



## COMMERCIAL (FFP)

### TELEPHONICS STANDARD TERMS AND CONDITIONS

#### 1. **FORMATION OF CONTRACT.**

The Purchase Order shall be deemed conclusively to be accepted by the Seller upon Seller's acknowledgment and acceptance of the Purchase Order or by shipment of goods or commencement of any performance herein. By acceptance of the Purchase Order, Seller agrees to comply with all terms and conditions and specifications in the purchase order documents, including those contained in all documents incorporated into the Purchase Order or any other contract document by reference. The terms set forth herein, and in those documents referenced herein, constitute the entire agreement and supersede all previous verbal or written representations, agreements and conditions. No revision of this order shall be valid and binding unless and until any such revision is in writing and is signed by an authorized representative of the Telephonics Corporation (hereinafter "Buyer") and no conditions stated by Seller in accepting, acknowledging, or amending this Order shall be binding upon Buyer unless expressly accepted in writing by Buyer. To the extent that the conditions set forth in the Purchase Order document are in conflict with these Standard Terms and Conditions, they shall supersede these Standard Terms and Conditions. Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (i) Purchase Order document; (ii) Special Terms and Conditions, including any applicable supplementary provisions; (iii) These Standard Terms and Conditions; (iv) Statement of Work; (v) Specifications; and, (vi) Drawings. The Purchase Order price is firm fixed price, unless indicated to the contrary elsewhere in the Purchase Order.

#### 2. **ELECTRONIC CONTRACTING.**

The parties agree that if this Purchase Order is transmitted electronically neither party shall contest the validity of this Purchase Order, or any acknowledgment thereof, on the basis that this Purchase Order or acknowledgment contains an electronic signature.

#### 3. **PACKING, BAR CODING AND SHIPPING.**

Unless otherwise provided herein, no charge shall be made by Seller for containers, crating, boxing, storage or other packaging requirements. Seller shall be responsible for ensuring the proper packaging, Bar Coding and shipping of Product hereunder in accordance with Buyer's Supplementary Purchase Order and Vendor Consignment Notice Packing, Bar Coding, and Shipping Instructions Form TCX1138 which is incorporated herein by reference and available on the Buyer's Website, <https://Telephonics.com>. Damage resulting from improper Product packaging will be charged to Seller and failure to comply with BAR Code instructions will delay payments to the Seller due to extended processing time.

#### 4. **INVOICE AND FREIGHT BILL.**

Seller shall send a separate invoice for each shipment and shall include the following information taken from Buyer's Purchase Order: (i) Purchase Order number; (ii) item number; (iii) part serial number (if serialized); (iv) part number; (v) unit of measure; (vi) unit price; and (vii) unit ECCN or ITAR designation. Seller's invoice shall also include: (viii) Seller's phone number and address; (ix) invoice number; (x) date prepared; (xi) item quantity; (xii) extended item price; and (xiii) total invoice value. If Seller's "remit to" address is different than the address indicated on the Order, clearly identify the "remit to" address on the invoice. No invoice shall be issued prior to shipment of Products. Seller shall also provide documentation to support its invoice as Buyer may reasonably require. For each shipment made at Buyer's expense (i.e., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice. Buyer reserves the right to return invoices failing to comply with these instructions for re-submittal of a correct invoice.

#### 5. **DELIVERY, TITLE.**

A. The FOB point shall be as designated in the Purchase Order. Title shall pass to Buyer upon acceptance (except as otherwise specified within this Purchase Order); however, passing of title shall not relieve Seller of any other obligations under this Purchase Order.



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- B. Time is of the essence for this Purchase Order. As a result, Purchase Order delivery schedules must be strictly adhered to without early/late and/or over/under quantity deliveries. Buyer reserves the right to return over-shipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of over-shipments and early shipments.
- C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements or by Seller's delay shall be borne by Seller.
- D. If Seller is unable to meet the required delivery schedules for any reason, it shall promptly notify Buyer and, other than for delays directed by Buyer, Buyer shall have the option to (i) terminate this Purchase Order, or (ii) fill such Purchase Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer, or (iii) accept late delivery and recover from Seller any costs Buyer incurs caused by the late delivery. This condition shall not limit Buyer's rights under the default clause contained herein.
- E. All Parties expressly agree that time is and shall remain a material element of this Purchase Order and no acts of Buyer, including without limitation, modifications to this Purchase Order or acceptance of late deliveries, shall constitute a waiver of this provision.

### 6. ACCEPTANCE AND REJECTION.

If any of the goods are found to be defective in material or workmanship, counterfeit or otherwise not in conformity with the requirements of this Purchase Order at any time within one (1) year after delivery, Buyer, in addition to any other rights which it may have under warranties or otherwise, shall have the right to (i) accept all or part of the defective or non-conforming goods at an equitable price reduction; (ii) reject and return all or part of such goods at Seller's expense (including Buyer's handling charges), and/or to require that such articles or materials be corrected or replaced promptly with satisfactory materials or workmanship conforming goods; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such goods to comply in all respects with the Purchase Order requirements; or (iv) terminate this Purchase Order for default in whole or in part. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Purchase Order or otherwise. Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed as Buyer's Authorized Procurement Representative may reasonably direct.

### 7. CHANGES.

- A. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Purchase Order in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; (vi) terms and conditions of this Purchase Order required to meet Buyer's obligations under Customer contracts or subcontracts; and, if this Purchase Order includes services, (vii) description of services to be performed; (viii) time of performance (e.g., hours of the day, days of the week, etc.); and (ix) place of performance. Seller shall comply promptly with such direction. Except for the rights granted to Buyer under this provision, a change pursuant to this provision shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Purchase Order.



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- B. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.
- C. If such change increases or decreases the cost or time required to perform this Purchase Order, Seller shall immediately notify Buyer and Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Purchase Order in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within 10 days after Seller's receipt of such direction and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 45 days, after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

### 8. **RIGHT OF ACCESS.**

Authorized representatives of Buyer and its Customer when accompanied by the Buyer's representative, shall be allowed reasonable access to all work and work-in-progress, and all data and information related to this Purchase Order, and all facilities thereof, including Seller's subcontractors' locations, for purposes of observation, inspection, examination and evaluation, and to conduct surveys, audits and reviews at any reasonable time prior to final acceptance or termination.

### 9. **INSPECTION.**

All supplies furnished hereunder must conform strictly to the specifications set forth in this Purchase Order. Buyer and its customers may inspect and test material, work in progress and supplies at all reasonable times and places, including Seller's subcontractors' locations, during manufacture. If inspection and test are made on Seller's or its subcontractor's premises, Seller without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Inspections and test by Buyer, and its customers, shall be performed in such manner as not to delay the work unduly. All supplies furnished hereunder shall be subject to inspection at destination notwithstanding any previous source inspection. The performance of any inspection or test shall in no way relieve the Seller of its obligation to furnish all supplies or materials in strict accordance with the terms and provisions of this Purchase Order. Seller shall maintain all records of inspection in connection with this Purchase Order and such records shall be available to Buyer, and its customers, at all reasonable times. Payment or receipt thereof shall not be deemed a waiver of inspection or the right to reject goods and seek damages.

### 10. **PARTS OBSOLESCENCE.**

Buyer may desire to place additional Purchase orders for items purchased hereunder. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any items purchased under this Purchase Order.

### 11. **WARRANTIES.**

In addition to, and without prejudice to, all other warranties both express and implied, Seller warrants that the supplies or services furnished hereunder will be (i) free from defects in material, workmanship and manufacturing processes (ii) in compliance with all requirements of this Purchase Order and all applicable drawings, specifications, samples, representation or other descriptions, (iii) to the extent such supplies or services are not furnished pursuant to detailed designs provided by Buyer, free from defects in design or specification, (iv) suitable for the purposes intended, and (v) free of all liens and encumbrances. All warranties both express or implied including the above, shall constitute conditions precedent and, shall survive inspection, acceptance and payment. If any supplies or services fail to comply in any respect to the warranty set forth above, Seller, at Buyer's option, shall promptly repair



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or replace the supplies or services. Transportation of replacement supplies and return of nonconforming supplies shall be at Seller's expense. If repair or replacement is not timely, Buyer may elect to return, repair, replace, or re-procure the nonconforming supplies or services at Seller's expense. All warranties shall run to Buyer and its customers. Buyer's approval of any documentation prepared by Seller or Buyer's participation in inspection, design reviews or first provision approval process or similar reviews shall not relieve Seller of any obligation under this warranty. Buyer's rights under this provision shall, at Buyer's option, be assignable to and enforceable by its successors and customers. The rights of Buyer set forth in this provision shall be in addition to, and not in lieu of, any other right Buyer may have under this Purchase Order, or in law or equity.

### 12. **FORCE MAJEURE.**

Seller shall not be liable for excess re-procurement costs pursuant to the "Cancellation for Default" provision of this Purchase Order incurred by Buyer because of any failure to perform this Purchase Order under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are: (i) acts of God or of the public enemy; (ii) acts of the Government in either its sovereign or contractual capacity; (iii) fires; (iv) floods; (v) epidemics; (vi) quarantine restrictions; (vii) strikes; (viii) freight embargoes; and (ix) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the Seller's failure is caused by the failure of a subcontractor of Seller and if such failure arises out of causes beyond the reasonable control of both, and if such failure is without the fault or negligence of either, Seller shall not be liable for excess re-procurement costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause(s). In all cases, Seller shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the goods required by the Purchase Order from other sources; otherwise Seller shall be liable for excess re-procurement costs.

### 13. **NON WAIVER.**

The failure of the Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor of the right to Buyer thereafter to enforce each and every such provisions.

### 14. **CANCELLATION FOR DEFAULT.**

- A. Buyer may, by written notice to Seller, cancel all or part of this Purchase Order: (i) if Seller fails to deliver the conforming goods within the time specified by this Purchase Order or any written extension; (ii) if Seller fails to perform any other provision of this Purchase Order or fails to make progress, so as to endanger performance of this Purchase Order, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or (iii) in the event of Seller's bankruptcy, 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.
- B. Seller shall continue work not canceled. If Buyer cancels all or part of this Purchase Order, Seller shall be liable for Buyer's excess re-procurement costs.
- C. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Purchase Order rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Purchase Order. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.



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- D. Buyer shall pay the Purchase Order price for goods accepted. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" provision of this Purchase Order, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Purchase Order any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
- E. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Purchase Order had been terminated according to the "Termination for Convenience" provision of this Purchase Order.

### 15. TERMINATION FOR CONVENIENCE.

Buyer may terminate all or part of this Purchase Order for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to stop work. Subject to the terms of this Purchase Order, within ninety (90) days after the effective date of termination, Seller may submit to Buyer a claim reflecting the percentage of the work performed prior to the effective date of termination, plus termination charges that Seller can demonstrate to the satisfaction of Buyer are supported by its standard record keeping system and have resulted directly from closing out the order being terminated. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Further, Seller shall not be paid, and in no event shall Buyer be obligated to pay, lost or anticipated profits or unabsorbed indirect costs or overhead. In no event shall Buyer be obligated to pay Seller any amount in excess of the Purchase Order price. The provisions of this Article shall not limit or affect the right of Buyer to cancel this Purchase Order for default. Seller shall continue all work not terminated.

### 16. TOOLS AND MATERIAL.

All materials, tools and equipment required to fill this Purchase Order shall be furnished by Seller unless otherwise specified. Materials, tools and equipment furnished to Seller by Buyer on other than a charge basis shall be held by Seller as Buyer's property and shall not be used except for the purpose of Seller's performance under this Purchase Order. All such materials, tools and equipment shall be satisfactorily marked, segregated or otherwise clearly identified by Seller as the property of the Buyer and shall be kept by Seller in good condition and repair and shall be returned by Seller at Buyer's request in as good a condition as when received, reasonable wear and tear excepted, except to the extent that any such materials, tools and equipment have been incorporated in supplies furnished to Buyer under this Purchase Order or have been properly consumed in the normal performance of work thereunder. Buyer shall have the right to remove its materials, tools and equipment upon receivership, bankruptcy or other default of Seller or upon termination of this Purchase Order. All risks of loss or damage to such materials, tools and equipment shall be upon Seller until the materials, tools and equipment have been delivered to Buyer. Seller shall, at its sole cost, maintain insurance covering any loss or damage to Buyer materials, tools, and/or equipment for the full replacement value, and protecting against all perils normally covered in an "all-risk" policy including but not limited to fire, windstorm, hurricane, tornado sandstorm, explosion, riot, civil commotion, aircraft, earthquake, flood or other acts of nature during such time as they remain in Seller's possession. The Seller shall require its subcontractors, who are responsible for developing or manufacturing any of the deliverable equipment under the terms of this purchase order, to comply with the provisions contained in this clause.

### 17. CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS.

- A. Unless expressly stated otherwise herein, the exchange of information under the Purchase Order shall be governed by the Purchase Order and, in particular this Section 17, which supersedes any prior agreement between Buyer and Seller to protect information relating to the purpose of the Purchase Order.





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- B. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information, including Buyer-provided specifications and Buyer-provided information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures; (ii) tangible items and software containing, conveying or embodying such information; and (iii) tooling identified as being subject to this Section that is obtained, directly or indirectly, from the other in connection with this Purchase Order or other agreement, including Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials shall not include information that is, as evidenced by competent records provided by the receiving Party, lawfully in the public domain, lawfully disclosed to or known by the receiving Party without restriction, generally known in the relevant trade or industry prior to disclosure hereunder, or developed by the receiving Party independently without use of or reference to the disclosing Party's Proprietary Information and Materials.
- C. Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Purchase Order, other contracts between the Parties, and Buyer's contract with its customer, if any. However, despite any other obligations or restrictions imposed by this Section or any prior agreement, Buyer shall have the right to use and reproduce Seller's Proprietary Information and Materials internal to Buyer, regardless of when disclosed. Buyer shall further have the right to, use, disclose, reproduce and make derivative works of Seller's Proprietary Information and Materials (i) to fulfill Buyer's obligations under, and (ii) for the purposes of testing, certification, use, sale or support of any goods delivered under, this Purchase Order, other contracts with Seller and Buyer's con whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials shall apply to all materials derived by the receiving Party or others on its behalf from the disclosing Party's Proprietary Information and Materials. In addition to disclosures permitted hereunder, a receiving Party may disclose received Proprietary Information and Materials in response to a subpoena or court order duly issued in a judicial or legislative process, provided that the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of any such disclosure requirement and to reasonably cooperate with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing its scope.
- D. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Purchase Order, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not at any time (i) dispose of (as scrap or otherwise) any Goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without the prior written authorization of Buyer or (ii) make, use, or sell any Goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without notifying Buyer in writing before any such planned making, using, or selling activity and executing an agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of such Proprietary Information and Materials of Buyer, unless Buyer has provided prior written authorization to Seller. Prior to disposing of such Goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Section.
- E. As required by Buyer's contract, Buyer may disclose Proprietary Information and Materials of Seller with its customer and the end-user. Any such use, disclosure, reproduction or derivative work by Buyer shall be subject to such customer agreeing in writing to obligations no less restrictive than those imposed upon Seller under this Section. Buyer shall be liable to Seller for any breach of such obligation by such subcontractor.



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F. The provisions of this Section are effective notwithstanding the application of any restrictive legends or notices to Proprietary Information and Materials. The provisions of this Section shall survive the performance, completion, termination or cancellation of this Purchase Order.

### 18. INFRINGEMENT INDEMNIFICATION.

- A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will defend, indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under this Purchase Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.
- B. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.
- C. If the use or sale of the Product is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer and extend this indemnification thereto.
- D. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under a Purchase Order, which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with Products not delivered by Seller if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.

### 19. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS).

- A. This provision only applies to purchase orders that include the delivery of software (including software residing on hardware).
- B. Seller shall disclose to Buyer in writing any FLOSS that will be used or delivered in connection with this Purchase Order and shall obtain Buyer's prior written consent before using or delivering such FLOSS in connection with this Purchase Order. Buyer may withhold such consent in its sole discretion.
- C. As used herein, "FLOSS License" means the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License," "Open Source License," "Public License," or "GPL Compatible License."
- D. As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (i) open source, publicly available, or "free" software, library or documentation, or (ii) software that is licensed under a FLOSS License, or (iii) software provided under a license that (1) subjects the delivered software to any FLOSS License, or (2) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (3) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (a) the delivered software, or any portion thereof, in object code and/or source code formats, or (b) any products incorporating the delivered software, or any portion thereof, in object code.
- E. Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, relating to use in connection with this Purchase Order or the delivery of FLOSS.



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### 20. **ASSIGNMENT, DELEGATION AND SUBCONTACTING.**

Seller shall not assign any of its rights or interest in this Purchase Order for all or substantially all of its performance of this Purchase Order, without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this Purchase Order. Seller may assign its right to monies due or to become due. Any attempt to assign or delegate in violation of this provision is void. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Purchase Order or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This provision does not limit Seller's ability to purchase standard commercial supplies or raw materials.

### 21. **OFFSET.**

This provision shall only apply to purchase orders in excess of fifty thousand dollars (\$50,000.00).

- A. Definition: "Offset" means the obligations that Buyer undertakes, in order to market or sell its products, to assist a customer country in reducing any trade imbalance caused by its purchase of Buyer's products or to meet other customer country national objectives.
- B. To the exclusion of all others, Buyer or its assignees shall be entitled to all benefits or Offset credits which might result from this purchase order. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for Offset credits.
- C. Seller agrees to use reasonable efforts to identify the foreign content of items that Seller either produces itself or procures from subcontractors for work under this purchase order. Promptly after selection of a non-U.S. subcontractor for work under this purchase order, Seller shall notify Buyer of the name, address, subcontractor point of contact (including telephone number) and dollar value of the subcontract.
- D. Seller shall include the substance of this provision, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this purchase order.

### 22. **SET OFF.**

Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer, or any of its affiliated companies against any amount payable at any time by Buyer or any of its affiliated companies to Seller against obligations of the Seller.

### 23. **RELEASE OF INFORMATION AND ADVERTISING.**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Purchase Order or the subject matter hereof, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use the name "TELEPHONICS" or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

### 24. **COMPLIANCE WITH LAW.**

Seller shall observe and comply with all applicable federal, state and local laws, executive orders, international agreements, rules and regulations in the performance of the Purchase Order, and Seller warrants that the supplies and services furnished under the Purchase Order have been or will be produced in compliance with all applicable requirements of all applicable laws and regulations including but not limited to the U.S. Fair Labor Standards Act. Seller agrees to indemnify and save harmless Buyer against any loss, liability expense or damage by reason of Seller's failure to observe or comply with any applicable law, executive order, international agreement, rule or regulation.





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### 25. INSURANCE/ENTRY ON BUYERS FACILITIES.

- A. In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Purchase Order then Seller and its subcontractors shall maintain for the performance of this Purchase Order workers compensation, commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit and such other insurance as Buyer may require. Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to maintain the required insurance. Seller shall name Buyer as an additional insured to the CGL and AL policies for the duration of this Purchase Order. If requested, Seller shall provide Buyer with a "Certificate of Insurance" evidencing Seller's compliance with these requirements. Insurance maintained pursuant to this provision shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. "Subcontractor" as used in this provision shall include Seller's subcontractors at any tier. Seller's obligations for maintaining insurance coverage herein are freestanding and are not affected by any other language in this Purchase Order.
- B. (i) Seller's personnel, including Seller's subcontractors, shall comply with all Buyer security, safety, rules of conduct, badging and personal identity, and related requirements while on Buyer premises. In addition, prior to entry on Buyer premises, Seller shall coordinate with Buyer to gain access to facilities. Seller shall provide information reasonably required by Buyer to ensure proper identification of personnel, including but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status. Buyer may, at its sole discretion, have Seller remove any specified employee of Seller from Buyer's premises and request that such employee not be reassigned to any Buyer premises under this Purchase Order. (ii) Seller personnel requiring unescorted access to sites of Buyer or its customers shall, prior to entry, be screened by Seller at no charge to Buyer through the Buyer Contractor Screen Program, or otherwise screened by Seller in a manner satisfactory to Buyer.
- C. Seller shall defend, indemnify and hold harmless Buyer, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors.

### 26. LABOR DISPUTES.

Whenever an actual or potential labor dispute delays, or threatens to delay, the performance of the Purchase Order, Seller shall immediately give notice thereof. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this provision in all subcontracts or purchase orders issued under this Purchase Order.

### 27. SUSPENSION OF WORK.

- A. Buyer's Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under this Purchase Order for a period not to exceed 100 days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order; (ii) terminate this Purchase Order in accordance with the "Termination for Convenience" provision of this Purchase Order; (iii) cancel this Purchase Order in accordance with the "Cancellation for Default" provision of this Purchase Order; or (iv) extend the stop work period.
- B. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Purchase Order is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Purchase Order delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled.



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### 28. NO LIABILITY FOR EXCESSIVE MATERIAL, LABOR OR PRODUCTION COSTS.

In order to minimize liability in case "Changes" are directed or "Termination for Convenience" occurs Seller agrees that Buyer will not be responsible for material, labor or production costs or charges that are unrealistic, excessive, or inconsistent with the minimum needs required to meet the delivery requirements of this Purchase Order.

### 29. DISPOSAL OF PRODUCTS.

Seller shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use. Upon completion or termination of this Purchase Order, Seller shall, at Seller's expense, dispose of all Products, including partially completed Products, as required or directed by Buyer.

### 30. RIGHT TO DEMAND RETURN OF INTERIM PAYMENTS.

Should Buyer prior to full performance and completion of the Purchase Order make any payment hereunder for any cause or reason, whether conditionally or unconditionally, any amount or amounts so paid shall be subject to return with interest, at the option of the Buyer, if this Purchase Order is ultimately terminated for default or otherwise not fully performed and completed by Seller in accordance with the terms and provisions hereof.

### 31. DISPUTES.

Any dispute that arises under or is related to this Purchase Order that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Purchase Order according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute. To the extent that the work or services being acquired hereunder are for ultimate sale to the United States Government, nothing in this Agreement grants the Seller with a direct right of action against the Federal Government under the Prime Contract.

### 32. EXPORT/IMPORT PROVISIONS.

A. Seller is advised that its performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations." Seller represents and warrants that it is either (i) a U.S. Person as that term is defined in the Export Laws and Regulations, or (ii) that it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder. Seller shall hold the Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from its failure to comply with this clause, the International Traffic in Arms Regulations or the Export Administration Act or other applicable export or import control laws. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this provision shall be a material breach of this Purchase Order.



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- B. Foreign Personnel/Persons. Seller shall not give any Foreign Person, including Foreign Persons employed by or associated with Seller or Seller's lower-tier suppliers, access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the Immigration and Naturalization Act), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph B. shall relieve Seller of its obligations to comply with the requirements of paragraph A. of this provision or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations. The Seller shall obtain any required approval of the U.S. Government, including the approval of any other relevant government, before exporting/importing any equipment, materials or technical data to such Foreign Persons.
- C. The Seller shall be responsible for securing any export or import licenses or security clearances necessary to enable Seller to meet its obligations under the terms of this Purchase Order. The Seller is responsible for complying with all relevant U.S. export and import laws, and the laws of any other country from which data, materials, or articles have been sourced or imported in the performance of this Purchase Order. In particular, the Seller shall obtain any required approval of the U.S. Government, including the approval of any other relevant government, before exporting/importing any equipment, materials or data generated under this Purchase Order. The Seller, by acceptance hereof, certifies that all technology and information required under this Purchase Order is based and covered by existing export or import licenses from the applicable government. Where information essential for the satisfactory completion of the Purchase Order is under the control of any government, such that an export or import license or other instrument is required for shipment to occur, the Seller shall, within a period of ninety (90) days from the date of Purchase Order award, expedite the necessary license or approval from the government. If the license or approval is not formally in place within the ninety-day period, the Buyer reserves the right to terminate the Purchase Order at no cost to the Buyer, in accordance with Provision 13 – Cancellation for Default as stated above.
- D. Subcontracts. The substance of this provision shall be incorporated into any lower-tier Purchase Orders or Subcontracts entered into by the Seller for the performance of any part of the work under this Purchase Order
- E. Seller agrees to notify Buyer if any deliverable under this Purchase Order is restricted by export control laws or regulations.
- F. Seller shall immediately notify the Buyer's 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.
- G. Where Seller is a signatory under a Buyer's export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Buyer's 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 Seller's performance under this Purchase Order.
- H. 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 Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.



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### 33. APPLICABLE LAW.

This Purchase Order shall be exclusively governed by and construed in accordance with the laws of the State of New York, excluding its choice of law rules, and both parties agree to the exclusive jurisdiction of the Courts of New York.

### 34. TAXES AND DUTIES.

The price set forth in this Purchase Order includes all applicable state and local sales taxes. If any import duties are included in the price Seller shall cooperate with Buyer in Buyer securing any rebates or drawbacks, which shall be for the sole benefit of Buyer. Buyer specifically reserves to itself all rights to drawback of duty or taxes paid on materials purchased for export or ultimate manufacture and export of goods. Seller disclaims all interest in such rights and agrees to furnish buyer with proof of importation and a signed U. S. Customs Form 331 (Certificate of Delivery or Certificate of Manufacture and Delivery) and any other document necessary for buyer to obtain payment of said drawback.

### 35. COUNTERFEIT GOODS.

- A. For purposes of this clause, Goods consists of the lowest level of separately identifiable items (e.g., articles, components, product, work, materials, and assemblies) delivered as an end item or part of an end item under this Purchase Order. "Counterfeit Goods" means Goods that are or contain items misrepresented as having been designed and/or produced or procured under seller's approved system or other acceptable method, substitutes or unauthorized copies of a product, a product as defined by the manufacturers' part number identification, date code and manufacturers' identification (logo, trademark) in which the materials used or the performance of the product has changed without notice by someone other than the original manufacturer of the product, a substandard component misrepresented by the supplier, products that have been re-topped (black-topped) remarked or otherwise fraudulently altered and/or misrepresented by a 3rd party. The term also includes approved Goods that have reached a design life limit or that have been damaged beyond possible repair, but are altered and misrepresented as acceptable, and/or have been used or reclaimed and misrepresented as new.
- B. Seller shall not deliver Counterfeit, suspect-Counterfeit, or sub-standard Goods to Buyer under this Purchase Order.
- C. Seller shall not disguise the pedigree of material or chain of ownership by removal of a previous seller's name, nomenclature, or identification.
- D. Seller shall implement an appropriate counterfeit mitigation program acceptable to Buyer to ensure that it does not receive counterfeit goods into inventory, use them in manufacturing, or inadvertently provide them in products sold to Buyer.
- E. Seller shall only purchase Goods to be delivered to Buyer, or Goods incorporated into end items to be delivered to Buyer, directly from Original Equipment Manufacturers (OEM) or OEM authorized distributors. Procurement of Goods from any other source (including, but not limited to independent distributors or brokers) requires identifying Sellers non-authorized supplier and the prior written approval of Buyer. Seller shall maintain appropriate documentation authenticating traceability of the affected items to the applicable OEM for the retention period specified in the Purchase Order, and shall provide full traceability documentation to buyer, directly back to the applicable OEM and/or their authorized distributor upon request.
- F. Counterfeit, suspect-Counterfeit, or sub-standard Goods delivered or furnished to Buyer under this Purchase Order are deemed nonconforming. If Seller becomes aware or suspects that it has furnished Counterfeit, suspect-Counterfeit, or sub-standard Goods to Buyer under this Purchase Order, Seller shall notify Buyer within two (2) business days and promptly replace, at Seller's expense, such Goods with authentic, new and unused OEM or Buyer-approved parts that conform to the requirements of this Purchase Order. Notwithstanding any other provisions of this Agreement, Seller shall be liable for all costs related to the replacement of such, including without limitation Buyer's costs of removing such components, Buyer's cost of installing conforming components, and any testing or validation necessitated by the installation of conforming goods



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after the offending Components have been replaced. Notwithstanding any other provisions of this Agreement, any limitation of liability set forth in this Purchase Order shall not be applicable to this provision. The remedies contained in this provision are in addition to any remedies Buyer may have at law, equity, or under other provisions of this Purchase Order.

- G. Seller shall include the substance of this article, (A) through (G) including this paragraph (G), in lower-tier subcontracts for the delivery of goods that will be included in, or furnished as, end items to Buyer.

### 36. GRATUITIES.

Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Purchase Order or securing favorable treatment under this Purchase Order.

### 37. QUALITY ASSURANCE.

Seller shall establish and maintain a quality management system acceptable to Buyer for the Goods purchased under this Purchase Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality management system and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.

### 38. PURCHASE ORDER DELIVERABLES.

Seller agrees and acknowledges that all deliverables, or portions thereof, under this Order ("Deliverable Materials") may be incorporated into deliverables under the next higher tier or prime contract. Seller hereby grants Buyer the right to deliver the Deliverable Materials or any portion thereof under the next higher tier or prime contract. Seller further hereby agrees to deliver the Deliverable Materials under this Purchase Order with the appropriate markings required by the government regulations incorporated into this Purchase Order.

### 39. COMMUNICATION WITH CUSTOMER.

Buyer shall be solely responsible for all liaison and coordination with the Buyer's customer, including the U. S. Government, as it affects the applicable prime contract, this Purchase Order, and any related contract.

### 40. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Purchase Order shall be Seller's employees exclusively without any relation whatsoever to Buyer.
- B. Seller shall be responsible for and hold harmless Buyer and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses 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 Purchase Order.

### 41. SEVERABILITY.

Each provision, paragraph and subparagraph of this Purchase Order is severable, and if one or more of them are declared invalid, the remaining provisions of this Purchase Order will remain in full force and effect.





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### 42. **CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM.**

Buyer has joined with the U.S. Bureau of Customs and Border Protection in the Customs Trade Partnership Against Terrorism (C-TPAT) program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of the United States to Buyer, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. Seller shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. In addition, Seller agrees to take such reasonable measures as may be required by Buyer to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in Seller's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Contact the authorized Purchasing Representative for assistance in identifying transportation companies that are validated under the C-TPAT program.

### 43. **RETENTION OF RECORDS.**

Unless a longer period is specified in this Contract or by law or regulation, Seller shall retain all records related to this Contract for ten (10) years from the date of final payment received by Seller under the Purchase Order. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, Seller shall timely provide access to such records to the US Government and/or Buyer or Buyer's Customer upon request and all documentation shall be archived in a fire-resistant, weather-proof and theft-proof area.

### 44. **SURVIVABILITY.**

- A. If this Purchase Order expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following clauses: 2, 11, 14, 17, 18, 19, 23, 26, 32, 33, and 36.
- B. If work delivered under this Purchase Order is provided to the Government, those U.S. Government flowdown provisions that by their nature should survive.