



SBIRTC-03 TERMS AND CONDITIONS TIME & MATERIALS-GOVERNMENT PURCHASE ORDERS REV A (6/06) 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 of 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 Seller shall also notify Buyer if approval of its property system has been withdrawn by the Government.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. **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.
5. **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.
6. **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.
7. **Defective work:** Buyer, at its option, may reject or require prompt correction (in place or elsewhere) of any services which are defective in material or workmanship or otherwise fail to meet the requirements of the Purchase Order.
8. **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.
9. **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."
10. **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.
11. **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.

12. **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.



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13. **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.
14. **Invoicing and Payment:** The amounts due to the Seller hereunder will be paid upon the submission of monthly invoices certified by an authorized official of the Seller. Their certification shall be to the effect that the amount contained therein is correct and just, and payment for the amount claimed has not been received or previously covered by a prior invoice. The Seller shall be paid as follows upon the submission of invoices or vouchers approved by Buyer.
 - (a) **Hourly Rate:** Unless provisions of the Purchase Order otherwise specifies, the hourly rate or rates set forth in the Purchase Order shall not be varied by virtue of the Seller having performed work on an overtime basis. If overtime work is approved in advance by Buyer, overtime rates will be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the "Disputes" Clause of this Purchase Order.
 - (b) **Materials and Subcontracts**
 - (1) Allowable costs of direct materials shall be determined by Buyer in accordance with Part 31, of the Federal Acquisition Regulation in effect on the date of this Purchase Order. Reasonable and allocable material handling costs may be included in the charge for material at cost to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense, allocated to direct materials in accordance with the Seller's usual accounting practices consistent with Part 31 of the Federal Acquisition Regulation. The Seller shall be reimbursed for items and services purchased directly for the Purchase Order only when cash, checks, or other forms of actual payment has been made for such purchased items or services. If requested, The Seller shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to Buyer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product. All costs included in the invoice must be computed in accordance with the latest revision of Section 31 of FAR and allowable with the principles therein. No payment shall be made for costs included in the invoice that are unallowable by Section 31.
 - (2) The Seller shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify Buyer to that effect, and give the reason therefore. Credit shall be given to Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Seller, or would have been so accrued except for the fault or neglect of the Seller. Such benefits lost through no fault or neglect on the part of the Seller, or lost through fault of Buyer, shall not be deducted from gross costs.
 - (c) It is estimated that the total cost to Buyer for the performance of this Purchase Order will not exceed the ceiling price set forth in the Purchase Order, and the Seller agrees to use his best efforts to perform the work specified in the Purchase Order. If at any time the Seller has reason to believe that the hourly rate payments and material costs which will accrue in the performance of this Purchase Order in the next succeeding thirty (30) days when added to all other payments and costs previously accrued, will exceed eighty-five percent (75%) of the ceiling price then set forth in the Purchase Order, the Seller shall notify Buyer to that effect giving his revised estimate of the total price to Buyer for the performance of this Purchase Order, together with supporting reasons and documentation.

If at any time during the performance of this Purchase Order, the Seller has reason to believe that the total price to Buyer for the performance of this Purchase Order will be substantially greater or less than the then stated ceiling price, the Seller shall so notify Buyer, giving his revised estimate of the total price for the performance of this Purchase Order, together with supporting reasons and documentation. If at any time during the performance of this Purchase Order, Buyer has reason to believe that the work to be required in the performance of this Purchase Order will be substantially greater or less than the stated ceiling price, Buyer will so advise the Seller, giving the then revised estimate of the total amount of effort to be required under this Purchase Order.
 - (d) Buyer shall not be obligated to pay the Seller any amount in excess of the ceiling price set forth in the Purchase Order, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Purchase Order, unless and until Buyer shall have notified the Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this Purchase Order. When and to the extent that the ceiling price set forth in the Purchase Order has been increased, any hours expended and material costs incurred by the Seller in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.
 - (e) The Seller agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Seller or any assignee which arise under the materials portion of this Purchase Order and for which the Seller has received reimbursement, shall be paid by the Seller to Buyer. The Seller and each assignee, under an assignment entered into under this Purchase Order and in effect at the time of final payment under this Purchase Order shall execute and deliver at the time of and as a condition precedent to final payment under this Purchase Order, an assignment to Buyer of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to Buyer.



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15. **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).
16. **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.
17. **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.

18. **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.
19. **Substitutions:** Seller shall not substitute materials or accessories without written consent of Buyer.
20. **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).
21. **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.
22. **Termination:** Without limiting Buyer's right to cancel this order for default of Seller as provided in FAR 52.249-6 Alternate IV, which is incorporated herein by reference, Buyer may terminate all or any part of the work under this order and process Seller's claims therefore in accordance with the provisions of the Termination Clause set forth in Part 52.249-6 Alternate IV of the Federal Acquisition Regulation as in effect on the date of this order. Where necessary to make this FAR part 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 52.249-6, change "1 year" to "6 months or any extension thereto." Delete Paragraph (i) of 52.249-6. However, Seller shall have the rights under the "Disputes Clause" of this Purchase Order.
22. **Notice to the Buyer of Potential Delays:** Whenever Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of the Purchase Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer.
23. **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.
24. **Standards of Services:** All services hereunder shall be performed by employees or agents of Seller who are experienced and highly skilled in their professions and in accordance with the highest standards of workmanship in their profession. Seller shall not change or transfer such employees once assigned except for good cause. Buyer shall have the right to request and have replaced any personnel who fail to perform to Buyer's satisfaction.



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25. **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".
26. **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	52.229-3	Federal, State, and local Taxes
52.204-2	Security Requirements	52.233-3	Protest after Award
52.209-5*	Certification regarding debarment, suspension, proposed debarment, and other responsibility matters	52.242-15	Stop Work Order
52.211-5	Material Requirements	52.244-6	Subcontracts for Commercial Items
52.211-15	Defense priority and Allocation 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 Modifications	52.246-16	Responsibility for Supplies
52.215-19	Notification of Ownership Changes	252.204-7000	Disclosure of Information
52.215-20	Requirements for Cost or Pricing Data	252.222-7000	Restrictions on Employment of Personnel
52.215-21	Requirements for Cost or Pricing Data or Information	252-223-7001	Hazard Warning Labels
52.219-8	Utilization of Small Business Concerns	252.223-7006	Prohibition of Storage and Disposal of Toxic and Hazardous Materials
52.222-21	Prohibition of Segregated Facilities	252.225-7001	Buy American Act and Balance of Payments program
52.222-25*	Affirmative Action Compliance	252.225-7021	Trade Agreements
52.222-26	Equal Opportunity	252-225-7014 Alt 1	Preference for Domestic Specialty Metals
52.222-41	Service Contract Act of 1965, as Amended	252.225-7025	Restriction on Acquisition of Forgings
52.223-7	Notice of Radioactive Materials	252.225-7028	Exclusionary Policies and Practices of Foreign Governments
52.223-11	Ozone-Depleting Substances	252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate
52.225-1	Buy American Act- Supplies	252.225-7036	Buy American Act- Free Trade Agreements
52.225-3	Buy American Act-Free Trade Agreements- Israeli Trade Act	252.227-7013	Rights in Technical Data Non Commercial Items
52.225-5	Trade Agreements	252.227-7014	Rights in Noncommercial Computer Software & Noncommercial Computer Software Documentation
52.225-8	Duty Free Entry	252.227-7015	Technical Data- Commercial Items
52.225-13	Restrictions on Certain Foreign Purchases	252.227-7016	Rights in Bid or Proposal information
52.225-15	Sanctioned European Union Country End Products	252.227-7019	Validation of Asserted Restrictions-Computer Software
52.227-1	Authorization and Consent	252.227-7025	Limitations on the use or disclosure of Government Furnished Information marked with restrictive legends
52.227-10	Filing of Patent Applications- Classified Subject Matter	252.227-7030	Technical Data- Withholding of Payment
52.227-11	Patent Rights- Retention by Contractor Short Form (Small Business)	252.227-7037	Validation of Restrictive Markings on Technical Data
52.227-12	Patent Rights- Retention by Contractor Long Form (Large Business)	252.231-7000	Supplemental Cost Principles
52.227-14	Rights in Data- General	252.243-7001	Pricing of Contract Modification
52.227-19	Commercial Computer Software - Restricted Rights	252.246-7001	Warranty of Data
		252-247-7024	Transportation by Sea

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	52.223-14	Toxic Chemical Release Reporting
52.203-7	Anti-Kickback Procedures	52.227-2	Notice & Assistance regarding Patent and Copyright Infringement
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	252.249-7002	Notification of Anticipated Contract Termination or Reduction
52.223-13	Certification of 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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