

**GENERAL TERMS AND CONDITIONS OF PURCHASE**

(12/2014)

**1. Acceptance of Purchase Order**

Agreement by Seller to furnish the materials, and products (“goods”) or services, including the products resulting from services hereby ordered, or its commencement of such performance, or acceptance of any payment, shall constitute Seller’s unqualified acceptance of this Purchase Order subject to these terms and conditions. In the event that this Purchase Order does not state price or delivery, Fidelity Technologies Corporation (“Buyer”) will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Buyer’s Purchasing Representative. These terms and conditions, together with any referenced exhibits, attachments or other documents, constitute the entire agreement between the Parties with respect to the subject matter of this Purchase Order; and supersede any prior or contemporaneous written or oral agreements pertaining thereto.

**2. Shipping Instructions; Risk of Loss**

- (a) Seller shall be responsible for ensuring the proper packaging of goods hereunder. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in this Purchase Order.
- (b) Seller shall at all times comply with Buyer’s written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or air bill, as appropriate. Seller shall submit all required shipping papers to Buyer prior to final payment. Title to goods furnished under this Purchase Order shall pass to Buyer upon formal acceptance, regardless of when or where Buyer takes physical possession, unless the Purchase Order specifically provides for earlier passage of title.
- (c) For goods purchased F.O.B. Origin (as “F.O.B. the place of shipment” is described in the Uniform Commercial Code Section 2-319), Seller shall bear the expense of and risk of loss of, or damage to, the goods until the goods are put into the possession of the carrier designated by Buyer.
- (d) For goods purchased F.O.B. Destination (as “F.O.B. the place of destination” is described in the Uniform Commercial Code Section 2-319) Seller shall bear the expense of transport of, and risk of loss or damage to, the goods to the named place.
- (e) Purchase Order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, air bills, and invoices.

**3. Delivery; Notice of Delay; Obsolescence**

- (a) Time is of the essence and failure to deliver in accordance with the delivery schedule under this Purchase Order, if unexcused, shall be considered a material breach of this Purchase Order. No acts of Buyer, including without limitation modifications of this Purchase Order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller’s risk and expense shipments made in excess of this Purchase Order or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.
- (b) Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer’s receipt or acceptance thereof shall not constitute a waiver to Buyer’s rights and remedies hereunder.

- (c) During performance of this Purchase Order, Seller shall notify Buyer of any planned obsolescence of the good(s) set out in this Purchase Order.

#### **4. Termination for Convenience**

- (a) Buyer may, by written notice, terminate this Purchase Order for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under the Purchase Order.
- (b) In the event of termination for convenience by Buyer, Seller shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit for work performed to date of termination. Any termination settlement proposal shall be submitted to Buyer promptly, but no later than ninety (90) days from the effective date of the termination. In no event shall the amount of any settlement be in excess of the Purchase Order value. Buyer may take immediate possession of all goods, complete or incomplete, and all products resulting from services upon written notice of termination to Seller.

#### **5. Termination for Default**

- (a) Buyer may, by notice in writing, terminate this Purchase Order in whole or in part at any time for (i) breach of any one or more of its terms, (ii) failure to deliver goods or services within the time specified by this Purchase Order or any written extension, (iii) failure to make progress so as to endanger performance of this Purchase Order, or (iv) failure to provide adequate assurance of future performance. Buyer may also terminate this Purchase Order in whole or in part in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors. In the event of partial termination, Seller is not excused from performance of the non-terminated balance of work under the Purchase Order.
- (b) In the event of Seller's default hereunder, Buyer may exercise any or all rights and remedies accruing to it, both at law, including without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity, including but not limited to, Seller's liability for Buyer's excess re-procurement costs for goods or services.
- (c) If this Purchase Order is terminated for default, Buyer may require Seller to transfer title to, and deliver to Buyer, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this Section) that Seller has specifically produced or acquired for the terminated portion of this Purchase Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.

#### **6. Force Majeure**

Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that performance of this Purchase Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the Party whose performance is so affected shall so notify the other Party's authorized representative in writing and, at Buyer's option, this Purchase Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of Force Majeure or this Purchase Order may be terminated for convenience pursuant to Section 4.

#### **7. Disputes and Governing Law**

- (a) Any controversy or claim that may arise out of or in connection with this Purchase Order shall be submitted in writing to senior management representatives of the Parties for resolution. If the Parties senior management representatives are unable after good faith efforts to settle the dispute to the mutual

satisfaction of the Parties within ten (10) business days after the dispute is submitted in writing to the senior management representatives, or such later date as may be agreed in writing by the Parties, either Party may submit the dispute to a court of competent jurisdiction. To the extent permitted by applicable law, the parties waive any right they may have to a trial by jury. Notwithstanding the above, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction at any time.

- (b) Pending resolution or settlement of any dispute arising under this Purchase Order, Seller will proceed diligently as directed by Buyer with the performance of this Purchase Order. Irrespective of the place of performance, this Purchase Order shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws provisions and Seller agrees that any dispute will be adjudicated in the courts of Berks County, Pennsylvania, except that any provision in this Purchase Order that is: (i) incorporated in full text or by reference from the Federal Acquisition Regulation (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 United States Government. The provisions of the "United Nations Convention on Contracts for International Sale of Goods" shall not apply to this Purchase Order, including any amendments or changes to this Purchase Order.

## **8. Remedies**

- (a) Except as otherwise provided herein, the rights and remedies of both Parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either Party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.
- (b) Buyer shall be entitled at all times to set off any amount owing at any time from Seller or any of its affiliated companies to Buyer, against any amount payable at any time by Buyer or any of its affiliated companies to Seller.

## **9. Proprietary Rights**

- (a) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 9(d) below, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction.
- (b) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 9 (d) below, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing goods or services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order.
- (c) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 9 (d) below, any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 9 (d) below, any work performed pursuant to this Purchase Order which includes any copyright interest shall be considered a "work made for

hire". Subject to Paragraph 9 (d) below, to the extent any of such works do not qualify as a "work made for hire", Seller hereby assigns to Buyer all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.

- (d) Applicable U.S. Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision of this Section 9 to the extent that such Regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with subcontractors rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

## **10. Buyer's Property**

- (a) All drawings, tools, jigs, dies, fixtures, materials, and other property supplied or paid for by Buyer shall be and remain the property of Buyer; and if Seller fails to return such property upon Buyer's demand, Buyer shall have the right, upon reasonable notice, to enter Seller's premises and remove any such property at any time without being liable for trespass or damages of any sort.
- (b) All such items shall be used only in the performance of work under this Purchase Order unless Buyer consents otherwise in writing.
- (c) Goods made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.
- (d) Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and all property to which Buyer acquires an interest by this Purchase Order and shall be responsible for all loss or damage to said property except for normal wear and tear.
- (e) Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss or damage.
- (f) Seller shall clearly mark, maintain in inventory, and keep segregated or identifiable all of Buyer's property.

## **11. Release of Information**

Seller shall not publish, distribute, or use any information developed under or about the existence of this Purchase Order, or use the Fidelity Technologies Corporation name, logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a business reference, creating a website content or for goods or service endorsement without prior written approval of Buyer.

## **12. Order of Precedence**

- (a) In the event of any inconsistency or conflict between or among the provisions of this Purchase Order, such inconsistency or conflict shall, subject to Section 9 (d) above, be resolved by the following descending order of preference:
  1. Order-specific provisions provided in full text on the Purchase Order
  2. Documents incorporated by reference on the Purchase Order which apply to the Purchase Order as a whole and not to a specific line item therein
  3. These General Terms and Conditions of Purchase and Supplements thereto
  4. Statement of Work; and
  5. Specifications attached hereto or incorporated by reference (see Paragraph 12 (b) below).

- (b) Buyer's specifications shall prevail over those of the United States Government, and both of the foregoing shall prevail over specifications of Seller. In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Purchase Order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final.

### 13. Warranty

- (a) Seller warrants the goods delivered pursuant to this Purchase Order, unless specifically stated otherwise in this Purchase Order, shall (i) be new (ii) be free from defects in workmanship, materials, and design and (iii) be in accordance with all the requirements of this Purchase Order. Seller further warrants that the performance of work and services shall conform with the requirements of this Purchase Order and to high professional standards. All warranties in this Purchase Order shall survive inspection, test, final acceptance and payment of goods and services.
- (b) Seller warrants that the goods delivered pursuant to this Purchase Order shall (i) be and only contain materials obtained directly from the Original Component Manufacturer (OCM) or the Original Equipment Manufacturer (OEM), (collectively, the Original Manufacturer (OM)) or an authorized OM reseller or distributor; (ii) not be or contain Counterfeit Items, as defined below; and (iii) contain only authentic, unaltered OM labels and other markings. Seller shall obtain and retain all documentation required to fully trace the distribution and sale of the goods delivered hereunder back to the relevant OM, and, on request of Buyer, shall provide such authenticating documentation. Counterfeit Items include, but are not limited to, goods or separately-identifiable items or components of goods that: (i) are an illegal or unauthorized copy or substitute of an OM item; (ii) are not traceable to an OM sufficient to ensure authenticity in OM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OM or are not constructed in accordance with OM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OM design but not disclosed as such or are represented as OM authentic or new; (v) have not passed successfully all OM required testing, verification, screening, and quality control processes; or (vi) an item with altered or disguised documentation, package labeling, or item marking intended to mislead a person into believing a non-OM item is genuine, or that an item is of better or different performance when it is not. Seller further warrants that it has and shall have an internal Counterfeit Item control process for goods delivered hereunder in accordance with the standards or instructions set forth in any Buyer's specifications or other provisions incorporated into this Purchase Order. Buyer shall have the right to audit, inspect, and / or approve the processes at any time before or after delivery of the goods ordered hereunder. Buyer shall have the right to require changes to the processes to conform to Buyer's defined standards, if any. Failure of the Seller to conform its processes to Buyer's defined standards may result in the termination of this Purchase Order in accordance with the termination provisions set forth herein. Seller shall include the substance of this Section 13 (b) in any agreement between Seller and its lower tier sellers.
- (c) Seller warrants that any hardware, software and firmware goods delivered under this Purchase Order: (i) shall not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; (ii) shall not contain any third party software (including software that may be considered free software or open source software) that (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer, or (b) may require distribution, copying or modification of any software free of charge; and (iii) shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party.
- (d) These warranty entitlements shall inure to the benefit of both Buyer and Buyer's customers. As used in this Purchase Order, Buyer's customer(s) shall include its direct and indirect customers such as direct sale end-users, higher-tier subcontractors, prime contractors and the ultimate user under relevant prime contract(s).

- (e) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties. Remedies shall be at Buyer's election, including, but not limited to, the prompt repair, replacement or reimbursement of the purchase price of nonconforming goods and, in the case of services either the prompt correction of the defective services at no cost or reimbursement of the amounts paid for such services. Return to Seller of defective or nonconforming goods and redelivery to Buyer of repaired or replaced goods shall be at Seller's expense. Goods or services required to be corrected, repaired or replaced shall be subject to this Section and the Inspection Section of this Purchase Order in the same manner and to the same extent as goods or services originally delivered under this Purchase Order, but only as to the repaired or replaced goods or parts thereof or the corrected service thereof. Seller shall promptly comply with Buyer's direction to (i) repair, rework or replace the goods, (ii) furnish any material or parts and installation required to successfully correct the defect or nonconformance or (iii) successfully correct the defective or nonconforming service.

#### **14. Inspection**

- (a) All goods and services shall be subject to inspection and test at all reasonable times and places by Buyer or Buyer's customer before, during and after performance and delivery. Buyer may require Seller to repair, replace or reimburse the purchase price of rejected goods or Buyer may accept any goods and upon discovery of nonconformance, may reject or keep and rework any such goods not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or reinspection by Buyer shall be at Seller's expense. Buyer's acceptance of goods or services shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud, or misrepresentation on the part of Seller exists.
- (b) If inspection and test are made on the premises of Seller or Seller's lower-tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Section are supplementary to and not in lieu of the provisions of Paragraph 14 (a) above.
- (c) Neither Buyer's inspection nor Buyer's failure to inspect shall relieve Seller of any responsibility to perform according to the terms of this Purchase Order. Notwithstanding any other provision of the Purchase Order, the risk of loss of, or damage to, nonconforming goods remains with Seller until cure or acceptance.

#### **15. Changes**

- (a) Buyer shall have the right by written notice to suspend or stop work or to make changes from time to time in the services to be rendered or the goods to be furnished by Seller hereunder or the delivery schedule. If such suspension, stoppage or changes cause an increase or decrease in the cost of performance of this Purchase Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Paragraph 15(a) must be asserted in writing within twenty (20) days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse Seller from proceeding with this Purchase Order as changed pending resolution of the claim.
- (b) Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's Purchasing Representative and which states it constitutes an amendment or change to this Purchase Order.

#### **16. Infringement**

Seller warrants that all goods and services (for purposes of this Section 16 hereinafter "items"), provided by Seller pursuant to this Purchase Order, which are not of Buyer's design, shall be free from claims of

infringement (including misappropriation) of third party intellectual property rights and that any use or sale of such items by Buyer or any of Buyer's customers shall be free from any claims of infringement. Seller shall indemnify and save Buyer, and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits, or actions alleging such infringement, which claims, suits, or actions Seller, hereby, agrees to defend, at Seller's expense, if requested to do so by Buyer. Seller may replace or modify infringing items with comparable items acceptable to Buyer of substantially the same form, fit, and function so as to remove the source of infringement, and Seller's obligations under this Purchase Order including those contained in Section 13 and in this Section 16 shall apply to the replacement and modified items. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell said item.

## **17. Taxes**

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

## **18. Assignments, Subcontracting, Organizational Changes, and Place of Manufacture**

- (a) Seller may not assign any rights, delegate any of its obligations due or to become due under this Purchase Order, or subcontract all or substantially all of its obligations under this Purchase Order, without the prior written consent of Buyer. Any purported assignment, delegation, or subcontracting by Seller without such consent shall be void. Buyer may assign this Purchase Order to (i) any affiliated company, (ii) any successor in interest, or (iii) Buyer's customer.
- (b) Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name or ownership changes, mergers or acquisitions.
- (c) Seller shall not change the location of manufacture of the goods to be provided to Buyer under this Purchase Order without Buyer's prior written consent.

## **19. Compliance with Law**

- (a) Seller warrants that the goods to be furnished and the services to be rendered under this Purchase Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations, including but not limited to the Foreign Corrupt Practices Act, 15 U.S.C. § 78 et seq. (the "FCPA") and all laws and regulations of Seller's place of performance, and in compliance with applicable international prohibitions on child labor. Seller certifies that with respect to the production of the goods and/or the performance of the services covered by this Purchase Order, it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof, if applicable.
- (b) Seller warrants that all goods delivered under this Purchase Order are in conformance with the latest OSHA requirements.
- (c) Seller warrants that in the performance of this Purchase Order, it will comply with all applicable U.S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations.

- (d) Seller warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- (e) For Purchase Orders placed in support of and charged to a U.S. Government ("Government") Prime Contract or subcontract thereunder procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, the clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of the prime contract or higher-tier subcontract are incorporated herein by reference as if set forth in full text unless made inapplicable by its corresponding note, if any. In all clauses listed herein terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under its prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 and (2) when title to property is to be transferred directly to the Government. If any of the FAR or DFARS clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.
- (f) Seller warrants that it has and shall maintain all registrations and licenses and shall obtain permits all as required to perform the work hereunder.
- (g) Seller further agrees to defend, indemnify and save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with the warranties in this Section 19. The foregoing is in addition to and not in mitigation of any other requirements of this Purchase Order.

## **20. Responsibility and Insurance**

- (a) Seller shall maintain, and cause its subcontractors to maintain, the insurance coverages that are specified as required in this Purchase Order or, if none are specified, the following minimum insurance coverage and limits: Statutory Workers' Compensation coverage and Employers' Liability with a limit of \$500,000; Commercial General Liability (including bodily injury and property damage, products / completed operations coverage and contractual liability coverage) with a limit of \$1,000,000 per occurrence. When applicable to Seller's performance on the Purchase Order, Seller shall also maintain, and cause its subcontractors to maintain, (i) Automobile Liability coverage with a limit of \$1,000,000 per accident; and (ii) Professional Liability covering the services provided by Seller under this Purchase Order. Upon Buyer's request, Seller shall (i) provide Buyer with certificates of insurance evidencing required insurance, (ii) arrange for a waiver of subrogation in favor of Buyer and / or (iii) in the case of the Commercial General Liability and Automobile Liability policies direct that Buyer be added as an additional insured.
- (b) If work is to be performed on premises owned or controlled by Buyer, then Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Purchase Order.



## **21. Indemnity against Claims**

- (a) Seller shall keep its work and all goods supplied by it hereunder and Buyer premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Purchase Order by Seller or by any of its vendors or subcontractors. Seller may be required by Buyer to provide a satisfactory release of liens as a condition of final payment.
- (b) Seller shall, without limitation, indemnify and save Buyer and its customer(s) and their respective officers, directors, employees and agents harmless from and against (i) all claims (including claims under Workers' Compensation or Occupational Disease laws or other equivalent laws in Seller's country) and resulting costs, expenses (including attorney fees and costs) and liability which arise from personal injury, death, or property loss or damage attributed to, or caused by, the goods supplied, or the services performed by Seller pursuant to this Purchase Order, including, without limitation, latent defects in such goods and/or services, except to the extent that such injury, death, loss or damage is caused solely and directly by the negligence of Buyer, and (ii) all claims (including resulting costs, expenses and liability) by the employees of Seller or any of its subcontractors.

## **22. International Transactions**

- (a) Payment will be in United States dollars unless otherwise agreed to by specific reference in this Purchase Order.
- (b) Seller agrees that Buyer, its subsidiaries, affiliates or its designees may exclusively use the value of the Purchase Order to satisfy any international offset obligations that Buyer may have with Seller's country, subject to the offset qualifying laws, rules and regulations of that country.

## **23. Export / Import Controls**

- (a) If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR").
- (b) Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by Buyer in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of Buyer and Seller's obtaining of the appropriate export license, technical assistance agreement or other requisite documentation for ITAR-controlled technical data or items. It shall be the sole responsibility of Seller to determine whether the information provided by Buyer is technical data as outlined in the ITAR (22 C.F.R. 120-130) prior to any release to a third party abiding by the terms outlined herein. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.
- (c) Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked.
- (d) Should Seller's goods or services originate from a foreign location, those goods may also be subject to the export control laws and regulations of the country in which the articles or services originate. Seller agrees to abide by all applicable export control laws and regulations of that originating country. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller, its officers, employees, agents, suppliers or subcontractors at any tier. Seller shall be responsible for complying with any laws or regulations governing the importation of the articles into the United States of America.

- (e) Buyer may be required to obtain information concerning citizenship, nationality, and related information of Seller's personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct.

#### **24. Severability**

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

#### **25. Standards of Business Ethics and Conduct**

By the acceptance of this Purchase Order, Seller represents that it has not participated in any conduct in connection with this Purchase Order that violates the Standards of Business Ethics and Conduct of Fidelity Technologies Corporation or, alternatively, equivalent Business Ethics and Conduct Standards of Seller. If, at any time, Buyer determines that Seller is in violation of the applicable Standards of Business Ethics and Conduct, Buyer may cancel this Purchase Order upon written notice to Seller and Buyer shall have no further obligation to Seller.

#### **26. Priority Rating**

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

#### **27. Survivability**

Seller's obligations that by their very nature must survive expiration, termination or completion of this Purchase Order, including but not limited to obligations under the Termination for Convenience, Termination for Default, Proprietary Rights, Release of Information, Warranty, Infringement, Compliance with Law, Responsibility and Insurance, Indemnity Against Claims, Export/Import Controls, Electronic Transmissions, and Seller Records provisions of this Purchase Order, shall survive expiration, termination or completion of this Purchase Order.

#### **28. Electronic Transmissions**

The Parties agree that this Purchase Order, if transmitted electronically and the electronic signatures thereon are authenticated; that neither Party shall contest the validity of such on the basis that this Purchase Order was electronically transmitted or contains an electronic signature.

#### **29. Seller Records**

Seller shall maintain general records relating to this Purchase Order for a minimum period of four (4) years after completion of final delivery of materials, goods or services pursuant to this Purchase Order or for such longer period as required by statute or as may be specified elsewhere in this Purchase Order.

## GENERAL TERMS AND CONDITIONS OF PURCHASE – Supplement 1

### Government Contract Provisions from the Federal Acquisition Regulation (FAR)

1. When materials, and products (“goods”) or services, including the products resulting from services hereby ordered are for use in connection with a United States Government (“Government”) prime contract or higher-tier subcontract, in addition to the Terms and Conditions of Purchase, the following FAR clauses and provisions shall apply, as required by the terms of the prime contractor by operation of law or regulation. The effective version of each FAR provision shall be the same version as that which appears in Buyer’s prime contract, or higher-tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these FAR provisions and the General Provisions, the FAR provisions shall control.
2. The following clauses set forth in the FAR in effect as of the date of the prime contract or higher-tier subcontract are incorporated herein by reference. In all clauses listed herein, terms shall be revised to suitably identify the party to establish Seller’s obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term “Government” and equivalent phrases shall mean “Buyer”, the term “Contracting Officer” shall mean “Buyer’s Purchasing Representative”, the term “Contractor” or “Offeror” shall mean “Seller”, “Subcontractor” shall mean “Seller’s Subcontractor” under this Purchase Order, and the term “Contract” shall mean this “Purchase Order”. For the avoidance of doubt, the words “Government” and “Contracting Officer” do not change: when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, for example in FAR 52.227-1 or FAR 52.227-2, or when title to property is to be transferred directly to the Government. The listed FAR clauses are incorporated herein as if set forth in full text unless made inapplicable by their corresponding notes, if any. If any of the following FAR clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

#### A. The following FAR clauses are applicable to purchase orders for commercial items under all Government contracts:

1. **52.203-5** “Covenant Against Contingent Fees” (Applicable to Purchase Orders over the Simplified Acquisition Threshold, as defined at FAR 2.101)
2. **52.203-6** “Restrictions on Subcontractor Sales to the Government” (Applicable to Purchase Orders over the Simplified Acquisition Threshold, as defined at FAR 2.101)
3. **52.203-7** “Anti-Kickback Procedures” (Excepting paragraph (c) (1)) (Applicable to Purchase Orders that exceed \$150,000.)
4. **52.203-12** “Limitation on Payments to Influence Certain Federal Transactions” (Applicable to Purchase Orders exceeding \$150,000.)
5. **52.203-13** “Contractor Code of Business Ethics and Conduct” (Applicable to Purchase Orders (i) that have a value more than \$5,000,000; and (ii) that have a performance period of more than 120 days. (In Paragraph (b)(3)(i), the meaning of “agency office of the Inspector General” and “Contracting Officer” does not change, in Paragraph (b)(3)(ii) the meaning of “Government” does not change, and in Paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of “OIG of the ordering agency”, “IG of the agency” “agency OIG” and “Contracting Officer” do not change.)
6. **52.203-14** “Display of Hotline Poster(s)” (Applicable to Purchase Orders exceeding \$5,000,000)
7. **52.203-16** “Preventing Personal Conflicts of Interest” (Applicable to Purchase Orders that include a requirement for services that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.) (Applicable to Purchase Orders exceeding \$150,000.)

8. **52.204-2** “Security Requirements” (Applicable to Purchase Orders that involve access to classified information.)
9. **52.204-9** “Personal Identity Verification of Contractor Personnel” (Applicable to Purchase Orders when Seller’s employees are required to have routine physical access to a Federally-controlled facility and / or routine access to a Federally-controlled information system.)
10. **52.204-10** “Reporting Executive Compensation and First-Tier Subcontract Awards” (Applicable to Purchase Orders of \$25,000 or more and when Buyer is the Prime Contractor.) (The usual substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.)
11. **52.209-6** “Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment” (Applicable to Purchase Orders of \$30,000 or more.)
12. **52.211-5** “Material Requirements”
13. **52.211-15** “Defense Priority and Allocation Requirements”
14. **52.215-2** “Audit and Records – Negotiation” (Applicable to Purchase orders: (i) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these, (ii) for which certified cost or pricing data are required; or (iii) that require Seller to furnish reports as discussed in paragraph (e) of the clause, (iv) over the Simplified Acquisition Threshold, as defined at FAR 2.101))
15. **52.215-10** “Price Reduction for Defective Certified Cost or Pricing Data”
16. **52.215-11** “Price Reduction for Defective Certified Cost or Pricing Data – Modifications”
17. **52.215-12** “Subcontractor Certified Cost or Pricing Data”
18. **52.215-13** “Subcontractor Certified Cost or Pricing Data – Modifications”
19. **52.215-14** “Integrity of Unit Prices” ” (Applicable to Purchase Orders over the Simplified Acquisition Threshold, as defined at FAR 2.101)
20. **52.215-15** “Pension Adjustments and Asset Reversions”
21. **52.215-16** “Facilities Capital Cost of Money”
22. **52.215-18** “Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions”
23. **52.215-19** “Notification of Ownership Changes”
24. **52.215-20** “Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data”
25. **52.215-21** “Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications”
26. **52.215-22** “Limitations on Pass-Through Charges – Identification of Subcontract Effort” (Applicable to solicitations for Purchase Orders that will incorporate FAR clause 52.215-23 or 52.215-23 Alt I.)

27. **52.215-23 & Alt I** “Limitations on Pass – Through Charges” (Include Alternate I if it is Included in the prime contract) (Under other than DoD prime contracts, applicable to time and material and labor hour Purchase Orders that exceed the simplified acquisition threshold; and under DoD prime contracts, applicable to time and material, labor hour, and fixed price Purchase Orders, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.)
28. **52.216-7** “Allowable Cost and Payment” (This clause is not applicable to Labor Hour Purchase Orders.)
29. **52.216-8** “Fixed Fee” (Applicable if this is a cost plus fixed fee Purchase Order.)
30. **52.216-10** “Incentive Fee” (Applicable if this is a cost plus incentive fee Purchase Order.)
31. **52.216-11** “Cost Contract -No Fee” (Applicable if this is a cost no fee Purchase Order.)
32. **52.216-12** “Cost Sharing Contract- No Fee” (Applicable if this is a cost sharing, no fee Purchase Order.)
33. **52.219-8** “Utilization of Small Business Concerns”
34. **52.219-9** “Small Business Subcontracting Plan” (Applicable to Purchase Orders exceeding \$650,000)
35. **52.222-2** “Payment for Overtime Premiums”
36. **52.222-4** “Contract Worker Hours and Safety Standards Act – Overtime Compensation” (Applicable to Purchase Orders that require or involve the employment of laborers and mechanics at any tier.)
37. **52.222-20** “Walsh-Healy Public Contracts Act” (Applicable to Purchase Orders exceeding \$15,000)
38. **52.222-21** “Prohibition of Segregated Facilities” (Applicable to Purchase Orders exceeding \$10,000.)
39. **52.222-26** “Equal Opportunity” (Applicable to Purchase Orders exceeding \$10,000.)
40. **52.222-35** “Equal Opportunity for Veterans” (Applicable to Purchase Orders exceeding \$100,000.)
41. **52.222-36** “Affirmative Action for Workers with Disabilities” (Applicable to Purchase Orders exceeding \$15,000.)
42. **52.222-37** “Employment Reports on Veterans” (Applicable to Purchase Orders exceeding \$100,000)
43. **52.222-40** “Notification of Employee Rights under the National Labor Relations Act” (Applicable to Purchase Orders that exceed \$10,000 and are issued under prime contracts resulting from Solicitations issued after December 12, 2010.)
44. **52.222-41** “Service Contract Act of 1965” (Applicable to Purchase Orders that are subject to the Service Contract Act of 1965.)
45. **52.222-50 & Alt I** “Combating Trafficking in Persons” (Alternate I is applicable to Purchase Orders if it is included in the prime contract.)
46. **52.222-54** “Employment Eligibility Verification” (Applicable to Purchase Orders (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,000; and (iii) includes work performed in the United States.)

47. **52.223-3** “Hazardous Material Identification and Material Safety Data” (“Government” means “Government and Buyer” in this clause.)
48. **52.223-5** “Pollution Prevention and Right-to-Know Information” (Applicable to Purchase Orders that provide for performance on a Federal facility.)
49. **52.223-7** “Notice of Radioactive Materials”
50. **52.223-11** “Ozone-Depleting Substances”
51. **52.223-18** “Encouraging Contractor Policies to Ban Text Messaging while Driving”
52. **52.224-1** “Privacy Act Notification” (Applicable to Purchase Orders when the design, development, or operation of a system of records on individuals is required to accomplish an agency function.)
53. **52.224-2** “Privacy Act” (Applicable to Purchase Orders that require the design, development, or operation of any system of records on individuals that is subject to the Privacy Act.)
54. **52.225-1** “Buy American Act – Supplies”
55. **52.225-5** “Trade Agreements”
56. **52.225-8** “Duty-Free Entry”
57. **52.225-13** “Restrictions on Certain Foreign Purchases”
58. **52.227-1** “Authorization and Consent and Alternate I” (Include Alternate 1 if it is included in the prime contract.)
59. **52.227-2** “Notice and Assistance Regarding Patent and Copyright Infringement”
60. **52.227-9** “Refund of Royalties” (Applicable to Purchase Orders in which the amount of royalties reported during negotiation of the Purchase Order exceeds \$250.)
61. **52.227-10** “Filing of Patent Applications-Classified Subject Matter” (Applicable to Purchase Orders that cover or likely to cover classified subject matter.)
62. **52.227-11** “Patent Rights – Ownership by the Contractor” (Applicable to Purchase Orders for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.)
63. **52.227-14** “Rights in Data – General”
64. **52.227-19** “Commercial Computer Software License”
65. **52.228-3** “Workers’ Compensation Insurance” (Defense Base Act)
66. **52.228-4** “Workers’ Compensation and War Hazard Insurance Overseas”
67. **52.228-5** “Insurance-Work on a Government Installation”
68. **52.232-7** “Payments under Time-and-Materials and Labor-Hour Contracts” – (“schedule” means this Purchase Order, “voucher(s)” means invoice(s).
69. **52.232-20** “Limitation of Cost” (Applicable to fully funded Purchase Orders.)
70. **52.232-22** “Limitation of Funds” (Applicable to incrementally funded Purchase Orders.)

71. **52.234-1** “Industrial Resources Developed Under Defense Production Act Title III”
72. **52.236-13** “Accident Prevention” (Applicable to fixed-price construction, fixed-price dismantling, demolition, or removal of improvements Purchase Orders.)
73. **52.237-2** “Protection of Government Buildings, Equipment and Vegetation”
74. **52.242-13** “Bankruptcy”
75. **52.243-2** “Changes – Cost-Reimbursement” (Applicable to cost-reimbursement Purchase Orders.)
76. **52.243-3** “Changes – Time and Material or Labor-Hours” (Applicable to time and material or labor hour Purchase Orders.)
77. **52.243-6** “Change Order Accounting”
78. **52.244-2** “Subcontracts”
79. **52.244-5** “Competition in Subcontracting”
80. **52.244-6** “Subcontracts for Commercial Items”
81. **52.245-1** “Government Property” (Applicable to Purchase Orders issued under non DoD prime contracts containing FAR 52.245-1 without Alternate I and the Purchase Order is either a cost-reimbursement, time and materials, or labor hour type, or is a fixed priced Purchase Order awarded on the basis of submission of certified cost or pricing data (reference FAR 45.104). Under DoD prime contracts containing FAR 52.245-1 without Alternate I, in addition to the Purchase Order types listed at FAR 45.104, the clause is applicable to negotiated fixed-price Purchase Orders awarded on a basis other than submission of certified cost or pricing data.)
82. **52.245-1 Alt I** “Government Property” (Alternate I – Applicable to Purchase Orders issued under prime contracts containing FAR 52.245-1 with Alternate I, and to Purchase Orders issued under prime contracts containing FAR 52.245-1 without Alternate I when the Purchase Order awarded is of a type other than a Purchase Order type listed in FAR 45.104 or DFARS 245.104.)
83. **52.245-1 Alt II** “Government Property” (Applicable to Purchase Orders for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research.)
84. **52.246-2** “Inspection of Supplies – Fixed-Price”
85. **52.246-3** “Inspection of Supplies (Cost-Reimbursement)” – (“Contracting Officer” means Buyer’s Purchasing Representative and “Government” means Buyer and “Government” (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer), and where “Government” first appears in paragraph (k) it shall mean “Government and/or Buyer”. The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.)
86. **52.246-5** “Inspection of Services (Cost Reimbursement)” – (“Contracting Officer” means Buyer’s Purchasing Representative” and “Government” means “Buyer and Government” (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer). The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.)

87. **52.246-6** “Inspection of Time and Material and Labor Hour” – (“Contracting Officer” means Buyer’s Purchasing Representative and “Government” means “Buyer and Government” (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer), and where “Government” first appears in paragraph (k) it shall mean “Government and/or Buyer”).) (The provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.)
88. **52.247-63** “Preference for U.S.-Flag Air Carriers” (Applicable to Purchase Orders that involve international air transportation.)
89. **52.247-64** “Preference for Privately Owned U.S.-Flag Commercial Vessels”
90. **52.248-1** “Value Engineering” (Applicable to Purchase Orders exceeding \$150,000.)
91. **52.249-2** “Termination for Convenience of the Government” (Fixed-Price) – (The usual substitution of the parties in which “Government” means “Buyer”, “Contracting Officer” means “Buyer’s Purchasing Representative”, and “Contractor” means “Seller” is applicable to this clause except that any express obligation to transfer or assign title to property shall be modified such that “Government” means “Government or Buyer”).)
92. **52.249-6** “Termination (Cost-Reimbursement)” – (“Government” means “Buyer” and “Contracting Officer” means Buyer’s Purchasing Representative.
93. **52.249-14** “Excusable Delays”

### **3. Certifications:**

The Offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

1. **52.203-11** “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions” (Applicable to offers and Purchase Orders over \$150,000.)
2. **52.209-5** “Certification Regarding Responsibility Matters” (Applicable to offers and Purchase Orders over \$30,000.)
3. **52.222-22** “Previous Contracts and Compliance Reports” (Applicable to offers and Purchase Orders over \$10,000.)

### **4. Additional Clauses:**

#### **A. Cost Accounting Standards (Applicable when stated in the Purchase Order)**

1. **52.230-2** “Cost Accounting Standards”
2. **52.230-3** “Disclosure and Consistency of Cost Accounting Practices”
3. **52.230-5** “Cost Accounting Standards – Educational Institution”
4. **52.230-6** “Administration of Cost Accounting Standards”

Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting the applicable Cost Accounting Standards clause, and the Administration of Cost Accounting Standards clause, provided Seller shall not be required to disclose to Buyer such communications containing information confidential to the Seller. In addition



to any other remedies provided by law or under this Purchase Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3, 52.230-4, 52.230-5 or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses, except in FAR 52.230-6.

## **B. Truth in Negotiations (Cost and Pricing Data)**

Unless exempt, Seller shall submit a FAR Part 15 compliant cost proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing Data.

### **a. Indemnification**

If any price (including profit or fee) negotiated in connection with the prime contract between the Government and the Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by the Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller shall indemnify the Buyer in the amount of said reduction.

The phrase "cost or pricing data" as used herein shall be deemed to include any such data which related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of, in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate.

If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable and shall pay the Buyer at the time such overpayment is repaid:

a. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Buyer is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

b. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

### **b. Cost or Pricing Data for Changes**

Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit expected to exceed the threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.

## **5. Disputes – Government Contracts**

Any reference to "Disputes" in any applicable FAR Clause contained herein shall mean this paragraph, Disputes -- Government Contracts.

- A.** Any dispute arising under this Purchase Order relating to any decision of the Contracting Officer under the prime contract shall be resolved in accordance with Paragraph (B) below. All other disputes will be resolved by the Disputes and Governing Law Section in the General Terms and Conditions of Purchase.
- B.** 1. Notwithstanding any other provisions in this Purchase Order, any decision of the Contracting Officer under the prime contract which binds Buyer shall bind both Buyer and Seller to the extent that it relates to this Purchase Order, provided that:
- a. The Buyer notifies with reasonable promptness the Seller of such decision and
  - b. The Buyer, at its sole discretion, authorizes in writing the Seller to appeal in the name of the Buyer such decision at its own expense, or
  - c. If Buyer should appeal such decision, Buyer at its sole discretion offers to the Seller the opportunity at its own expense to join Buyer in such appeal.
2. Any decision upon such appeal, when final, shall be binding upon the Seller and Seller shall have no recourse against Buyer for any damages that allegedly resulted from the decision of the Contracting Officer.
3. The Seller shall keep Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer.
4. The Seller shall indemnify and save harmless Buyer from any and all liability of any kind incurred by or imputed to Buyer under Section 5, "Fraudulent Claims," of the Contract Disputes Act of 1978, as amended, (41 U.S.C. 7103 (c)(2), Fraudulent Claims) if Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of Seller.
- C.** Pending any prosecution, appeal, or final decision or settlement of any dispute arising under this Purchase Order, the Seller shall proceed diligently, as directed by Buyer, with the performance of this Purchase Order.
- D.** Nothing in this Section 5 nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.
- E.** As used in this Section 5, the word "appeal" means an appeal taken under the Contract Disputes Act of 1978, as amended.

## GENERAL TERMS AND CONDITIONS OF PURCHASE – Supplement 2

### Government Contract Provisions from the Department of Defense Federal Acquisition Regulation (DFAR)

1. When the materials, and products (“goods”) or services, including the products resulting from services are for use in connection with a U. S. Government Department of Defense Prime Contract or higher-tier subcontract, in addition to the General Provisions and the Federal Acquisition Regulation (FAR) provisions (Supplement 1), the following Department of Defense FAR Supplement (DFARS) clauses and provisions (Supplement 2), shall apply, as required by the terms of the prime contractor by operation of law or regulation. The effective version of each DFARS provision shall be the same version as that which appears in Buyer’s Prime Contract, or higher-tier subcontract under which this Purchase Order is a subcontract. In the event of a conflict between these DFARS provisions (Supplement 2) and the General Provisions or the FAR provisions (Supplement 1), the DFARS provisions (Supplement 2) shall control.
2. The following clauses set forth in the DFARS in effect as of the date of the prime contract are incorporated herein by reference. In all clauses listed herein, the terms “Government”, “Contracting Officer” and “Contractor” shall be revised to suitably identify the contracting parties under this Purchase Order and affect the proper intent of the provision except where further clarified or modified below. However, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or his or her duly authorized representative, and (2) when title to property is to be transferred directly to the Government. “Subcontractor,” however, shall mean “Seller’s Subcontractor” under this Purchase Order. The listed DFARS clauses are incorporated herein as if set forth in full text unless made inapplicable by their corresponding notes, if any. If any of the following DFARS clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting. The Seller, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award. With respect to any applicable DFARS clauses incorporated into this Purchase Order relating to rights in noncommercial technical data and noncommercial computer software and noncommercial computer software documentation, the Seller grants to Buyer the right to use, disclose, modify, combine, integrate or make derivative works of any noncommercial technical data, noncommercial computer software and/or noncommercial computer software documentation delivered under this Purchase Order to the extent necessary, and for such period as is required, for Buyer to complete its performance under the Buyer’s U.S. Government programs.

#### A. The following DFARS clauses are applicable to Purchase Orders for Commercial Items under DoD contracts:

1. **252.203-7001** “Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies”
2. **252.203-7004** “Display of Fraud Hotline Poster(s)” (Applicable to all Purchase Orders except Purchase Orders that are for acquisition of a commercial item, or that will be performed entirely outside the United States, in lieu of FAR 52.203-14 Display of Hotline Poster(s).) (Applicable to Purchase Orders exceeding \$5,000,000)
3. **252.204-7000** “Disclosure of Information” (Applicable to Purchase Orders when the seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.)
4. **252.204-7008** “Export-Controlled Items”
5. **252.208-7000** “Intent to Furnish Precious Metals as Government-Furnished Material”(Applicable to Purchase Orders when the item being purchased contains precious metals.)
6. **252.209-7004** “Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country”
7. **252.211-7000** “Acquisition Streamlining” (Applicable to Purchase Orders exceeding \$1,500,000)

8. **252.211-7003** “Item Identification and Valuation” (Seller’s obligations under this clause are limited to cooperating with Buyer’s efforts to comply with this clause, including granting Buyer access to Seller’s deliverables at its facilities and to appropriate property records.)
9. **252.211-7007** “Reporting of Government-Furnished Property” (Applicable to Purchase Orders when FAR Clause 52.245-1 is contained in the prime contract and Seller is in possession of Government Property. Seller will comply with paragraph (d) of this clause.)
10. **252.215-7003** “Excessive Pass-Through Charges – Identification of Subcontract Effort” (APR 2007) (Applicable to solicitations for Purchase Orders issued under Department of Defense (DoD) solicitations issued after April 25, 2007 and before May 13, 2008 and that do not specifically incorporate the FAR Limitations on Pass-Through Charges provision, except solicitations for firm-fixed price (FFP) Purchase Orders and fixed-price (FP) Purchase Orders with economic price adjustment.)
11. **252.215-7003** “Excessive Pass-Through Charges – Identification of Subcontract Effort” (MAY 2008) (Applicable to solicitations for Purchase Orders issued under DoD solicitations issued after May 12, 2008 and before October 14, 2009 and that do not specifically incorporate the FAR Limitations on Pass-Through Charges provision, except solicitations for FFP Purchase Orders and FP Purchase Orders with economic price adjustment.)
12. **252.215-7004** “Excessive Pass-Through Charges” (APR 2007) (Applicable to Purchase Orders issued under DoD contracts awarded after April 25, 2007 and before May 13, 2008 and that do not specifically incorporate the FAR Limitations on Pass-Through Charges clause, except FFP Purchase Orders and FP Purchase Orders with economic price adjustment.)
13. **252.215-7004 & Alt I** “Excessive Pass-Through Charges” (MAY 2008) (Include Alternate I if it is included in the prime contract) (Applicable to Purchase Orders under DoD contracts awarded after May 12, 2008 and before October 14, 2009 and that do not specifically incorporate the FAR Limitations on Pass-Through Charges clause, except FFP Purchase Orders and FP Purchase Orders with economic price adjustment.)
14. **252.219-7003** “Small Business Subcontracting Plan (DoD Contracts)” (Include Alternate 1 if it is included in the prime contract) (Applicable to Purchase Orders under prime contracts which contain FAR clause 52.219-9.) (Applicable to Purchase Orders exceeding \$650,000)
15. **252.219-7004** “Small Business Subcontracting Plan (Test Program)” (Applicable to Purchase Orders that offer subcontracting possibilities.) (Applicable to Purchase Orders exceeding \$650,000)
16. **252.222-7006** “Restricting the Use of Mandatory Arbitration Agreements” (Applicable to Purchase Orders (i) issued under prime contracts containing the clause and awarded after June 17, 2010, (ii) exceeding \$1,000,000.)

Certification Regarding Compliance with DFARS 252.222-7006 (If this clause is included in Buyer’s prime contract or higher tier subcontract, this certification is applicable to Purchase Orders over \$1,000,000 issued after June 17, 2010, under DoD contracts except Purchase Orders for the acquisition of commercial items or commercially available off-the-shelf items.):

By Seller’s acceptance of this Purchase Order:

(i) Seller certifies that it shall not enter into, and shall not take any action to enforce any provision of, any agreement with any of its employees or independent contractors performing work related to this Purchase Order, that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of a sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; and

(ii) Seller certifies that it requires each of its lower tier subcontractors, which performs work under this Purchase Order and which is a “covered subcontractor” as defined in DFARS 252.222-7006, to agree not to enter into, and not take any action to enforce any provision of, any agreement with any of its employees or independent contractors performing work related to this Purchase Order, that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of a sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

17. **252.223-7001** “Hazard Warning Labels” (Applicable to Purchase Orders for goods that require submission of hazardous material data sheets (see FAR 23.302(c)).
18. **252.223-7002** “Safety Precautions for Ammunition and Explosives” (“Government” means “Government and/or Buyer”.)
19. **252.223-7003** “Change in Place of Performance – Ammunition and Explosives”
20. **252.223-7006 & Alt I** “Prohibition on Storage and Disposal of Toxic and Hazardous Materials” (Includes Alt I if it is in the prime contract) (Applicable to Purchase Orders that require, may require, or permit a Seller to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.)
21. **252.223-7007** “Safeguarding Sensitive Conventional Arms, Ammunition and Explosives” (Applicable to Purchase Orders for (i) the development, production, manufacture, or purchase of arms, ammunition, and explosives (AA&E), or (ii) when AA&E will be provided to the Seller as Government-furnished property.)
22. **252.223-7008** “Prohibition of Hexavalent Chromium” (Applicable to all Purchase Orders for supplies, maintenance and repair services, or construction materials.)
23. **252.225-7001** “Buy American Act and Balance of Payments Program”
24. **252.225-7002** “Qualifying Country Sources as Subcontractors”
25. **252.225-7006** “Quarterly Reporting of Actual Contract Performance Outside the United States” (Applicable to Purchase Orders when Seller is a first-tier subcontractor.) (Applicable to Purchase Orders exceeding \$650,000)
26. **252.225-7007** “Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies” (Applicable to Purchase Orders for the acquisition of items covered by the United States Munitions List of the International Traffic in Arms Regulation.)
27. **252.225-7008** “Restriction on Acquisition of Specialty Metals” (Applicable to Purchase Orders for the delivery of specialty metals as end items to Buyer or Seller to the extent necessary to ensure compliance of the end products that Buyer will deliver to the Government when DFARS clause 252.225-7009 is in the prime contract.)
28. **252.225-7009** “Restriction on Acquisition of Certain Articles Containing Specialty Metals” (excluding paragraph (d) which is deleted from this clause). (Applicable to Purchase Orders for items containing specialty metals to the extent necessary to ensure compliance of the end products that Buyer will deliver to the Government under prime contracts awarded, or modified to include the clause, after July 28, 2009).
29. **252.225-7010** “Commercial Derivative Military Article – Specialty Metals Compliance Certificate” (Applicable to solicitations for Purchase Orders that will incorporate DFARS clause 252.225-7009.)
30. **252.225-7012** “Preference for Certain Domestic Commodities”

31. **252.225-7013** “Duty-Free Entry”
32. **252.225-7014 & Alt I** “Preference for Domestic Specialty Metals and Alternate I” (Applicable to Purchase Orders for items containing specialty metals that the Buyer will deliver to the Government under prime contracts awarded before July 29, 2009 and that do not specifically incorporate a different specialty metals clause.)
33. **252.225-7014 (Deviation (Dev.) No. 2006-O0004) & Alt. I (Dev. No.2006-O0004)** “Preference for Domestic Specialty Metals” (DEVIATION No.2006-O0004) and Alternate I (DEVIATION No. 2006-O0004)” (Applicable to Purchase Orders for items containing specialty metals that the Buyer will deliver to the Government under prime contracts awarded after November 15, 2006 and before October 26, 2007 and that do not specifically incorporate a different specialty metals clause.)
34. **252.225-7014 (Dev. No. 2007-O0011) & Alt I (Dev. No. 2007-O0011)** “Preference for Domestic Specialty Metals” (DEVIATION No. 2007-O0011) and Alternate I (DEVIATION No. 2007-O0011) (Applicable to Purchase Orders for items containing specialty metals that the Buyer will deliver to the Government under prime contracts awarded after October 25, 2007 and before January 29, 2008 and that do not specifically incorporate a different specialty metals clause.)
35. **252.225-7014 (Dev. No. 2008-O0002) & Alt I (Dev. No. 2008-O0002)** “Preference for Domestic Specialty Metals” (DEVIATION No. 2008-O0002) and Alternate I (DEVIATION No. 2008-O0002) (Applicable to Purchase Orders for items containing specialty metals that the Buyer will deliver to the Government under prime contracts awarded after January 28, 2008 and before July 29, 2009 and that do not specifically incorporate a different specialty metals clause.)
36. **252.225-7015** “Restriction on Acquisition of Hand or Measuring Tools”
37. **252.225-7016** “Restriction on Acquisition of Ball and Roller Bearings”
38. **252.225-7025** “Restriction on the Acquisition of Forgings”
39. **252.225-7027** “Restriction on Contingent Fees for Foreign Military Sales”
40. **252.225-7028** “Exclusionary Policies and Practices of Foreign Governments”
41. **252.225-7030** “Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate”
42. **252.225-7031** “Secondary Arab Boycott of Israel”
43. **252.225-7033** “Waiver of United Kingdom Levies” (Applicable to Purchase Orders where a lower-tier subcontract exceeding \$1 million with a U.K. firm is anticipated.)
44. **252.225-7040** “Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States” (Applicable to Purchase Orders that will be performed outside the United States in areas of combat and other significant military operations designated by the Secretary of Defense, contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises designated by the Combatant Commander.)
45. **252.226-7001** “Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns” (Applicable to Purchase Orders exceeding \$500,000)
46. **252.227-7013** “Rights in Technical Data Noncommercial Items” (Applicable whenever any technical data for commercial items developed in part at Government expense will be provided for delivery to the Government under this Purchase Order.)

47. **252.227-7014** “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” (Applicable to solicitations and resulting Purchase Orders when Seller’s performance will require delivery of computer software or computer software documentation.)
48. **252.227-7015** “Technical Data – Commercial Items” (Applicable whenever any technical data related to commercial items developed in any part at private expense will be provided under this Purchase Order for delivery to the Government.)
49. **252.227-7016** “Rights in Bid or Proposal Information” (Applicable to solicitations and resulting Purchase Orders that will include DFARS clause 252.227-7013, 252.227-7014, or 252.227-7018.)
50. **252.227-7017** “Identification and Assertion of Use, Release, or Disclosure Restrictions” (Applicable to solicitations and resulting Purchase Orders that will include DFARS clause 252.227-7013, 252.227-7014, or 252.227-7018.)
51. **252.227-7019** “Validation of Asserted Restrictions – Computer Software” (Applicable to all Purchase Orders when Seller’s performance includes the furnishing of computer software that Buyer will furnish to the Government.)
52. **252.227-7025** “Limitation on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends”
53. **252.227-7026** “Deferred Delivery of Technical Data or Computer Software”
54. **252.227-7027** “Deferred Ordering of Technical Data or Computer Software”
55. **252.227-7028** “Technical Data or Computer Software Previously Delivered to the Government” (Applicable to solicitations for Purchase Orders when the resulting Purchase Order will require the Seller to deliver technical data.)
56. **252.227-7030** “Technical Data – Withholding of Payment” (Applicable to solicitations and resulting Purchase Orders that will include DFARS clause 252.227-7013 or 252.227-7018.)
57. **252.227-7037** “Validation of Restrictive Markings on Technical Data” (Applicable to Purchase Orders requiring the delivery of technical data.)
58. **252.227-7038** “Patent Rights – Ownership by the Contractor (Large Business)” (Applicable to Purchase Orders for experimental, developmental, or research work if the Seller is not a small business or nonprofit organization, unless a different patent rights clause is required by FAR 27.303.)
59. **252.227-7039** “Patents – Reporting of Subject Inventions” (Applicable to solicitations and resulting Purchase Orders that will include the clause at FAR 52.227-11.)
60. **252.228-7001** “Ground and Flight Risk” (Applicable to solicitations and resulting Purchase Orders for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft unless an exception listed at DFARS 228.370(b)(1) applies.)
61. **252.228-7005** “Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles”
62. **252.231-7000** “Supplemental Cost Principles” (Applicable to solicitations and resulting Purchase Orders that are subject to the principles and procedures described in FAR subparts 31.1, 31.2, 31.6, or 31.7.)
63. **252.235-7003** “Frequency Authorization” (Applicable to Purchase Orders requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.)

64. **252.239-7016** “Telecommunications Security Equipment, Devices, Techniques, and Services” (Applicable to Purchase Orders which require securing telecommunications.)
65. **252.244-7000** “Subcontracts for Commercial Items and Commercial Components (DoD Contracts)”
66. **252.246-7001** “Warranty of Data” (Applicable to solicitations and resulting Purchase Orders that will include DFARS clause 252.227-7013.)
67. **252.246-7003** “Notification of Potential Safety Issues” (Applicable to Purchase Orders for (i) parts defined as critical safety items in accordance with this clause; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; and (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.)
68. **252.247-7023** “Transportation of Supplies by Sea”
69. **252.247-7024** “Notification of Transportation of Supplies by Sea”
70. **252.249-7002** “Notification of Anticipated Contract Terminations or Reductions” (Applicable to Purchase Orders exceeding \$150,000)