

1. **ACCEPTANCE:** This Order constitutes BUYER's offer to Seller and is not an acceptance or a confirmation. This Order becomes a binding contract on the terms set forth herein when it is accepted by Seller either by written acknowledgment or the commencement of performance. Seller(s) acceptance is limited to the exact terms of this Order. No additional or conflicting terms and conditions stated by Seller in accepting or acknowledging this Order shall be binding upon BUYER unless expressly accepted in writing by BUYER. No revision to this Order shall be valid unless in writing and signed by authorized representative of BUYER.
2. **PACKING AND SHIPPING:** Unless otherwise specified (A) all packing and crating by Seller shall be in compliance with carriers tariffs and in suitable containers for protection in shipment and storage, and also shall be in compliance with any stated Government contract specifications, and (B) the price or prices shall include all charges for Seller(s) packing and crating, and for transportation to the F.O.B. point.
3. **DELIVERY:** Deliveries shall be strictly in accordance with the schedule set out or referred to in the Order and in exact quantities. If Seller's deliveries will not meet such schedule, BUYER may request Seller to ship via routing necessary to meet schedule or recover time lost by nondelivery on schedule, and the difference between revised routing and order routing costs shall be paid by Seller. Time is of the essence, and failure by Seller to complete delivery within time specified shall, at BUYER's option without liability, in addition to BUYER's other rights and remedies, relieve BUYER of any obligation to accept and pay for any such material or work.
4. **INVOICES AND PAYMENT:** Unless otherwise provided in this Order, no invoices shall be issued nor payments made prior to delivery and acceptance. Individual invoices must be issued for each shipment under this Order. Unless freight and other charges are itemized, any discount will be taken on the full amount of invoice. All payments are subject to adjustment for shortage or rejection.
5. **INSPECTION, ACCEPTANCE, AND REJECTION:** (A) All Items or Services are subject to final inspection, test, and acceptance at destination, regardless of the F.O.B. point or any payment or prior inspection at source. Final inspection will be made at a reasonable time after receipt of the Items or Services. Final inspection shall be conclusive except as regards latent defects, fraud and such gross mistakes as amount to fraud. Seller shall furnish to BUYER, if requested, all information and data as may be reasonable by BUYER in order to perform inspection and acceptance. Final inspection does not relieve Seller of its obligation under any Warranties herein or as may be provided by law. (B) In case any Item is defective in material or workmanship, or otherwise not in strict conformity with the requirements of this Order, BUYER shall have the right either to reject it, require its correction, or accept the Item with an equitable adjustment in price. Any Item which has been rejected or required to be corrected may be returned to and shall be replaced or corrected by and at the expense of the Seller, including transportation charges as well as including any costs incurred by BUYER and/or any costs incurred by a third party under the control or direction of BUYER for effort that may be required to enable Seller to re-perform in strict conformity with the requirements of this contract, promptly after notice. If after being requested by BUYER, the Seller fails to promptly replace or correct any defective Item within the contractual delivery schedule, BUYER may (i) by contract or otherwise, replace or correct such Item and charge to the Seller the cost occasioned BUYER thereby; (ii) without further notice terminate this Order for default, in accordance with the clause hereof titled "Termination"; or (iii) require a reduction in price which is equitable under the circumstances. (C) If any Services performed hereunder are not in conformity with the requirements of this Order, BUYER shall have the right to require the Seller to perform the Services again in conformity with the requirements of the Order, at no additional increase in total Order price. Seller shall also be responsible for any costs incurred by BUYER and/or any costs incurred by a third party under the control or direction of BUYER for effort that may be required to enable Seller to re-perform in strict conformity with the requirements of this contract. When

the Services to be performed are of such a nature that the defect cannot be corrected by re-performance of the Services, BUYER shall have the right to (i) require the Seller to immediately take all necessary steps to insure future performance of the Services in conformity with the requirements of the Order; and (ii) reduce the Order price to reflect the reduced value of the Services performed. (D) In the event the Seller fails promptly to perform the Services again or to take necessary steps to insure future performance of the Services in conformity with the requirements of the Order, BUYER shall have the right to either (i) by contract or otherwise have the Services performed in conformity with the Order requirements and charge to the Seller any cost occasioned to BUYER that is directly related to the performance of such Services; or (ii) terminate this Order for default as provided in the clause of this Order entitled "Termination." (E) Rejected Items or Services may not be re-tendered to BUYER by Seller without the prior written notice and approval of BUYER.

**6. CHANGES:** (A) BUYER shall have the right at any time, by a written change notice issued by BUYER to make changes in this Order relating to the goods or services provided. (B) If any such change affects the time for performance, the cost of manufacturing, or the cost of furnishing services, BUYER shall make an equitable adjustment in the Order price or delivery schedule, or both, and the order shall be modified in writing accordingly. Any claim by Seller for an equitable adjustment must be submitted to BUYER in writing within ten (10) days from the date of receipt by Seller of the notification of a change or of any event thought to constitute a change. Nothing herein contained shall excuse Seller from proceeding with this Order as changed even though a mutually agreed price and/or delivery change has not been reached.

**7. WARRANTIES:** Seller warrants that the goods and services provided hereunder will be (A) free of any claim of any nature by a third party and that Seller will convey clear title thereto to BUYER as provided hereunder, (B) of merchantable quality, free from all defects in design, workmanship and materials, and will be fit for the particular purpose for which they are purchased and will be provided in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by BUYER, and (C) performed in a professional manner by well-qualified individuals and will conform to the standards of professionalism normally expected in the provision of such services. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of BUYER, by acknowledgment or otherwise, in accepting or performing this Order, shall be null, void, and ineffective without BUYER's written consent. Said warranties, together with Sellers service warranties and guarantees, shall inure to the benefit of BUYER, its successors, assigns and Customers. Seller agrees to indemnify BUYER, its successors, assigns and Customers from all liability, loss, cost, damage, or expense, including costs and attorney's fees, which any or more of them may suffer or incur as a result of Seller's breach of any such warranty or of any other term or condition of this Order. Inspection, tests, acceptance and/or payment thereunder shall not relieve Seller from any liability which exists under its warranties or any other term or condition of this Order. The warranties and remedies provided for in this paragraph shall be in addition to any provided by law.

**8. INDEMNIFICATION:** Seller shall take all necessary precautions to prevent the occurrence of any injury to persons (including death) or damage to property during the progress of the work and shall defend and indemnify the BUYER, its successors, assigns and Customers against any claim which may result in any way from any act or omission of Seller, its agents, employees or subcontractors in performance of work hereunder. In the event of such work on the premises of BUYER or its Customer, Seller shall maintain insurance in the following amounts: Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed above) - \$1,000,000 per occurrence, \$2,000,000 aggregate; Comprehensive Automobile Liability (Bodily injury and Property Damage combined) - \$1,000,000 per occurrence, \$1,000,000 aggregate; Employers Liability - \$1,000,000 per occurrence and Statutory Workers Compensation insurance as required to protect Seller from all claims under any applicable

workers compensation and occupational disease law. Seller shall furnish to BUYER, prior to beginning work hereunder, a Certificate of Insurance completed by its insurance carrier (s) certifying that the required insurance coverages are in effect and will not be canceled or materially changed without ten (10) days prior written notice to BUYER.

**9. PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT ASSIGNMENT AND INDEMNITY:** All work created by Seller pursuant to BUYER's specifications shall be deemed "Work for Hire", and all rights in any patent, copyright or other proprietary right resulting from such work shall belong solely to BUYER and shall be assigned to BUYER from Seller and/or its agents upon request. Seller shall defend, at its sole expense, any suit or proceeding brought against BUYER or its Customers which is based in whole or in part on a claim that any goods or services, or any part thereof, furnished by Seller under this Order constitutes an infringement of any United States patent, copyright, trade secret or other proprietary right of a third party. Seller shall pay all damages and costs awarded therein provided Seller is notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same. In the event that the use of said goods or services, or part thereof, is held to constitute an infringement of any patent, copyright, trade secret or other proprietary right and the use thereof is enjoined; Seller shall, at its own expense, either procure for BUYER the right to continue using such goods or services, replace the same with non-infringing goods or services meeting BUYER's requirements, or modify the goods or services so as not to infringe goods or services meeting BUYER's requirements, or modify the goods or services so as not to infringe upon such third party's rights. Any modification to the goods or services, however, must be approved in writing by BUYER. If none of the foregoing is possible, Seller shall take back such goods or services and refund to BUYER the purchase price and the transportation and installation costs thereof. Seller shall not, however, assume any liability with respect to any article or invention which is specifically required to be used on or in connection with the Order by BUYER's specifications or instructions unless Seller has Knowledge of the infringing nature of such use and fails to so notify BUYER.

**10. REMEDIES:** The rights and remedies of the BUYER provided in this Order shall not be exclusive and are in addition to any other rights and remedies provided by law.

**11. TERMINATION:** In addition to any other rights of BUYER to cancel or terminate this Order, BUYER may at its option immediately terminate for convenience all or any part of this Order, at any time and for any reason, by giving written notice to Seller. Upon such termination, BUYER shall pay to Seller the following amounts without duplication: (A) the Order price for all goods or services which have been completed in accordance with this Order and not previously paid for; and (B) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods and services under this Order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Order; less, however, the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with BUYER's written consent, and the cost of any damaged or destroyed goods or materials. BUYER will make no payment for finished goods, work-in-process, or raw materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Payments made under this paragraph shall not exceed the aggregate price payable by BUYER for finished goods which would be produced by Seller under delivery or release schedules outstanding at the date of termination. Within thirty (30) days from the effective date of termination, Seller shall submit a comprehensive termination claim to BUYER, with sufficient supporting data to permit BUYER's audit, and shall thereafter promptly furnish such supplemental and supporting information as BUYER shall request. BUYER or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items related to any termination claim of Seller.

12. **SELLER INFORMATION:** Any knowledge or information which Seller shall have disclosed or may hereafter disclose to BUYER, and which in any way relates to the goods or services covered by this Order and BUYER's specification, shall not, unless otherwise specifically agreed to in writing by BUYER, be deemed to be confidential or proprietary information, and shall be acquired by BUYER free from any restrictions as part of the consideration for this Order.

13. **INSOLVENCY:** If Seller ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, BUYER may terminate this Order without liability, except for deliveries previously made or for goods covered by this Order then completed and delivered in accordance with the terms of the Order.

14. **RELATIONSHIP OF PARTIES:** Seller and BUYER are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

15. **CONSEQUENTIAL DAMAGES:** Notwithstanding any other provision herein, BUYER shall under no circumstances be responsible for any consequential, indirect, incidental or special damages.

16. **COMPLIANCE WITH LAWS:** Seller agrees to comply with the applicable provision of any federal, state or local law or ordinance and all lawful orders, rules and regulations issued thereunder. Seller hereby certifies that it is in compliance with any provisions, representations or agreements or contractual clauses required thereby to be included or incorporated by reference or operation of law in the contract, including the Equal Opportunity clause set forth in 41 CFR chapter 60-1.4, the Affirmative Action Clause regarding Disabled Veterans and Veterans of the Vietnam Era set forth in 41 CFR Chapter 60-250.4, the requirements for nonsegregated facilities set forth in 41 CFR Chapter 60-1.8, the Affirmative Action Clause regarding Handicapped Workers set forth in 41 CFR Chapter 60-741.4, and any other provisions or contractual clauses required by the OFCCP as set forth in 41 CFR Chapter 60, as well as any Executive Orders as now or hereafter issued, amended, or codified.

17. **HEALTH AND SAFETY:** If Seller performs work at BUYER's or BUYER's Customer's location, Seller shall comply with all applicable Federal, state and local health and safety laws and regulations and any health and safety rules of BUYER and/or its Customer. Compliance with such requirements shall represent the minimum standard required of Seller, and Seller shall be responsible for examining all requirements and determining whether additional or more stringent provisions are required for the work. Seller shall be responsible for preparing and implementing its own project health and safety plans and programs, and all other written programs required by Federal, state and local regulations. Seller shall furnish protective devices and clothing as may be required by applicable laws, regulations, health and safety plans and BUYER's and its Customer's rules and regulations, and to ensure that such devices and clothing are properly used. Seller shall comply with training and medical monitoring requirements regarding its employees, agents, subcontractors and other invitees to the extent required by applicable laws, regulations, health and safety plans and BUYER's and its Customer's rules and regulations, and to pay the costs and expenses thereof.

18. **MATERIAL SAFETY DATA SHEETS:** If, pursuant to 29 CFR 1910.1200, a Material Safety Data Sheet is required to be provided with the goods ordered hereunder, the Order shall not be considered complete by BUYER, and payment may be withheld, until such time as the Material Safety Data Sheet is received.

19. **FORCE MAJEURE:** Neither party shall be liable for delays due to acts of God, acts of governmental authority, acts of public enemy, war, fires, floods, epidemics, strikes, labor

troubles, nor causes or contingencies reasonably beyond its control, but this Section shall not prevent BUYER from canceling in accordance with the clause hereof titled “Termination”.

20. **GOVERNMENT PROCUREMENT REGULATION CLAUSES:** If this Order is placed or arises under a Government Contract, the Government Contract (or applicable portions of it) will be available for inspection at BUYER's offices. In that event, this Order includes, and incorporates by reference, all clauses and other contractual provision which must be included in subcontracts either under the terms of the government Contract or under applicable law, including those not physically incorporated in the government contract, but either referenced or cited therein, or included by operation of law. Where necessary to make the context of these clauses applicable to this Order, in such clauses, the term “Contractor” shall mean “Seller”, the term “Contract” shall mean “Order” and the terms “Government”, “Contracting Officer”, and similar terms shall mean “BUYER” in addition to or in lieu of “Government”, “Contracting Officer”, or the like as the case may require.

21. **TAXES:** Except as may be otherwise provided in this Order, the prices herein include all Federal, state and local taxes applicable to the goods and/or services purchased therein.

22. **SET-OFF:** BUYER shall be entitled 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 in connection with this Order.

23. **ASSIGNMENT:** Neither this Order nor any interest, duty or right under it shall be assigned or otherwise transferred by Seller to any third party without the prior written consent of BUYER. Such consent shall not release Seller from its obligations and liabilities.

24. **WAIVER:** The failure of BUYER at any time to require performance by Seller of any provision of this Order shall in no way affect BUYER's right to require such performance at any time thereafter, nor shall the waiver by BUYER of a breach of any provision of this Order constitute a waiver of any succeeding breach of the same or any other provision.

25. **CLEARANCE OF MATERIAL FOR PUBLIC RELEASE:** No news release, advertisement, public announcement, denial or confirmation of same relating to any part of the subject matter of this Order or any phase of any program hereunder shall be made directly or indirectly without prior written approval of BUYER. If this Order is issued under a Government contract, the Government is excluded from the restrictions set out in this provision.

26. **SEVERABILITY:** If any provision of this Order, or part thereof, shall be invalid or unenforceable, such provision or part shall be deemed severed, and the remainder hereof shall be given full force and effect.

27. **APPLICABLE LAW:** This Order and performance hereunder shall be governed by and construed in accordance with the substantive laws of the State of Texas.

28. **ENTIRE AGREEMENT:** This Order, together with the attachments, exhibits or supplements specifically referenced herein, constitutes the entire agreement between BUYER and Seller with respect to the matter contained herein, and supersedes all prior oral or written representations and agreements. No course of prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of this Order.