

SBIRTC-02 TERMS AND CONDITIONS FIRM FIXED PRICE-GOVERNMENT PURCHASE ORDERS REV A (06/06) Page 1

1. **General Acceptance:** The Purchase Order (which term shall be deemed to include plans, specifications, and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the Parties for the supplies/services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this Purchase Order, (a) received acknowledgment (b) furnishing of any part of the supplies/services under this Purchase Order; (c) acceptance of any payment for the supplies/services or (d) commencement of performance under this Purchase Order. Any additional or different terms proposed by the Seller are objected to and are hereby rejected unless the same shall be accepted in writing by the Buyer. Failure of any party to enforce its rights under this Purchase Order shall not constitute a waiver of such rights or of any other rights under this Purchase Order
2. **Assignment:** Neither this Purchase Order, nor any payments hereunder are assignable nor transferable without Buyer's written approval which approval will not be unreasonably withheld.
3. **Government or Buyer Furnished Property:** If in connection with the performance of this Purchase Order, any property is furnished to Seller by the Buyer or by the Government, Seller shall assume the risk of, and be responsible for, any loss. Destruction of or damage to the property while in Seller's possession or control except that this Purchase Order, with the prior approval of the Buyer and/or Government, provides for the relief of the Seller from such liability. In the absence of such approval the Seller shall return all such property in as good a condition as when received, except for reasonable wear and tear caused by the utilization of such property in accordance with the provisions of the prime contract. Seller shall establish and maintain a system in accordance with the provisions of FAR subpart 45.5 for the control of Government of Buyer's owned property. Seller shall also notify Buyer if approval of its property system has been withdrawn by the Government.
4. **Changes:** Buyer may at any time, by written order, without notice to any surety, make any/and all changes or additions within the general scope of this Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, whether changed or not changed by any such written order, Seller shall notify Buyer in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this Purchase Order.
5. **Choice of Law:** Irrespective of the place of performance, this Purchase Order will be construed, and interpreted according to federal common law of Government contracts as enunciated and applied to federal judicial bodies and boards of contract appeals of the federal Government. To the extent that the federal common law of Government contracts is not dispositive, the laws of California shall apply.
6. **Compliance with Laws & Regulations:** Seller shall comply with any applicable laws, executive orders, or regulations, including export administration regulations. Seller agrees to indemnify Buyer against any loss cost, liability, or damage by reason of Seller's violation of any applicable law, executive order or regulation. If a government Contract number is indicated, Seller agrees that performance of this Purchase Order is subject to the laws and regulations of the applicable Federal Government agency. Any knowing willful act to falsify, conceal, or alter a material fact, or any false, fraudulent, or fictitious statement of representation, in connection with the performance of work under this order may be punishable in accordance with applicable Federal statutes.
7. **Default to Seller:** The provisions of FAR 52.249-8, "Default (Fixed-price Supply and Service)," in effect on the date of this order are incorporated in this paragraph by reference as follows: Subparagraphs (a), (b), (e), and (f), (g), and (h). Where necessary to make this FAR provision applicable to this Purchase Order, "Contractor" shall mean "Seller" and "Contracting Officer" shall mean "Buyer", and "Government" shall mean "Buyer or Government". If bankruptcy, insolvency, dissolution, receivership or equivalent proceedings shall be instituted by or against Seller, or upon Seller's making any assignment for the benefit of creditors or entering into any such arrangement or upon Seller's suspension of its business or becoming insolvent, Buyer shall have the right to terminate this Purchase Order in accordance with FAR 52-249-8.
8. **Defective Work:** Buyer may reject, or require prompt correction (in place or elsewhere) of any supplies or goods which are defective in material or workmanship or otherwise fail to meet the requirements of this Purchase Order.
9. **Delivery:** Time is of the essence. Seller shall comply with delivery schedule but shall not make material or production commitments in advance of such time as the Seller reasonably believes necessary to meet the schedule without prior written approval by the Buyer. Representatives of Buyer shall during Seller's regular working day have access to Seller's plant for the purpose of assuring delivery in accordance with the schedule.
10. **Disputes:** Any dispute arising under this Purchase Order which is not settled by agreement of the parties will participate in mediation and/or arbitration in the state or federal courts of California. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Purchase Order, Seller shall proceed diligently with the performance of this Purchase Order unless otherwise agreed between the parties.
11. **Equal Opportunity:** The information set forth in FAR clause 52.222-26 and in FAR Section 22.810 as applicable, as in effect on the date of this Purchase Order are incorporated herein by reference unless this Purchase Order is exempt under regulation issued by the Secretary of Labor. Where necessary to make the FAR applicable to this Purchase Order, the word "Contractor" shall mean "Subcontractor."
12. **Federal and Local Taxes:** Except as may be otherwise provided in this Purchase Order, the price includes all applicable federal, state and local, taxes and duties.
13. **Indemnity:** If Seller in connection with the performance of this Purchase Order shall send any of its agents or employees onto premises owned or controlled by Buyer, Seller shall provide safety protection for persons and property in accordance with all applicable laws and regulations and indemnify and save harmless Buyer from and against any and all liabilities and losses whatsoever, whether resulting from or contributed to by negligence of Buyer, including without limitation, costs and expenses in connection therewith, on account, or by reason of, injury to, or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the course of, or in connection with, the performance of the work. Buyer at its option may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification provided above but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify.

Seller shall comply with the provisions of FAR 52.215-10, 52.215-11, 52.215-12, and 52.215-13 which are incorporated herein by reference to the extent that such clauses are or become applicable to this Purchase Order. Seller shall indemnify and hold harmless Buyer from any amount, loss and expense, including interest assessed by the Government under 10 U.S.C § 2306a, by which this Purchase Order is determined by the Government to have been defectively priced because of Seller's or Seller's subcontractor's failure to comply with such provisions. The rights of the Parties hereunder shall survive completion or termination of this Purchase Order.

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14. **Inspection:** Inspection and Acceptance will be at destination, unless otherwise provided in this Purchase Order. Buyer and its customer may inspect and test material, work in progress, and supplies at all times and places, during manufacture and otherwise. If Inspection and test are made on Seller's premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing such inspections. Inspections shall be performed in such manner as not to delay the work unduly.
15. **Responsibility for Supplies or Goods:** Except as specifically otherwise provided in this Purchase Order, Seller shall be responsible for supplies meeting the requirements of this Purchase Order until final inspection and acceptance thereof by Buyer, and shall bear all risks as to rejected supplies or supplies requiring correction after notice of rejection notwithstanding any prior acceptance.
16. **Invoicing and Payment:** A separate invoice shall be issued for each shipment. Unless otherwise specified in this Purchase Order, no invoice shall be issued prior to shipment of goods and no payment will be made prior to receipt of goods and a correct invoice. Payment due dates will be computed from the date of receipt of goods or the date of receipt of a correct invoice, whichever is later.
17. **Liens:** Seller warrants that on the date Buyer pays for all the supplies or goods delivered under this agreement, all liens, rights of lien and claims against Buyer or the supplies or goods arising by virtue of work performed by Seller of any subcontractor with respect to the provision of the supplies or goods will have been released or satisfied. Upon request, Seller will provide to Buyer certification, releases or other satisfactory evidence in support thereof, stating that no such liens, right of lien or claims exist.
18. **Military Security Requirements:** (a) Seller shall be responsible for safeguarding all classified information in accordance with the provisions of the Seller's Security Agreement with the Department of Defense and with all applicable Government requirements including, without limitation, FAR 52-204-2, "Security Requirements" which is incorporated herein by reference. (b) Seller agrees to insert in all subcontracts under this Purchase Order that involve access to classified information, provisions which shall conform substantially to the language of Subparagraph (a) above and to this Subparagraph (b).
19. **Intellectual Property Indemnity:** Seller shall indemnify Buyer, and/or Buyer's customer, and their respective officers, agents, and employees against liability, including costs, for infringement of any patent, copyright, trademark or other intellectual property arising out of the manufacture or delivery of supplies or goods or performance of services under this Purchase Order or out of the use or disposal by, or for the account of, Buyer and/or Buyer's customer, of such supplies or goods.
20. **Property Rights:** Seller agrees to make prompt and complete disclosure to Buyer of all inventions, and disclosures made or conceived as a result of work performed under this Purchase Order. Seller agrees to keep necessary records supporting such inventions and discoveries and will furnish to Buyer upon request all such records.

Any invention, discovery, proprietary information, software, system, data, or report resulting from the work performed under this Purchase Order shall be the sole property of the Buyer. All patents, copyrights, trade secrets, trademarks, or other intellectual property resulting from work under this Purchase Order shall be the sole property of the Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of the Seller and without any duty to account to the Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this Purchase Order, and to provide reasonable support for the Buyer's prosecution of such patent or patent application. The Parties agree that any original work of authorship created under this Purchase Order is a work made for hire for purposes of copyright ownership. To whatever extent the Seller has any interest in any original work of authorship created under this Purchase Order, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.

This Purchase Order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of the Purchase Order.

The rights of the U.S. Government in technical data, computer software and inventions pertaining to the supplies and/or services delivered under this Purchase Order are set forth in the applicable FAR and DFARS clauses incorporated by reference. Buyer shall have the right to utilize the supplies and/or services in performance of Buyer's contractual obligations to its customer, including the right to copy and modify any technical data and computer software delivered under this Purchase Order and the right to deliver such information to Buyer's customer if it is required as a deliverable under Buyer's contract with its customer.

21. **Subcontracting:** Seller shall not subcontract all or substantially all work on any article to be supplied under this Purchase Order without prior written approval of Buyer. This provision shall not apply to purchases of standard commercial articles or raw materials on which Seller will perform further work.
22. **Substitutions:** Seller shall not substitute materials or accessories without written consent of Buyer.
23. **Priority Rating.** If so identified, this Contract is a "rated order" certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).
24. **Stop Work Order:** In accordance with the provisions of the "Stop-Work-Order" clause set forth in FAR 52.242-15 in effect on the date of this order, Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by any Purchase Order for a period of 90 days after the order is delivered to Seller, and for any further period to which the Parties may agree. Upon receipt of such an order, Seller will immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the indicated 90-day period, Buyer will take the actions prescribed in FAR 52.242.15.
25. **Termination:** Without limiting Buyer's right to cancel this order for default of Seller as provided above, Buyer may terminate all or any part of the work under this Purchase Order and process Seller's claims therefore in accordance with the provisions of the "Termination for the Convenience of the Government (fixed-Price)" clause set forth in FAR 52.249-2 in effect on the date of this order. Where necessary to make FAR 52.249-2 applicable to this Purchase Order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and "Government" shall mean "Buyer or the Government". In paragraph (e) of FAR 52.249-2, change "1 year" to "6 months or any extension thereto".

26. **Notice to Buyer of Potential Delays:** Whenever Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto to Buyer.
27. **Foreign Content:** Seller agrees to use reasonable efforts to identify any foreign content of items that Seller either produces itself or procures from subcontractors for work under this Purchase Order. Promptly after selection of any non- U.S. subcontractor for work under this Purchase Order, Seller shall notify the Buyer.
28. **Special Tooling (ST), Special Test Equipment (STE), and Facilities (FAC):** Unless specifically provided to the contrary in this Purchase Order, Seller warrants that the price set forth in this Purchase Order does not include: (a) any amount representing rent for the use of Government-owned ST, STE or FAC; or (b) as a direct charge to this Purchase Order, the cost of any ST, STE, or FAC as the same are defined in part 45 of the FAR. Any such ST, STE, or FAC to be charged to the Buyer will be covered by a separate Purchase Order.
29. **Warranty:** Seller warrants for a period of one (1) year that the supplies covered by this Purchase Order will conform to the design, specifications, drawings, samples or other descriptions referred to in this Purchase Order and will be free from defects in material and workmanship, and to the extent that the seller knows or has reason to know of the purpose for which the supplies/services are intended, will be fit and sufficient for such purpose. The warranties contained in this paragraph shall run to Buyer and its Customers. Seller warrants that supplies/services provided under this Purchase Order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which in any manner would interfere with Buyer's property rights as described in paragraph entitled "Property Rights".
30. **Export Related Requirements:** Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- a) Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations.
 - b) Seller shall immediately notify the Buyer Procurement Representative if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
 - c) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
 - d) Where Seller is a signatory under a Buyer's export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to the Buyer Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the Seller's performance under this Contract.
 - e) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.
31. **Federal Acquisition Regulation (FAR, DOD FAR Supplement (DFARS):** The following clauses set forth in the FAR and DFARS as in effect on the date of this Purchase Order are incorporated herein by reference. Where necessary to make the clauses applicable to this Purchase Order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer", and the "Government" shall mean "Buyer or the "Government" whenever appearing the clauses. If any of the following FAR or DFARS clauses do not apply to a particular Purchase Order, such clauses are considered to be self-deleting.

All Orders:

52.203-10	Price of Fee Adjustment for illegal or improper Activity	52.242-15	Stop Work Order
52.204-2	Security Requirements	52.244-6	Subcontracts for Commercial Items
	Certification regarding debarment, suspension, proposed debarment, and other responsibility matters	52.245-2	Government property (Fixed-Price Contracts)
52.209-5*			
52.211-5	Material Requirements	52.245-17	Special Tooling
52.215-10	Price reduction for Defective Cost or Pricing Data	52.245-18	Special Test Equipment
52.215-11	Price reduction for Defective Cost or Pricing Data Modification	52.246-2	Inspection of Supplies- Fixed-price
52.215-12	Subcontractor Cost or Pricing Data	52.246-16	Responsibility for Supplies
52.215-13	Subcontractor Cost or Pricing Data-Modifications	52.247-64	Preference for Privately Owned US Flag Commercial Vessels
52.211-15	Defense priority and Allocation Requirements	52.249-2	Termination for Convenience of the Government (Fixed-Price)
52.215-19	Notification of Ownership changes	52.249-8	Default (Fixed-Price Supply and Service)
	Requirements for cost or pricing data or information other than cost or pricing data note 2 applicable	252.204-7000	Disclosure of Information
52.215-20			
52.215-21	Requirements for Cost or pricing Data or information other than Cost or Pricing data-modifications Note 2 applicable.	252.222-7000	Restrictions on Employment of Personnel
52.219-8	Utilization of Small Business Concerns	252.223-7001	Hazard Warning Labels
52.222-21	Prohibition of Segregated Facilities	252.223-7006	Prohibition of Storage and Disposal of Toxic and Hazardous Materials
52.222-25*	Affirmative Action Compliance	252.225-7001	Buy American Act and Balance of Payments program
52.222-26	Equal Opportunity	252.225-7013	Duty Free Entry
52.222-41	Service Contract Act of 1965, as Amended	252.225-7014 Alt 1	Preference for Domestic Specialty Metals
52.223-7	Notice of Radioactive Materials	252.225-7021	Trade Agreements
52.223-11	Ozone-Depleting Substances	252.225-7025	Restriction on Acquisition of Forgings
52.225-1	Buy American Act- Supplies	252.225-7028	Exclusionary Policies and Practices of Foreign Governments
52.225-3	Buy American Act-Free Trade Agreements- Israeli Trade Act	252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate
52.225-5	Trade Agreements	252.225-7036	Buy American Act- Free Trade Agreements



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52.225-8	Duty Free Entry	252.227-7013	Rights in Technical Data Non Commercial Items
52.225-13	Restrictions on Certain Foreign Purchases	252.227-7014	Rights in Noncommercial Computer Software & Noncommercial Computer Software Documentation
52.225-15	Sanctioned European Union Country End Products	252.227-7015	Technical Data- Commercial Items
52.227-1	Authorization and Consent	252.227-7016	Rights in Bid or Proposal information
52.227-10	Filing of Patent Applications- Classified Subject Matter	252.227-7019	Validation of Asserted Restrictions-Computer Software
52.227-11	Patent Rights- Retention by Contractor Short Form (Small Business)	252.227-7025	Limitations on the use or disclosure of Government Furnished information marked with restrictive legends
52.227-12	Patent Rights- Retention by Contractor Long Form (Large Business)	252.227-7030	Technical Data- Withholding of Payment
52.227-14	Rights in Data- General	252.227-7037	Validation of Restrictive Markings on Technical Data
52.227-19	Commercial Computer Software - Restricted Rights	252.246-7001	Warranty of Data
52.233-3	Protest after Award		

All Orders of \$10,000 or Above:

52.222-20	Walsh-Healey Public Contracts Act	52.222-36	Affirmative Action for Workers with Disabilities
52.222-35	Equal opportunity for Special Disabled Veterans	52.222-37	Employment Reports on Special Disabled Veterans

All Orders of \$25,000 or Above:

52.209-6	Protecting the Government's interest When Subcontracting with Contractors Debarred, Suspended, or proposed Debarment		
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All Orders of \$100,000 or Above:

52.203-6	Restrictions on Subcontractor Sales to the Government	52.227-2	Notice & Assistance regarding Patent and Copyright Infringement
52.203-7	Anti-Kickback Procedures	52.232-32	Performance- Based Payments
52.203-11	Certification & Disclosure Regarding Payments to Influence Certain Federal Transactions	52-248-1	Value Engineering
52.215-2	Audit and Records-negotiations	252.203-7001	Prohibition on persons Convicted of Fraud or Other Defense Contract Related Felonies
52.215-14	integrity of Unit Prices	252.247-7023	Transportation of Supplies by Sea
52.222-4	Contract Work hours and Safety Standards Act- Overtime Compensation	252.247-7024	Notification of Transportation of Supplies by Sea
52.223-13	Certification of Toxic Chemical Release Reporting	252.249-7002	Notification of Anticipated Contract Termination or Reduction
52.223-14	Toxic Chemical Release Reporting		

All Orders of \$500,000 or Above:

52.219-9	Small Business Subcontracting Plan	52.230-5	Cost Accounting Standards - Educational Institution
52.230-2	Cost Accounting Standards	52.230-6	Administration of Cost Accounting Standards
52.230-3	Disclosure and Consistency of cost Accounting Practices	252.219-7003	Small, Small Disadvantaged and Women owned Small Business Subcontracting Plan (DOD contracts)

All Orders of \$550,000 or Above:

52.215-12	Subcontractor Cost of Pricing Data	52.215-13	Allowable Cost and payment- Facilities
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