



TERMS AND CONDITIONS FOR COMMERCIAL ORDERS (SUPPLIES AND SERVICES)

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1. DEFINITIONS. As used throughout these terms and conditions, the following terms shall have the meanings set forth below.

“Buyer” means GENERAL ATOMICS.

“Order” means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are affixed.

“Seller” means the person, firm, or corporation, trust, joint venture, association, company, partnership, limited liability company or government (including any agency or political subdivision thereof) executing the Order with Buyer and who will furnish the supplies or services provided for herein.

Except as otherwise provided in these terms and conditions, the term “subcontract” includes purchase orders issued by Seller under the Order, but does not include Seller’s employment relationships.

All references to “work,” “works,” “supplies,” “articles,” “products,” or “items” shall include “services,” if the Order, wholly or in part, provides for the furnishing of services.

2. INDEPENDENT CONTRACTOR. Seller is, and shall be deemed to be, an independent contractor and not an agent or employee of Buyer either expressly or impliedly. The Order shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order shall grant to either party the right to make commitments of any kind for, or on behalf of, the other party. Buyer will rely on Seller’s expertise and management of each of Seller’s employees to perform the work or provide the services under the Order. Seller represents and warrants that: (a) Seller will exclusively control and direct the work of its employees, who shall be free from the control and direction of Buyer in connection with the performance of the work or provision of the services; and (b) Seller is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed or the services to be provided under the Order.

3. PACKING AND SHIPMENT. Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers and be packaged to ensure against damage from weather or transportation. Buyer’s Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing materials. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. INSPECTION. Buyer shall be permitted to inspect Seller’s manufacture, fabrication and testing facilities. For these purposes, and upon reasonable advance notice, Seller shall provide access to Seller’s facilities to enable Buyer and its representatives to perform inspections and to determine Seller’s orderly, timely and satisfactory compliance with the requirements of the Order.

Inspections and design or planning reviews performed or not performed by Buyer shall not relieve Seller from responsibility to perform all inspection tests and quality assurance measures nor otherwise to comply with the requirements of the Order.

Any work or item which fails to meet the Order requirements may be rejected. If delivered to Buyer’s destination, rejected work or items shall be removed promptly by Seller at Seller’s expense.

5. DELIVERY. TIME OF DELIVERY UNDER THE ORDER IS OF THE ESSENCE. If Seller fails to adhere to the delivery schedule set forth in the Order, and Buyer must therefore demand a more expeditious means of transportation than specified in the Order, Seller shall be liable for the difference in such transportation cost. This in no way affects any other rights and remedies available to Buyer related to such delivery.

Unless otherwise noted on the Order, the date of delivery shall mean the date the item is to be delivered at Buyer’s facility, or if the Order is for services, the date the services (or phase thereof) are to be completed.

Buyer’s needs are for the quantities specified within the Order. Items delivered in excess of the quantities ordered result in substantial administrative expense to Buyer. Therefore, articles delivered under the Order in excess of the quantity specified may be retained by Buyer at no additional cost. Buyer is under no obligation to notify Seller of any over shipments.

6. TITLE AND RISK OF LOSS. Title shall pass to Buyer at the specified destination. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item.

Seller shall assume and bear the risk of any loss of, or damage to, the supplies covered hereby until delivered at the specified destination.

Seller shall bear all risks as to rejected items after notice of rejection.

7. WARRANTY. Notwithstanding inspection and acceptance by Buyer of supplies furnished under the Order, all supplies furnished under the Order will be free from defects in material or workmanship and will conform with all requirements of the Order. Seller warrants that supplies ordered to specifications hereunder will conform to the specifications and to any drawings, samples, or other description furnished or adopted by Buyer in connection with the Order. If supplies are not ordered to such specifications, Seller warrants that they will be fit for the purpose intended. All articles purchased hereunder are warranted to be merchantable, to be of good material and workmanship, and to be free from defect for a period of one year after delivery and acceptance by Buyer. All such warranties and guarantees, if any, shall survive inspection or test, acceptance, and payment. All statutory warranties shall apply and Buyer shall additionally have the benefit of any longer manufacturers’ warranty periods applicable thereto. Warranties shall run to Buyer, its successors, assigns, and customers.

Seller further warrants that all work and services called for herein shall comply with the requirements of the Order and shall conform to the highest standards applicable to them, and that Seller will comply with all applicable laws concerning the provision of work and services, including as related to any workers retained by Seller to provide the services under the Order.

8. SPECIAL TOOLS. If prices are stated separately for dies, tools, and/or patterns acquired by Seller for the purpose of filling the Order (each a “Special Tool”), such Special Tools shall be properly identified by Seller as such. Title shall pass to Buyer upon payment for the Special Tool. If a Special Tool is needed for the manufacture by Seller of the Order, then Seller will hold such Special Tool in good condition, normal wear and tear excepted, and hand over such Special Tool to Buyer, as applicable, at the completion of the Order unless Buyer directs Seller in writing to dispose of such Special Tool.

9. BUYER-FURNISHED PROPERTY AND MATERIAL. Property and material furnished by Buyer to Seller for use in performance of the Order is to be held by Seller

for mutual benefit and if the materials are damaged or not satisfactorily accounted for, Seller will pay for all such property and materials.

Seller shall properly mark and account for all Buyer property.

10. PAYMENT. Payment date and cash discount period shall be calculated from either the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the goods and supporting documentation at destination, whichever occurs last. 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 entities) against any amount payable by Buyer (or any of its affiliated entities) to Seller. Seller's acceptance of payment from Buyer shall constitute a waiver of all claims by Seller against Buyer with respect to the work, items or services to which such payment applies.

11. ACCEPTANCE. Any one of the following methods will constitute acceptance by Seller of the Order (including these terms and conditions and any additional terms and conditions listed on the Order, all of which are hereby deemed to be part of the Order and incorporated into the Order by reference):

- (a) acknowledgement in writing;
- (b) commencement of performance by Seller; or
- (c) delivery in whole or in part of the items or services called for under the Order.

Seller's acceptance of the Order creates a binding contract between Buyer and Seller, which shall be governed by the provisions of the Order. No condition stated by Seller in its acknowledgement of the Order, quotation or any other document provided by Seller shall be binding upon Buyer if in conflict or inconsistent with, or in addition to the terms and conditions of the Order, unless expressly accepted in writing by an authorized representative of Buyer's Purchasing Department. The rights and obligations described in these terms and conditions shall survive completion, and final payment, of the Order.

12. CHANGES.

(a) An authorized representative of Buyer's Purchasing Department may at any time without notice to the sureties, if any, issue written directions to Seller requiring additional work within the general scope of the Order, or directing the omission of or variation in work covered by the Order or any amendment thereto. If any such direction results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be made and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under this clause 12 must be asserted in writing within fifteen (15) days from the date of receipt by Seller of the notification of change.

(b) Whether made pursuant to this clause 12 or by mutual agreement, changes shall not be binding upon Buyer until agreed to in writing by an authorized representative of Buyer's Purchasing Department. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder unless the same is in a writing which is signed by an authorized representative of Buyer's Purchasing Department and which expressly states that it constitutes a modification or change to the Order.

(c) Seller shall proceed with prosecution of the work in accordance with any written direction issued under the Order as herein described.

13. WRITINGS REQUIRED.

(a) No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless provided in writing.

(b) No oral statement of any person whatsoever shall in any manner or degree, modify or otherwise affect the terms of the Order.

(c) No extra charge of any kind, or change in the price or schedule or terms and conditions of the Order will be allowed unless specifically agreed to in writing by an authorized representative of Buyer's Purchasing Department.

14. RECORDS. Seller agrees that its manufacturing facilities, or such part of any manufacturing facilities as may be engaged in the performance of the Order, and its books, documents, papers and records shall at all reasonable times be subject to examination and audit by any person designated by Buyer. Such books and records shall be maintained by Seller for a period of five (5) years after final payment is made under the Order, unless Seller is obligated to keep such records for a longer period of time by law or by agreement with Buyer.

15. STOP WORK ORDER. Buyer may, at any time, by written notice to Seller, require Seller to stop all or part of the work called for by the Order for a period of ninety (90) days after such notice is delivered to Seller. Within ninety (90) days after such notice is delivered to Seller, or within any extension of the period to which the parties have agreed, Buyer shall either:

- (a) withdraw the notice and direct Seller to resume work, in which event Seller may be entitled to receive an equitable adjustment of the Order price or schedule or both, provided a claim for such an adjustment shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage; or
- (b) terminate the work and the Order or part thereof.

16. TERMINATION FOR CONVENIENCE.

(a) Buyer may, at its option, terminate the Order, in whole or in part, for Buyer's convenience, by written notice to Seller, effective at date of sending. Upon termination hereunder, Seller shall:

- (i) forthwith stop work under the Order on the terminated portion thereof and place no further orders or lower-tier subcontracts hereunder,
- (ii) terminate or, if so directed by Buyer, assign to Buyer, orders or subcontracts outstanding hereunder, and
- (iii) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same. Within three (3) months after receipt of such notice of termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs directly resulting from the termination. Such claim which shall include termination costs, if any, from lower-tier subcontractors, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:

(1) The Order price for articles which have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination, an equitable

adjustment will be made to the Order price for such articles.

(2) The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with industry standards and Seller's usual accounting procedures, to the terminated portion of the Order other than articles whose price is paid under subclause 16(a)(iii)(1), except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. Notwithstanding the provisions of this subclause 16(a)(iii)(2), if the Order provides for fixed hourly rates, Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of the Order.

(3) Reasonable expenses actually incurred by Seller in settling Seller's terminated orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.

(4) Such allowance for profit on the work performed as may be reasonable and allocable under the circumstances; provided, however, that if it appears that Seller would have incurred a loss if the Order had not been terminated, no profit shall be allowed and Buyer's payments pursuant to subclause 16(a)(iii)(2) above will be reduced by the proportionate amount of such loss as the terminated portion of the Order relates to the entire Order.

(b) Payments under this clause 16, including all payments made under the Order prior to the termination, shall in no event exceed the aggregate price specified in the Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed under subclause 16(a)(iii) above or, with Buyer's approval, may retain the same at an agreed price or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any orders and subcontracts that Seller has terminated in accordance with this clause 16.

(c) In no event will Seller be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed by subclause 16(a)(iii) above, nor shall Seller be allowed to recover any cost incurred prior to termination unless such cost was allocated to the Order in accordance with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

17. TERMINATION FOR DEFAULT.

(a) Buyer may terminate all or any part of the Order if Seller breaches any of the terms hereof including warranties or fails to make progress as to endanger performance of the Order in accordance with its terms. Termination hereunder shall be effected by written notice to Seller.

(b) In the event Buyer terminates the Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the Order to the extent not terminated under the provisions of this clause 17.

(c) Except with respect to defaults of subcontractors at any tier, Seller shall not be liable for excess costs if the failure to

perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

(d) If the Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of:

(i) any completed items, and

(ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or acquired for the performance of such part of the Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed items delivered and accepted by Buyer shall be at the Order price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in the amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials, such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of the Order under the provisions of this clause 17, it is determined for any reason that Seller was not in default under the provisions of this clause 17, or that the default was excusable under the provisions of clause 17(c), the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to clause 16 and the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly.

(f) The rights and remedies of Buyer provided in this clause 17 shall not be exclusive and are in addition to any others provided by law or the Order.

18. DATA

If the Order is for research, development, or experimental work, all data, notes, drawings, designs, sketches, specifications, records, and memoranda of every description in any physical or electronic form relating to the work hereunder or any part thereof as Seller shall produce, and all copies of the foregoing, shall be the property of Buyer and subject to inspection by Buyer at all reasonable times and shall be delivered to Buyer or otherwise disposed of by Seller as Buyer may direct from time to time.

19. PROPRIETARY INFORMATION.

(a) Each party agrees to hold in confidence all drawings, diagrams, specifications and other information furnished by the other party and identified as confidential or proprietary ("Confidential Information") and to use such Confidential Information only for the purpose furnished. Each party further agrees that no party shall reproduce, distribute or disclose the other party's Confidential Information to a third party without first obtaining the other party's written consent; provided, however, notwithstanding anything to the contrary in the NDA (as applicable and as defined below), Buyer is authorized to reproduce, distribute and disclose Seller's Confidential Information to Buyer's customers (or prospective customers), subcontractors, suppliers and other third parties in connection

with using any of the work or other deliverables furnished under this Order. Each party shall take all reasonable measures to protect the other party's Confidential Information, which measures shall be at least equal to those with which such party protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer, and the use by Seller is restricted to the work to be performed under the Order. Seller agrees to retain in confidence and return to Buyer on completion of the Order, all designs, drawings, specifications, and technical information of every kind belonging to Buyer, including all digital and hard copies thereof, and furnished to Seller in connection with the Order.

(b) Notwithstanding the foregoing subclause 19(a), neither party shall have an obligation with respect to any Confidential Information which the party receiving such Confidential Information can demonstrate:

(i) was in such party's rightful possession free of any obligation of confidence prior to its first receipt from other party,

(ii) is publicly known through no fault of the receiving party,

(iii) is obtained from a third person who had a right to disclose it, or

(iv) was independently developed without access to any confidential or proprietary information of the other party.

(c) If the parties have entered into a confidentiality agreement related to the subject matter of the Order that is in effect as of the date of any disclosure of confidential information under this Order ("NDA"), such NDA, which is incorporated by this reference, shall govern the parties' confidentiality obligations under this Order; provided, however, that clause 31 of these terms and conditions shall govern any Disputes.

20. INVENTIONS. If the Order is for, or includes, experimental, development, or research work, Seller agrees to disclose, and agrees to assign and hereby does assign, to Buyer inventions conceived or first actually reduced to practice in the course of or under the Order.

21. ADVERTISING, USE OF NAME. Seller shall not, without first obtaining written consent of an authorized representative of Buyer's Purchasing Department, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles or services provided for in the Order. Seller agrees that it shall not use Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without Buyer's prior written consent in each instance.

22. INDEMNITY. Seller agrees to defend, indemnify, and hold harmless Buyer against any and all loss, liability, damage, claim, deficiency, action, judgment, interest, penalty, fine, or award, including costs and expenses, arising out of or resulting from:

(a) any asserted trademark, copyright, or patent infringement arising from the performance of any work, services or provision of any items or supplies by Seller, or the manufacture, use, distribution, or sale of any articles furnished to Buyer under the Order, except where such articles are in accordance with Buyer's detailed design or specification and Seller gives prompt notice to Buyer of such claims which come to Seller's attention,

(b) any breach of any warranty of Seller under the Order, including these terms and conditions and any Additional Terms (defined below),

(c) any damages incurred by Buyer or any third party as a result of or arising out of any work, services or provision of any items or supplies, or the manufacture, use distribution or sale of articles furnished by Seller under the Order including in connection with the filing of any mechanics, materialman's or design lien, and

(d) any breach by any personnel of Seller of any agreement between Seller and its personnel required under any of the Additional Terms, or of any other document to which Buyer and its affiliates are third-party beneficiaries, including any unauthorized use or disclosure of Buyer's Confidential Information by any such personnel.

23. PRECAUTIONS, INDEMNITY, AND INSURANCE.

In addition to Seller's obligations set forth in clause 22, Seller will defend Buyer at Seller's expense from any suit or action, criminal or civil, arising out of Seller's performance of the Order, or that of its officers, directors, employees or agents. Further, Seller shall determine at its own risk the amounts and kinds of insurance sufficient to insure its obligations and liabilities hereunder, and shall procure and maintain all such insurance during the term of the Order and at its expense. Without prejudice to the foregoing, such insurance shall include at a minimum the following (except as otherwise specified in the Order):

(a) Automobile liability insurance protecting the Seller from automobile bodily injury and property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.

(b) Commercial general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises-operations, independent contractors and subcontractors and fire legal liability. Coverage will be on a per occurrence basis with limits of liability no lower than \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage.

(c) If the Order is for engineering or other professional service, professional liability coverage with a limit no less than \$1,000,000 per claim.

(d) Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances.

For (a) and (b) above, such policies shall name Buyer as additional insured when Seller performs a service on the premises of the Buyer or of a third party at the request of Buyer, or as otherwise requested by Buyer.

Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order. If Seller fails to maintain such insurance, Buyer shall have the option, but not the obligation, to arrange for such insurance at Seller's sole cost and expense and without any responsibility on Buyer's part for obtaining the insurance, the solvency of the insurance provider, the adequacy of the coverage, or the collection of claims. In the event of Seller's breach of this provision, Buyer shall have the right to

cancel the undelivered portion of any work, goods or services covered by the Order and shall not be required to make further payments except for conforming work, goods delivered or services rendered prior to cancellation.

If Seller's work under the Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, to comply with Buyer's workplace safety procedures and protocols, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause 23.

24. PROPERTY INSURANCE. Seller shall secure and maintain for the benefit of Buyer, insurance against any loss or damage of all property in which Buyer has an interest hereunder. Coverage will be provided on an all risk basis and value will be at replacement cost.

25. TAXES.

I. Domestic (U.S.):

(a) Unless Buyer furnishes a valid exemption certificate or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order.

(b) Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (a) of this clause 25(I), as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.

(c) Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this clause 25(I), when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

II. Foreign (Non-U.S.): The total purchase amount of the Order does not include any taxes or duties of any foreign country, jurisdiction, government, or subdivision thereof, including but not limited to income tax, value added tax, withholding tax, sales tax, use tax, excise tax, personal property tax, assessments, ad valorem tax, stamp and documentary taxes, import duties and all other governmental charges, fees, fines, interest or other penalties whatsoever, in each case imposed by the applicable foreign country, jurisdiction, government or subdivision thereof. Seller shall not be required to file, and Buyer shall arrange for a tax exemption for any such taxes or duties imposed by the foreign country, jurisdiction, government or subdivision thereof, in a manner acceptable to the applicable foreign taxing jurisdiction or authorities or otherwise to be responsible for payment of such taxes or duties. If Seller is required to pay any applicable foreign taxes, duties, or any other foreign governmental charges, fees, fines, interest, or other penalties whatsoever, Buyer agrees to pay or reimburse Seller any such amounts as they become due upon presentation of valid documentation with respect thereto.

26. SUBCONTRACTING. Seller will obtain Buyer's written approval before subcontracting the Order or any substantial portion thereof. The purchase of raw materials or standard commercial articles is not a subcontract within the meaning of this clause 26. Seller understands, acknowledges and agrees that its use of subcontractors shall not in any way

alter its obligations, representations and warranties made to Buyer, including its obligations to indemnify Buyer as set forth in any Additional Terms (as defined in clause 45).

27. FORCE MAJEURE. Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (a) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, epidemics, or unusually severe weather affecting either party; or (b) similar causes beyond their control and which are not foreseeable or causes beyond the control of their subcontractors which are not foreseeable.

28. COMPLIANCE WITH LAWS AND REGULATIONS.

(a) Seller understands and acknowledges that Buyer is committed to compliance with all domestic and foreign laws affecting its business and operations. Seller agrees that in performing its duties under the Order, Seller will conduct itself in strict adherence to all applicable laws, rules and regulations.

(b) Seller represents, after conducting a reasonable inquiry, that it will not: (i) provide to Buyer, or; (ii) use in the performance of the Order, telecommunications equipment or services as a substantial or essential component of any system, or as critical technology that is produced or provided by: (1) Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of those entities; (2) video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of those entities; or (3) any entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China. Seller agrees to contact an authorized representative of Buyer's Purchasing Department immediately in the event Seller is not able to fully comply with this representation. Buyer reserves the right to enhance or minimize this representation pursuant to changes to the regulations implementing Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

29. EXPORT CONTROLS.

The parties acknowledge that information exchanged pursuant to the Order may be subject to U.S. export control laws and regulations. Each party shall comply with all applicable export and import laws and regulations, including but not limited to, the International Traffic in Arms Regulations, as amended (22 C.F.R. Parts 120 - 130) ("ITAR"), the Export Administration Regulations, as amended (15 C.F.R. Parts 730 - 774), and the export control regulations promulgated by the United States Department of Energy at 10 CFR Part 810 (collectively, "Export Regulations"). The parties shall not export, disclose, transfer, furnish or otherwise provide any article, technical data, technology, defense service, or technical assistance of the other party to any foreign country or foreign person as defined by ITAR, including those working for a party, whether in the U.S. or abroad, without obtaining in advance proper U.S. government export authorization. Seller will ensure that all U.S. federal government export control requirements are conveyed to all sub-tier suppliers or subcontractors, as applicable. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately provide written notification to an authorized representative of Buyer's Purchasing Department.

30. ASSIGNMENT. Seller will not assign or transfer the Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. Any purported assignment or delegation in violation of this clause shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations under the Order. In the event written consent is granted, Seller shall promptly supply Buyer

two copies of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.

31. DISPUTES. Any dispute, claim or controversy arising out of or in connection with this Order, the NDA, and/or the relationship of Buyer and Seller (each, a “Dispute”) shall be subject to the procedures described in this clause 31:

(a) If a Dispute arises, either party may provide the other party with written notice of such Dispute (the effective date of such notice, the “Dispute Notice Date”). During the thirty (30) days following the Dispute Notice Date, at least one (1) procurement or contracts senior management representative of each party shall meet with the other in good faith, and attempt to resolve the Dispute. If a Dispute arises, Seller shall not suspend performance under the Order while the Dispute is pending. If the Dispute is not resolved within thirty (30) days of the Dispute Notice Date, it will be governed as follows:

(i) If Seller is located in the United States of America, then either party may seek its rights and remedies in a court of competent jurisdiction, provided that for any such litigation (and for recognition or enforcement of any judgment or settlement agreement involving such parties), the parties hereby agree to the exclusive jurisdiction of the United States District Court for the Southern District of California, unless federal jurisdiction would not attach in which case venue shall be in Superior Court of California in San Diego, California. For any such litigation, each party accepts, generally and unconditionally, the jurisdiction and venue of the aforesaid applicable court, and each party knowingly waives any objection thereto.

(ii) If Seller is located outside of the United States of America, then the Dispute, as well as the determination of the scope or applicability of this agreement to arbitrate, shall be finally decided by arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce Arbitration Rules effective as of the date of the Dispute Notice Date (“ICC Rules”), before a panel of three (3) arbitrators appointed in accordance with the ICC Rules. Subject to any valid requirements of any applicable statute, the arbitration shall be seated in San Diego, California, United States of America, and, except as the arbitrators may direct for good cause shown, the hearings shall be conducted in San Diego, California. Each party hereto may be represented by counsel in any such arbitration. The arbitration shall be conducted in English. Subject to subclause 31(b), the arbitrators shall have the authority to award temporary, preliminary and permanent injunctive and equitable relief in the arbitration (in addition to any monetary relief). The arbitration proceedings, including the award, shall be confidential, and no party will publicize the nature of any dispute or the outcome of any arbitration proceeding except to the extent required by applicable law, provided in such case the party required to make any disclosure informs the other part(ies) of such requirement to allow the other part(ies) to seek a protective order. The arbitrator will issue appropriate protective orders to safeguard each party’s confidential information disclosed in the arbitration. The arbitration shall be final and binding upon the parties, and judgment may be entered upon it in any court having jurisdiction.

(b) Notwithstanding the foregoing, if the Dispute could lead to either party suffering irreparable harm (including any Dispute involving the ownership, use, or disclosure of confidential or proprietary information or trade secrets or to enforce restrictive covenants), such party may opt to seek equitable relief, including emergency injunctive relief, at any time, from a court of competent jurisdiction.

32. APPLICABLE LAW. The Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California’s choice of law provisions shall not apply. The 1980 U.N. Convention on Contracts for the International Sales of Goods shall not apply to any sales transactions governed by these terms and conditions.

33. ATTORNEY FEES. If it is necessary for either party to obtain legal representation to enforce any part of the Order, the non-prevailing party agrees to bear the court costs and the attorney fees of the prevailing party.

34. NON-WAIVER. The failure of Buyer to insist, in one or more instances upon strict performance or to exercise any rights shall not waive or relinquish to any extent Buyer’s right to assert or rely upon any such terms or rights on any future occasion.

35. PRECEDENCE. If any of the provisions of the Order are in conflict, the following will be the order of precedence:

- (a) typed provisions on the face of the Order,
- (b) any Additional Terms (as defined below) that are referenced on or attached to the Order and any of Buyer’s other Order attachments (excluding these terms and conditions),
- (c) these terms and conditions,
- (d) other specifications or documents incorporated by reference, and
- (e) Seller’s proposal or other documents only when specifically referenced on the Order.

In the event of any conflicting provisions, Seller shall promptly notify Buyer thereof.

36. ORDERS WITH ASSIGNMENT OF CERTAIN PERSONNEL. If the Order contains a key personnel clause and the designated employee(s) of Seller become unavailable to perform services under the Order, a replacement for that individual with comparable abilities and qualifications shall be promptly assigned. Seller shall promptly furnish an authorized representative of Buyer’s Purchasing Department with resume(s) and any other information Buyer may reasonably request to support assignment of the replacement personnel.

37. SELLER’S OBLIGATIONS FOR “NOT-TO-EXCEED” ORDERS. If the Order is a not-to-exceed order, Seller agrees to perform its obligations within the “not-to-exceed” (“NTE”) price set forth in the Order. If at any time during performance of the Order, Seller’s incurred costs plus its estimated costs to complete, are projected to exceed the total Order NTE price, Seller shall immediately notify Buyer in writing giving a revised NTE. Seller shall be under no obligation to continue performance, if in doing so, the NTE price shall be exceeded and Buyer shall not be obligated to pay Seller more than the NTE price, unless specifically authorized in writing by an authorized representative of Buyer’s Purchasing Department. When Seller’s incurred costs equal seventy-five percent (75%) of the NTE price, Seller shall promptly provide written notification to an authorized representative of Buyer’s Purchasing Department indicating total incurred costs and projected cost to complete.

38. PAYMENTS UNDER COST REIMBURSABLE LINE ITEMS.

(a) If this is a cost reimbursement type order or if the Order specifies fixed hourly rates for services, a statement of accounts or invoice, shall be sent to Buyer’s Accounts Payable Department monthly. Invoices tendered for payment shall show the monthly rate of expenditure by labor classification as well as

other costs allowable under the Order. Delays in receiving a statement or invoice, and errors and omissions on the statement, will be considered just cause for deferring payment without losing discount privilege.

(b) Seller shall promptly notify Buyer's Accounts Payable Department of any overpayment received by Seller under the Order. Overpayments identified by either Buyer or Seller shall be refunded to Buyer in the manner it directs.

(c) Seller shall submit a final invoice to Buyer within ninety (90) days after completion of the Order. If Seller fails to submit a final invoice within the time specified, Buyer may determine the total amount due the Seller under the Order and issue a unilateral modification to the Order. Amounts paid by Buyer in excess of the total amount due Seller shall be refunded to Buyer within forty-five (45) days of Seller having received the unilateral modification.

(d) Seller agrees to maintain books, records, documents, and other evidence (hereinafter called "records") to the extent and in such detail as necessary to properly reflect all costs of labor, materials, equipment, supplies and service, and other expenses for which reimbursement is claimed. Seller will make available at the office of Seller at all reasonable times during the duration of the Order and until five (5) years after final payment, any of the records for inspection, audit, or reproduction by an authorized representative of Buyer. Buyer may also extend or shorten the retention period by amending the Order in writing.

39. ACCOUNTING SYSTEM. By acceptance of the Order, Seller certifies that Seller's accounting system can segregate costs adequately to allow for a sufficient audit of costs incurred by line item detail.

40. CREDIT. Seller shall credit to Buyer, either as a cost reduction or by cash refund, the applicable portion of any income, rebate, allowance, or other credit related to cost for which Seller has been reimbursed by Buyer.

41. TRAVEL COSTS. Unless otherwise noted in the Order, travel costs shall be reimbursed at cost, provided airfare cost does not exceed the cost of coach airfare and meals and incidental expenses do not exceed the amounts set forth in the current Federal Travel Regulation prescribed by the General Services Administration. All travel costs must be approved by Buyer in advance as a condition to Buyer's obligation for the reimbursement thereof.

42. REPORTING OF DEFECTS AND NONCOMPLIANCE: If the Order or any specification or drawing attached to the Order indicates that this procurement is for a basic component, or design for a basic component, or for materials, supplies, or hardware, which will be used in a nuclear reactor, facility or activity licensed by the Nuclear Regulatory Commission ("NRC"), the provisions of 10 CFR 21 shall apply to the Order and are hereby incorporated by reference with the same force and effect as if fully recited herein.

In the event the Order or the specifications or drawings attached hereto fail to specify the use of the items covered by the Order as set forth above, and Seller has knowledge that any item covered by the Order will, in fact, be used in an NRC-licensed nuclear reactor, facility or activity, the provisions of 10 CFR 21 shall apply and are hereby incorporated by reference with the same force and effect as if fully recited herein.

43. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been given upon receipt of hand delivery, registered mail, return receipt requested, national overnight courier service, or facsimile transmission with confirmation receipt followed by delivery by a nationally recognized overnight courier (receipt

requested). All notices hereunder shall be delivered to the address or facsimile number of the applicable party set forth on the Order.

44. SEVERABILITY. If any aspect of any of these terms and conditions is declared by a court or arbitrator having jurisdiction to be invalid, illegal, or unenforceable, the validity of the Order shall not be affected, and the rights and obligations of the parties are to be construed and enforced as if the Order did not contain such term.

45. ADDITIONAL TERMS. An Order may refer to or attach additional terms and conditions set forth in an addendum ("Additional Terms"), including, but not limited to, any of the following Additional Terms:

- (a) GA 1603 Addendum A "Additional Terms and Conditions for Commercial Construction Orders"
- (b) GA Form 1603 Addendum B "Additional Terms and Conditions for Commercial Items Purchased Under Government Contracts"
- (c) GA Form 1603 Addendum E "Additional Terms and Conditions for the Acquisition of Commercial Items Funded Under U.S. Government Department of Energy Contracts"
- (d) GA Form 1603 Addendum F "Additional Terms and Conditions and Flowdown Provisions for Orders for Commercial Items Under U.S. Government Department of Energy Financial Assistance Awards"
- (e) GA Form 1603 Addendum L "Additional Terms and Conditions for Contract Labor Orders"
- (f) GA Form 1603 Addendum N "Additional Terms and Conditions for Commercial Items Purchased Under U.S. Government National Aeronautics and Space Administration (NASA) Funded Contracts"
- (g) GA Form 1603 Addendum R "Additional Terms and Conditions for Research and Development Orders"

Any Additional Terms that are referenced on or attached to an Order are hereby incorporated into the Order by reference.

46. ENTIRE AGREEMENT. These terms and conditions and those on the face of the Order to which this form is attached including other specifications, attachments or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral between the parties related to the subject matter of the Order. No agreement or understanding varying or extending the terms or conditions of the Order will be binding on Buyer unless executed in writing by an authorized representative of Buyer's Purchasing Department.