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## **PURCHASE ORDER TERMS AND CONDITIONS**

**THESE TERMS AND CONDITIONS APPLY TO ALL CONTRACTUAL DOCUMENTS ISSUED BY INTEGRATED PROCUREMENT TECHNOLOGIES (IPT), WHICH INCORPORATE THIS FORM, UNLESS ADDED TO, MODIFIED, SUPERCEDED, OR OTHERWISE ALTERED BY THE CONTRACTUAL DOCUMENT ITSELF.**

### **SECTION A – DEFINITIONS**

The following definitions apply unless otherwise specifically stated:

- A-1. “Buyer” – The legal entity issuing this Order
- A-2. “Purchasing Representative” – Buyer’s authorized representative
- A-3. “Seller” – The legal entity which contracts with the Buyer
- A-4. “Order” – This IPT contractual purchase order and documents which incorporate these terms and conditions
- A-5. “Goods” – The articles, materials or services being purchase from Seller by Buyer via its Order.

### **SECTION B – APPLICABLE CLAUSES**

#### **B-1 ACCEPTANCE:**

The Acceptance Copy annexed hereto must be signed and returned immediately. Acceptance of this Order is expressly conditioned upon seller’s assent to the terms and conditions stated here in. Any additions, deletions, or differences in the terms proposed by the Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. Seller’s failure to acknowledge this Order within ten (10) days of the date of receipt of Seller’s commencement of performance or acceptance of this Order, in any manner, shall conclusively evidence agreement to this order as written.



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**B-2. PACKAGING/MARKING:**

Goods shall be packed in suitable containers for protection and labeled with Buyer's shipping marks to permit safe transportation. An itemized packing list shall be placed in each package. No charges are allowed for boxing, packing or crating unless previously agreed to by Buyer. All Hazardous Materials/Dangerous Goods shipped must be packaged, labeled, and shipped in accordance with, and comply with the International Air Transportation Association (IATA) regulations, as well as any and all other applicable laws and regulations. Hazardous materials shipped in cans must have lid locking devices. A UN number is required with hazardous materials are per IATA regulations. Bearings must be individually packaged in original manufacturing packaged. All shelf life limited materials must have 80% of shelf life remaining at the time of delivery. A protective coating is required with sheet metal. If a MATERIAL SAFETY DATA SHEET (M.S.D.S.) is required for the Goods, the Seller shall include on copy of the M.S.D.S., and it shall be identifiable and provided with each shipment of the goods furnished under this Order.

**B-3. SHIPMENT/INSPECTION:**

All Goods shall be shipped to final end-user destination, and shall be received at such destination, subject to Buyer's and the final end-user's rights of inspection and rejection. Seller acknowledges that Buyer is purchasing the Goods for resale under the contract identified to this Order, that the final end-user has the right to inspect and reject the Goods, and that Buyer will not independently inspect the Goods. Rejection of the Goods by the final end-user shall be rejection of the Goods by Buyer. Buyer's right to inspect and reject the Goods shall not expire prior to the expiration of the period during which the final end-user may inspect and reject the Goods. Defective Goods not in accordance with Buyer's specifications, or Goods in excess of those specified will be held for Seller's direction at Seller's risk and cost. If Seller so directs, such defective Goods will be returned to Seller at Seller's expense. If inspection by Buyer and the final end-user discloses that part of the Goods are not in accordance with the Buyer's specifications, Buyer shall have the right to cancel any unshipped portion of the Order. Payment for Goods in this order prior to inspection by Buyer and the final end-user shall not constitute acceptance thereof, and is without prejudice to any claims that the Buyer may have against the Seller. Buyer's or the final end-user's failure to specify the reasons for rejection in writing or otherwise is not a waiver of those reasons, which may be raised by the Buyer at any time before or after rejection. Risk of loss shall not pass to the Buyer until Goods are inspected and accepted by the Buyer and the final end-user. Inspection and acceptance by Buyer or the US Government or its Customer or the final end-user, shall not waive latent defects or express or implied warranties in the Goods, which shall survive delivery.



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**B-4. TITLE:**

Seller warrants that Seller has legal title to the Goods, and that the Goods are free from all liens and encumbrances.

**B-5. CHANGES:**

Buyer shall have the right, upon written notice to Seller, to require changes in the quantity, quality, or terms of delivery and shipment of the Goods sold by the Seller, and confirmed adjustments shall be made in the amount due or in time of delivery and shipment required.

**B-6. CANCELLATION FOR DEFAULT:**

If Seller fails to make any delivery in accordance with the agreed delivery date or schedule (and time is of the essence to Buyer) or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this Order, or fails to make progress so as to endanger performance of this Order, or in the event of any proceeding by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee or an assignment for the benefit or creditors, Buyer may in addition to any other right or remedy provided by this Order, or by law or equity, terminate all or any part of this Order by telegraphic or other written notice to Seller without any liability to Buyer to Seller on account thereof. In the event of such Cancellation for cause, Buyer may purchase supplies or services elsewhere on such terms of in such manner as Buyer may deem appropriate, and Seller shall be liable for any and all excess costs and expenses incurred by Buyer.

**B-7. TERMINATION:**

Buyer may terminate work under this Order in whole or in part at any time by notice to Seller in writing. Seller will there upon immediately stop work on this Order, or the terminated portion thereof, and notify its subcontractors to do likewise. Except where such termination is caused by a default or delay of Seller, Seller shall be entitled to reimbursement of its actual costs incurred up to and including the date of termination which are applicable to the termination in accordance with recognized accounting practices. Seller shall also be entitled to a reasonable profit only on the work done prior to such termination at a rate used in establishing the original purchase price. The total of such claim shall not exceed the canceled commitment value of this Order. Termination shall be subject to the inspection provision of U.S. Government procurement regulations, if applicable hereto.



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**B-8. CONFIDENTIALITY:**

Seller agrees that all drawing, specifications, samples and/or written disclosures forming a part of this Order, either by reference or otherwise, are the property of Buyer, and if marked Proprietary, are submitted in confidence with the understanding and agreement by Seller that such drawings, specifications, samples and/or written disclosures so marked shall not be utilized, in whole or in part, by Seller, either for itself or by it on behalf of any other person, firm, or corporation, without written permission of Buyer, for copying or replication, program purposes, including procurement and manufacture of buyers products, or portions thereof.

**B-9. DELAY IN DELIVERY:**

If Seller becomes aware of any circumstances that are likely to give rise to delay in delivery of the Goods, Seller shall immediately notify Buyer in writing stating the reason for the delay and a new time of delivery, which shall be subject to written acceptance by Buyer. In case of delay in delivery, Buyer reserves the right to cancel the Order for default under Clause B-6, without liability to Seller or any other third party. Buyer reserves the right to cancel the Order should the Seller not respond promptly to Buyer's expedited notices.

**B-10. QUALITY:**

All Goods ordered will be supplied in accordance with MIL-I-45208A or ISO 9002 standards, or higher. Goods supplied shall meet the requirements in the applicable technical specifications and documentation (drawings, specifications, standards, etc.). It shall be the sole responsibility of Seller to monitor that the technical specifications regarding materials, methods, form, fitness, and function are observed, whether or not the Goods have been manufactured by Seller or by any of Seller's subcontractors. Where no specific requirements are stated, good industry and craftsman like practice shall be observed. Goods are to be manufactured in accordance with spares configuration guidelines.

**B-11. TAXES/DUTIES:**

Buyer shall not be liable for any Federal, State or local taxes, or Export or Import duties at destination for the Goods.



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**B-12. PRICE WARRANTY:**

The Seller warrants that the prices of the Goods set forth herein do not exceed those charged by the Seller to any other customer purchasing the same or similar Goods in comparable quantities.

**B-13. LAW/COMPLIANCE:**

Seller agrees that in the performance of this order that it will comply with all applicable Federal, State and local laws, Executive Orders and procurement regulations. This Order is to be governed, performed and construed in accordance with the laws of the State of California, except for its internal choice of law provisions.

**B-14. DISPUTES:**

The venue for any dispute or legal action relating to this Order shall be in the Municipal or Superior Court, County of Santa Barbara, California U.S.A. Seller specifically waives and gives up any right to bring an action in or remove an action to the United States District Court. If any Party to this order brings an action relating to this order, the prevailing Party shall be entitled to recover from the other Party its costs, including reasonable attorney's fees, in addition to any other relief to which it may be entitled. Pending resolution of any such dispute, the Seller shall proceed in accordance with Buyer's written instructions.

**B-15. INFRINGEMENT:**

Seller shall indemnify and save harmless Buyer from any and all claims losses, liabilities, expenses and damages suffered, and shall settle or defend any such claim as a result of alleged or proved infringement of any patent, trademark or other intellectual property right with respect to the Goods supplied hereunder. Seller agrees to defend any such claims (whether judicial or administrative) at its sole cost and expense and to promptly pay and discharge any obligations imposed or agreed to in connection with the resolution thereof; provided, however, that Buyer reserves the right to employ its own legal counsel to protect its interest with respect to any such claim, at Buyer's expense; without diminishing or waiving the undertakings of Seller set forth above.



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**B-16. EXAMINATION OR RECORDS:**

The Seller agrees that the Buyer (or a US Government representative) shall have the right to examine and audit the books and records of the Seller directly pertaining to this Order during the period of the Order, and until expiration three years after the final payment under the Order, if this Order is for \$10,000.00 or more.

**B-17. ENTIRE AGREEMENT:**

This order is intended by Buyer and Seller as a final expression of their agreement concerning the matters contained herein, and it is intended as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Order. Acceptance or acquiescence in a course of performance rendered under this Order shall not be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code (UCC) is used in this Order, the definition contained in the UCC shall control.

**B-18. MODIFICATIONS:**

This Order can be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.

**B-19. WAIVER:**

No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

**B-20. EXPORT CONTROL**

- (a) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation ("ITAR"), 22 C.F.R.



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part 120 et seq.; and the Export Administration Act, 50 U.S.C. 2401-2420, including the Export Administration Regulations (“EAR”) , 15 C.F.R. part 730-774, including, the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that is will not transfer and export-controlled item, data or services, to include transfer to foreign persons employed or associated with, or under contract to Seller or Seller’s lower-tier subcontractors or suppliers without the authority of an export license, agreement, or applicable exemption or exceptions;

- (b) Seller agrees to notify Buyer if any deliverable under the Order is restricted by export control laws or regulations;
- (c) Seller shall immediately notify buyer if seller is, or becomes listed in any Denied Persons list issued by the Bureau of Industry and Security (“BIS”) (or any successor agency) from time to time or if Seller’s export privileges are otherwise denied, suspended or revoked in whole or in part by any US Government entity or agency;
- (d) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents and warrants that: (i) it is registered with the Directorate of Defense Trade Controls (“DDTC”) as required by the ITAR, and (ii) it maintains an effective export/import compliance program in accordance with the ITAR; and
- (e) Where Seller is a signatory under the Buyer export license or export agreement, Seller shall provide prompt notification to buyer in the event of changed circumstances, including, but not limited to, ineligibility, violation or potential violations of the ITAR, and the initiation or existence of a Government investigation, that could effect Seller’s performance under the order

## **B-21 ORDER OF PRECEDENCE**

The following descending order of precedence shall apply in the event of ambiguity, discrepancy or conflict in the documents comprising these terms and conditions: (a) the order; (b) these Terms and Conditions as may be amended or supplemented from time to time; and (c) any other documents relating to these Terms and Conditions. However, in the event of an ambiguity, discrepancy or conflict in any of the technical requirements or drawings related to the Order, Seller shall immediately consult buyer for a resolution prior to proceeding with the performance of the Order.

## **B-22 INDEMNIFICATION**

To the fullest extent permitted by law, Seller shall at all times indemnify, save, defend and hold harmless Buyer and its officers, directors, shareholders, employees and agents and buyer’s customers, their parents and affiliates and all of their officers, directors, employees and agents, from and against all claims, causes of action, suits, injuries (including, without limitation, death) to persons and damage or loss to property, losses, liabilities, fines penalties, costs, expenses (including, without limitation, expenses of investigation and remediation) and detriments of every nature and description (including,



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without limitation, all expenses legal and otherwise, incidental to all such claims and actions) which are caused by, or the result of, or are in any way sustained by reason of: (a) any breach of these Terms and Conditions by seller or its employees, agents or subcontractors at any tier; (b) any breach of express or implied warranty hereunder; (c) any defect in design or manufacture or the goods furnished in the performance of the order; and (d) any wrongful or negligent act, error or omission of the Seller or any of its suppliers, subcontractors, agents and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable in the performance of the order; and (e) any act or omission, while on or near the premises of Customer or Buyer, of seller or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be made liable. This indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage.

**B-23. U.S. GOVERNMENT PROCUREMENT REQUIREMENTS:**

The appearance of a U.S. Government agency prime contract number on the face of this Order automatically incorporates into this Order, without further notice or action, the Fair Labor Standards Act and the provision of Buyer's "ADDITIONAL TERMS AND CONDITIONS (U.S. GOVERNMENT CONTRACTS PROGRAM) 2/07 Rev. D", which shall also apply to this Order, and shall prevail over any inconsistency with the foregoing terms of Sections A and B above.