provision only applies to purchase orders that include the delivery of software (including software residing on hardware).
- B. Seller shall disclose to Buyer in writing any FLOSS that will be used or delivered in connection with this Purchase Order and shall obtain Buyer's prior written consent before using or delivering such FLOSS in connection with this Purchase Order. Buyer may withhold such consent in its sole discretion.
- C. As used herein, "FLOSS License" means the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License," "Open Source License," "Public License," or "GPL Compatible License."
- D. As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (i) open source, publicly available, or "free" software, library or documentation, or (ii) software that is licensed under a FLOSS License, or (iii) software provided under a license that (1) subjects the delivered software to any FLOSS License, or (2) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (3) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (a) the delivered software, or any portion thereof, in object code and/or source code formats, or (b) any products incorporating the delivered software, or any portion thereof, in object code.
- E. Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, relating to use in connection with this Purchase Order or the delivery of FLOSS.

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### 22. **ASSIGNMENT, DELEGATION AND SUBCONTRACTING.**

Seller shall not assign any of its rights or interest in this Purchase Order for all or substantially all of its performance of this Purchase Order, without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this Purchase Order. Seller may assign its right to monies due or to become due. Any attempt to assign or delegate in violation of this provision is void. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Purchase Order or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This provision does not limit Seller's ability to purchase standard commercial supplies or raw materials.

### 23. **OFFSET.**

This provision shall only apply to purchase orders in excess of fifty thousand dollars (\$50,000.00).

A. Definition: "Offset" means the obligations that Buyer undertakes, in order to market or sell its products, to assist a customer country in reducing any trade imbalance caused by its purchase of Buyer's products or to meet other customer country national objectives.

B. To the exclusion of all others, Buyer or its assignees shall be entitled to all benefits or Offset credits which might result from this purchase order. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for Offset credits.

C. Seller agrees to use reasonable efforts to identify the foreign content of items that Seller either produces itself or procures from subcontractors for work under this purchase order. Promptly after selection of a non-U.S. subcontractor for work under this purchase order, Seller shall notify Buyer of the name, address, subcontractor point of contact (including telephone number) and dollar value of the subcontract.

D. Seller shall include the substance of this provision, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this purchase order.

### 24. **SET OFF.**

Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer, or any of its affiliated companies against any amount payable at any time by Buyer or any of its affiliated companies to Seller against obligations of the Seller.

### 25. **RELEASE OF INFORMATION AND ADVERTISING.**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Purchase Order or the subject matter hereof, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use the name "TELEPHONICS" or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

### 26. **COMPLIANCE WITH LAW.**

Seller shall observe and comply with all applicable federal, state and local laws, executive orders, international agreements, rules and regulations in the performance of the Purchase Order, and Seller warrants that the supplies and services furnished under the Purchase Order have been or will be produced in compliance with all applicable requirements of all applicable laws and regulations including but not limited to the U.S. Fair Labor Standards Act. Seller agrees to indemnify and save harmless Buyer against any loss, liability expense or damage by reason of Seller's failure to observe or comply with any applicable law, executive order, international agreement, rule or regulation.

### 27. **INSURANCE/ENTRY ON BUYERS FACILITIES.**

A. In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Purchase Order then Seller and its subcontractors shall maintain for the performance of this Purchase Order workers compensation, commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit and such



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other insurance as Buyer may require. Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to maintain the required insurance. Seller shall name Buyer as an additional insured to the CGL and AL policies for the duration of this Purchase Order. If requested, Seller shall provide Buyer with a "Certificate of Insurance" evidencing Seller's compliance with these requirements. Insurance maintained pursuant to this provision shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. "Subcontractor" as used in this provision shall include Seller's subcontractors at any tier. Seller's obligations for maintaining insurance coverages herein are freestanding and are not affected by any other language in this Purchase Order.

- B. (i) Seller's personnel, including Seller's subcontractors, shall comply with all Buyer security, safety, rules of conduct, badging and personal identity, and related requirements while on Buyer premises. In addition, prior to entry on Buyer premises, Seller shall coordinate with Buyer to gain access to facilities. Seller shall provide information reasonably required by Buyer to ensure proper identification of personnel, including but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status. Buyer may, at its sole discretion, have Seller remove any specified employee of Seller from Buyer's premises and request that such employee not be reassigned to any Buyer premises under this Purchase Order. (ii) Seller personnel requiring unescorted access to sites of Buyer or its customers shall, prior to entry, be screened by Seller at no charge to Buyer through the Buyer Contractor Screen Program, or otherwise screened by Seller in a manner satisfactory to Buyer.
- C. Seller shall defend, indemnify and hold harmless Buyer, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors.

### 28. PRICING.

- A. The Seller, by acceptance of a Purchase Order from Buyer, certifies that to the best of its knowledge and belief the Seller's quotation relating to this Purchase Order was based on the best and most current pricing data available to the Seller as of the date of its quotation and that the rates specified herein are those which are normally quoted to the "best offer" or "most favored customer," and are no higher than those charged any other customer for identical items in like quantities. If, during the term of this Order, Seller hereafter agrees to sell a substantially similar work to another buyer under substantially similar terms and conditions and at a lesser purchase price than specified in this Purchase Order, then the Seller agrees to provide a price adjustment to the Buyer, in order that the Buyer or its customer is not at a price disadvantage to another buyer. In the event the Buyer has already paid under this Purchase Order, Seller will refund to the Buyer the portion of the price difference. In the event Seller does sell a substantially similar work to another buyer, the Buyer has, at its sole discretion, the option to have a mutually agreed independent auditor evaluate the price and schedule given to the other buyer, to assess if Seller is due any adjustment on price and schedule, and as a result provide consideration to the Buyer under the Purchase Order. Seller's obligations under this provision shall terminate one year after final delivery.
- B. Where submission of cost or pricing data is required or requested by the Government at any time prior to or during performance of this Purchase Order, if Seller or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon Buyer's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on Buyer's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate or materially incomplete;



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or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (a) Buyer's contract price or fee is reduced; (b) Buyer's costs are determined to be unallowable; (c) any fines, penalties, withholdings, or interest are assessed on Buyer; or (d) Buyer incurs any other costs or damages; Buyer may proceed as provided for in C. below.

- C. Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraph B above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of this Purchase Order or any other Purchase Order with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded. In the case of withholding(s), Buyer may withhold the same amount from Seller under this Purchase Order.

### 29. LABOR DISPUTES.

Whenever an actual or potential labor dispute delays, or threatens to delay, the performance of the Purchase Order, Seller shall immediately give notice thereof. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this provision in all subcontracts or Purchase Orders issued under this Purchase Order.

### 30. SUSPENSION OF WORK.

A. Buyer's Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under this Purchase Order for a period not to exceed 100 days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order; (ii) terminate this Purchase Order in accordance with the "Termination for Convenience" provision of this Purchase Order; (iii) cancel this Purchase Order in accordance with the "Cancellation for Default" provision of this Purchase Order; or (iv) extend the stop work period.

B. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Purchase Order is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Purchase Order delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled.

### 31. NO LIABILITY FOR EXCESSIVE MATERIAL, LABOR OR PRODUCTION COSTS.

In order to minimize liability in case "Changes" are directed or "Termination for Convenience" occurs Seller agrees that Buyer will not be responsible for material, labor or production costs or charges that are unrealistic, excessive, or inconsistent with the minimum needs required to meet the delivery requirements of this Purchase Order.

### 32. DISPOSAL OF PRODUCTS.

Seller shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use. Upon completion or termination of this Purchase Order, Seller shall, at Seller's expense, dispose of all Products, including partially completed Products, as required or directed by Buyer.

### 33. RIGHT TO DEMAND RETURN OF INTERIM PAYMENTS.

Should Buyer prior to full performance and completion of the Purchase Order make any payment hereunder for any cause or reason, whether conditionally or unconditionally, any amount or amounts so paid shall be subject to return with interest, at the option of the Buyer, if this Purchase Order is ultimately terminated for default or otherwise not fully performed and completed by Seller in accordance with the terms and provisions hereof.

### 34. DISPUTES.

Any dispute that arises under or is related to this Purchase Order that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Purchase Order according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute. To the extent that the work or services being acquired hereunder are for ultimate sale to the United States Government, nothing in this Agreement grants the Seller with a direct right of action against the Federal Government under the Prime Contract.

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### 35. **ADDITIONAL CONDITIONS CONFORMING TO THE UNITED STATES GOVERNMENT PROCUREMENT REGULATIONS.**

- A. Federal Acquisition Regulation Provisions. All Federal Acquisition Regulation and Agency Supplement clauses that are required by law or regulation are included in these Standard terms and conditions. In addition, Attachment 'A' is incorporated herein and sets forth the Federal Acquisition Regulations in effect on the date of Buyer's Prime Purchase Order are hereby incorporated by reference as if set forth in full text. Whenever said provisions include a requirement for the resolution of disputes between the parties in accordance with the "Disputes" provision herein, the dispute shall be disposed of in accordance with the provision entitled "Disputes" in these Standard Terms and Conditions. Where necessary to derive proper meaning in a Purchase Order situation from these clauses, "Contractor" means "Seller" "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change: (i) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime Purchase Order Contracting Officer or duly authorized representative, (ii) when title to property is to be transferred directly to the Government, and (3) in FAR 52.227-1, 52.227-2, and DFARS 252.227-7013 and 252.227-7014. The Seller shall include in each lower-tier subcontract the appropriate flow-down clauses as required by Federal Acquisition Regulations (FARS) and Defense Federal Acquisition Regulation Supplement (DFARS).
- B. Notice to Prospective Subcontractors of Requirement for Certifications of Non-segregated facilities. Certification of Non-segregated facilities as required by the 9 May 1967 order on Elimination of Segregated Facilities by the Secretary of Labor (2 Fed Reg 7439 19 May 1967) must be submitted prior to the award of a Purchase Order exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each Purchase Order or for all subcontracts during a period (i.e. quarterly, semiannually or annually).
- C. Contract Disputes Act of 1978. If Buyer determines that a claim submitted by Seller may become part of a Buyer's claim against the government that is subject to the Contract Disputes Act of 1978, P.L. 95 563,41 U.S.C. paragraph 601-613, Seller shall, on request, provide Buyer with a written certification, in such form and detail as Buyer may require, stating that the Seller's claim is made in good faith, the supporting data are accurate and complete to the best of Seller's knowledge and belief, and the amount requested accurately reflects the Purchase Order adjustment for which the Seller believes Buyer is liable. Notwithstanding any other provision of this Purchase Order, Seller agrees to indemnify and hold Buyer harmless against any loss or damage suffered by Buyer as a result of any breach of or discrepancy in any such certification.

### 36. **SELLER BUSINESS SYSTEMS.**

"Seller Business Systems" as used in this provision means Seller's material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system. If Seller's Business Systems are reviewed and approved by a Government agency, Seller shall provide prompt notice to Buyer whenever there is a material change in the status of the Government's approval or determination of adequacy of any of Seller's Business Systems.

### 37. **EXPORT/IMPORT PROVISIONS.**

- A. Seller is advised that its performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) 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

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disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder. Seller shall hold the Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from its failure to comply with this clause, the International Traffic in Arms Regulations or the Export Administration Act or other applicable export or import control laws. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this provision shall be a material breach of this Purchase Order.

- B. Foreign Personnel/Persons. Seller shall not give any Foreign Person, including Foreign Persons employed by or associated with Seller or Seller's lower-tier suppliers, access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the Immigration and Naturalization Act), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph B. shall relieve Seller of its obligations to comply with the requirements of paragraph A. of this provision or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations. The Seller shall obtain any required approval of the U.S. Government, including the approval of any other relevant government, before exporting/importing any equipment, materials or technical data to such Foreign Persons.
- C. The Seller shall be responsible for securing any export or import licenses or security clearances necessary to enable Seller to meet its obligations under the terms of this Purchase Order. The Seller is responsible for complying with all relevant U.S. export and import laws, and the laws of any other country from which data, materials, or articles have been sourced or imported in the performance of this Purchase Order. In particular, the Seller shall obtain any required approval of the U.S. Government, including the approval of any other relevant government, before exporting/importing any equipment, materials or data generated under this Purchase Order. The Seller, by acceptance hereof, certifies that all technology and information required under this Purchase Order is based and covered by existing export or import licenses from the applicable government. Where information essential for the satisfactory completion of the Purchase Order is under the control of any government, such that an export or import license or other instrument is required for shipment to occur, the Seller shall, within a period of ninety (90) days from the date of Purchase Order award, expedite the necessary license or approval from the government. If the license or approval is not formally in place within the ninety-day period, the Buyer reserves the right to terminate the Purchase Order at no cost to the Buyer, in accordance with Provision 13 – Cancellation for Default as stated above.
- D. Subcontracts. The substance of this provision shall be incorporated into any lower-tier Purchase Orders or Subcontracts entered into by the Seller for the performance of any part of the work under this Purchase Order.
- E. Seller agrees to notify Buyer if any deliverable under this Purchase Order is restricted by export control laws or regulations.
- F. Seller shall immediately notify the Buyer's Procurement Representative if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.



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- G. Where Seller is a signatory under a Buyer's export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Buyer's Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect Seller's performance under this Purchase Order.
- H. If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

### 38. APPLICABLE LAW.

This Purchase Order shall be exclusively governed by and construed in accordance with the laws of the State of New York, excluding its choice of law rules except that any provision in this Purchase Order that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) 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. Both parties agree to the exclusive jurisdiction of the Courts of New York.

### 39. TAXES AND DUTIES.

The price set forth in this Purchase Order includes all applicable state and local sales taxes. If any import duties are included in the price Seller shall cooperate with Buyer in Buyer securing any rebates or drawbacks, which shall be for the sole benefit of Buyer. Buyer specifically reserves to itself all rights to drawback of duty or taxes paid on materials purchased for export or ultimate manufacture and export of goods. Seller disclaims all interest in such rights and agrees to furnish buyer with proof of importation and a signed U. S. Customs Form 331 (Certificate of Delivery or Certificate of Manufacture and Delivery) and any other document necessary for buyer to obtain payment of said drawback.

### 40. COUNTERFEIT GOODS.

In addition to other FAR flow down clauses, Seller shall comply with the provisions of DFARS 252.246-7007, entitled "CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM", which clause is hereby incorporated herein and made a part hereof by this reference, except that the term "contract" therein shall mean this Purchase Order, the term "Contracting Officer" therein shall mean "Buyer's authorized representative" the term "Government" where applicable. Seller shall implement an appropriate counterfeit mitigation program acceptable to Buyer and compliant with DFARS 252.246-7007 to ensure that it does not receive counterfeit goods into inventory, use them in manufacturing, or inadvertently provide them in products sold to Buyer. Seller shall flow this article down lower-tier subcontracts for the delivery of goods that will be included in, or furnished as, end items to Buyer.

### 41. 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 this Purchase Order or securing favorable treatment under this Purchase Order.

### 42. QUALITY ASSURANCE.

Seller shall establish and maintain a quality management system acceptable to Buyer for the Goods purchased under this Purchase Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality management system and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.



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### 43. PURCHASE ORDER DELIVERABLES.

Seller agrees and acknowledges that all deliverables, or portions thereof, under this Order ("Deliverable Materials") may be incorporated into deliverables under the next higher tier or prime contract. Seller hereby grants Buyer the right to deliver the Deliverable Materials or any portion thereof under the next higher tier or prime contract. Seller further hereby agrees to deliver the Deliverable Materials under this Purchase Order with the appropriate markings required by the government regulations incorporated into this Purchase Order.

### 44. COMMUNICATION WITH CUSTOMER.

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

### 45. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform work under this Purchase Order shall be Seller's employees exclusively without any relation whatsoever to Buyer.

B. Seller shall be responsible for and hold harmless Buyer and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

### 46. CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM.

Buyer has joined with the U.S. Bureau of Customs and Border Protection in the Customs Trade Partnership Against Terrorism (C-TPAT) program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of the United States to Buyer, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. Seller shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. In addition, Seller agrees to take such reasonable measures as may be required by Buyer to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in Seller's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Contact the authorized Purchasing Representative for assistance in identifying transportation companies that are validated under the C-TPAT program.

### 47. RETENTION OF RECORDS.

Unless a longer period is specified in this Contract or by law or regulation, Seller shall retain all records related to this Contract for ten (10) years from the date of final payment received by Seller under the Purchase Order. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, Seller shall timely provide access to such records to the US Government and/or Buyer or Buyer's Customer upon request and all documentation shall be archived in a fire-resistant, weather-proof and theft-proof area.

### 48. SURVIVABILITY.

If this Purchase Order expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following clauses: 3, 12, 15, 18, 19, 20, 21, 25, 27, 34, 37, 38 and 45 and those U.S. Government flowdown provisions that by their nature should survive.

### 49. SEVERABILITY.

Each provision, paragraph and subparagraph of this Purchase Order is severable, and if one or more of them are declared invalid, the remaining provisions of this Purchase Order will remain in full force and effect.