

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders - GOODS & SERVICES (WORK)

Table of Contents	
<i>(In alphabetical order for convenience only)</i>	
Clause Title and Clause Number	Clause Title and Clause Number
Acceptance of Order 6	Industrial Participation Obligations..... 36
Acceptance or Rejection of Work..... 14	Inspection, Quality Control and Capability 13
Advertising, Use of Name 27	Insurance and Precautions 29
Applicable Laws 40	Intellectual Property 26
Assignments, Changes to Name and Place of Manufacture .. 38	Non-Waiver..... 41
Changes 18	Packing and Shipment 4
Communications 37	Payment..... 9
Compliance with Laws 34	Property 8
Counterfeit Parts 16	Proprietary Information/Cybersecurity..... 25
Definitions 1	Records..... 21
Delivery, Notice of Delay 5	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment..... 44
Diminishing Manufacturing Sources 17	Stop Work Order 22
Disputes 39	Survivability 43
Entire Agreement..... 42	Tariff-Benefits Pass-Through..... 11
Export Controls..... 35	Taxes 31
Force Majeure..... 33	Termination 23
Headings 2	Title and Risk of Loss 7
Indemnification..... 30	Warranty..... 15
Independent Contractor 3	Writings Required; Applicable Language 20

1. DEFINITIONS

As used throughout these terms and conditions, the following shall have the meanings set forth below.

“Buyer” means GENERAL ATOMICS AERONAUTICAL SYSTEMS, INC.

“Buyer’s Authorized Procurement Representative” means the person(s) identified in the Order who is delegated with the procurement authority to execute and administer the Order.

“Customer” means a customer of Buyer pursuant to a Prime Contract and that is a private company customer or a foreign government customer but not including a United States Government customer.

“Goods” means those products, supplies, reports, computer software, hardware, data, materials, articles, items, parts, components or assemblies, as described in the Order.

“Order” means the instrument of contracting, such as “Purchase Order,” “PO,” “Subcontract,” or other such instrument of contracting, issued by Buyer to Seller, to which these Terms and Conditions are applicable, and all other referenced documents, exhibits, attachments and amendments. If these Terms and Conditions are part of a “long term agreement,” “master agreement” or other “umbrella” type of agreement that provides for releases (in the form of a purchase order or other such document) the term Order shall also mean the release document(s) for which the Work is the subject matter.

“Party” means each of Buyer and Seller, and collectively “Parties.”

“Prime Contract” means the contract between Buyer and its Customer for the acquisition of the Work by the Customer.

“Seller” means the person, firm, or corporation executing the Order with the Buyer and who will provide, furnish and deliver the Work to the Buyer pursuant to the Order.

“Services” means Seller’s, or its subcontractors or suppliers, time and effort to perform the tasks described in the Order.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

“Terms and Conditions” means the terms and conditions set forth in these TC-02 Terms and Conditions for Fixed-Price, Non-USG Orders.

“Work” means Goods and Services together or Goods and/or Services, as described in and furnished under the Order and as applicable from the context of the Order.

2. HEADINGS

The division of these Terms and Conditions into clauses, and the insertion of headings are for convenience of reference only and shall not define, limit, or describe the scope or the intent of the Order nor shall they affect the construction or interpretation of these Terms and Conditions. The terms “these Terms and Conditions,” “hereof,” “hereunder,” and similar expressions in these Terms and Conditions refer to these Terms and Conditions and not to any particular clause or other portion and include any Terms and Conditions supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to clauses are to clauses of these Terms and Conditions.

3. INDEPENDENT CONTRACTOR

Seller is an independent contractor and not an agent or employee of Buyer either expressly or impliedly. For purposes of this Independent Contractor clause only, “Seller” shall also include Seller’s agents, representatives, subcontractors, and suppliers at any tier. The employees used by Seller to perform Work under the Order shall be Seller’s employees exclusively without any relation whatsoever to Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under the Order, and Buyer assumes no liability for the actions of Seller’s personnel. The Order will not constitute, create, give effect to, or imply a joint venture, teaming arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order will grant to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

4. PACKING AND SHIPMENT

- a. The shipping terms for the Order shall be set forth on the face of the Order.
- b. Seller shall properly package the Goods including necessary boxing, crating, carting, marking, storage, or any other associated services or activities, without additional charge, unless otherwise specified in the Order. Goods will be suitably packaged to secure the lowest transportation costs and to prevent damage to the Goods in accordance with the requirements of common carriers and good commercial practices.
- c. Seller shall plainly mark Buyer’s Order number on all invoices, packages, bills of lading and shipping orders. Seller shall mark packages with necessary lifting, loading and shipping information, including Buyer’s Order number, dates of shipments and other relevant information. Packing lists will be enclosed with each shipment. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY, NOTICE OF DELAY

- a. Seller’s timely performance is a critical element of the Order.
- b. Seller shall perform and deliver Work strictly in accordance with the quantities and schedules agreed to pursuant to the Order and if Seller fails to deliver in accordance thereto, if unexcused by Buyer’s Authorized Procurement Representative, then Seller shall be considered in material breach of the Order. Seller represents that it has and shall continue to have and maintain sufficient production capacity to timely supply the volumes of Work in accordance with the Order.
- c. Any Work delivered prior to the agreed delivery date(s) or in excess of the agreed quantities, and without written authorization from Buyer’s Authorized Procurement Representative may, at the Buyer’s option, be
 - i. retained by Buyer, without penalty; provided, however, Buyer may withhold payment for such Work until the agreed delivery date and Warranty shall not begin before the originally agreed date of delivery, or
 - ii. refused by Buyer and/or returned to Seller, at Seller’s risk and expense, including handling and return shipment costs.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- d. Notwithstanding the foregoing, however, Seller agrees that Buyer's acceptance of late, early or excess deliveries shall not be considered a waiver of this Delivery, Notice of Delay clause. In the event of any anticipated, potential, or actual delay, including but not limited to where Seller becomes aware or has reason to believe that there is or will be a decrease in its production capacity, including labor reductions, or an increase in its production requirements that would or could adversely impact Seller's capability to fully and timely meet the Order requirements and obligations, Seller shall:
- i. immediately notify Buyer in writing of the anticipated, potential, or actual delay, the reason(s) for the delay, and the actions being taken to overcome or minimize the anticipated, potential, or actual delay;
 - ii. provide Buyer with a proposed written recovery schedule; and
 - iii. if directed by Buyer, expedite the shipping and routing of impacted Goods or accelerate the Services, at no additional cost to Buyer, as necessary to avoid or minimize delay to Prime Contract requirements to the maximum extent possible.
- e. If a Force Majeure event occurs in accordance with the Force Majeure clause herein, which might otherwise permit Seller to allocate production and delivery of its products that are Goods among Seller's various customers and to the extent Seller continues to manufacture, assemble and ship such Goods, Seller shall, to the extent legally able, allocate and deliver such Goods to Buyer, on a timely basis, one hundred percent (100%) of the Goods ordered by Buyer pursuant to the Order
- f. If Seller is unable to meet the Work delivery and/or performance schedules for any reason, other than a change directed by Buyer pursuant to the Changes clause in these Terms and Conditions, Buyer shall have, in its sole discretion, the option to:
- i. terminate all or part of the Order,
 - ii. fill all or part of the Order or any portion thereof, from sources other than Seller and reduce Seller's Order accordingly at no increase in unit price, and without any penalty to Buyer, or
 - iii. accept late delivery of Work and recover from Seller any costs Buyer incurs as a result of the late delivery.

The rights and remedies provided in this Delivery, Notice of Delay clause shall not limit Buyer's other rights or remedies hereunder or pursuant to the Order or applicable law.

6. ACCEPTANCE OF ORDER

- a. The Order is Buyer's offer to Seller for purchase of the Work. Seller's acceptance of the Order creates a binding contract between Buyer and Seller for the purchase of the Work and constitutes the entire agreement of the Parties governing the Work. Acceptance of Buyer's offer is strictly limited to the provisions of the Order, including these Terms and Conditions. Any one of the following methods shall constitute acceptance of the Order by Seller:
- i. acknowledgement in writing of acceptance;
 - ii. commencement of performance, or
 - iii. acceptance of payment.
- b. After acceptance of the Order or any time during performance of the Order and except as set forth in the Changes clause herein, modifications of the Order, to be binding, must be set forth in a separate written instrument by Buyer's Authorized Procurement Representative and accepted by Seller. The rights and obligations described in the Order will survive completion and final payment of the Order.
- c. **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACCEPTANCE HEREOF ARE HEREBY OBJECTED TO BY BUYER. ANY SUCH PROPOSED ADDITIONAL OR DIFFERING TERMS OR CONDITIONS SHALL BE VOID AND HAVE NO EFFECT ON THE ORDER.**

7. TITLE AND RISK OF LOSS

Risk of loss will pass to Buyer in accordance with the shipping term set forth on the face of the Order, regardless of when or where Buyer takes physical possession. Title will pass to Buyer at the destination specified on the face of the Order unless the Order provides for other passage of title either specifically or by choice of shipping term. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item and shall not relieve Seller of any other obligations under the Order.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders - GOODS & SERVICES (WORK)**8. PROPERTY**

- a. For purposes of this PROPERTY clause, such “Property” will include: property, equipment, materials and Special Tools of the Buyer and of its suppliers that are provided by or otherwise furnished to the Seller by or on behalf of Buyer for performance of and to satisfy the requirements of the Order (“Buyer-Furnished Property”);
 - (i) property, equipment, materials and Special Tools of the Customer that are provided by or otherwise furnished to the Seller for performance of and to satisfy the requirements of the Order (“Customer Property”); and
 - (ii) property, equipment, materials and Special Tools which may be acquired by Seller during and for performance of and to satisfy the requirements of the Order (“Acquired Property”).

“Special Tools” shall include any drawings, special tools, jigs, dies, fixtures, molds, patterns, and manufacturing aids. Acquired Property shall be priced separately and identified as such. Title shall pass to Buyer upon payment for such Acquired Property and shall be properly identified by Seller as Buyer-Furnished Property. Seller will hold all Property in good condition, except for reasonable wear and tear, and shall return or deliver to Buyer at the completion of the Order unless Buyer directs Seller otherwise in writing. Seller shall only use Property for performance of and to satisfy the requirements of the Order and Property shall not be altered unless Buyer otherwise consents in writing.

- b. Seller shall clearly mark, maintain in inventory, and keep segregated or identifiable all Property. Title to Property will remain with Buyer or its supplier or with the Customer, as applicable. Seller shall maintain all Property in a condition as good as when received and shall assume the risk of and be liable for all loss, destruction, or damage to Property while in Seller’s possession or control except for normal wear and tear, unless otherwise agreed to in writing by Buyer’s Authorized Procurement Representative.
- c. Seller shall have in place or establish and maintain a property management and control system that provides adequate management and control measures to manage normal process variations for the Property and to ensure compliance with the Order. Seller shall promptly notify if Seller becomes aware that its property management and control system does not meet the requirements of the Order. At all times, Buyer and its Customer, as applicable, shall have access to Seller’s facilities for the purpose of conducting periodic surveillance of or otherwise reviewing Seller’s compliance with the management of all Property related to the Order and compliance with applicable Customer regulations and requirements.
- d. Seller shall, if requested by Buyer, conduct a physical inspection of the Property and promptly prepare a complete and thorough written inventory report containing the results of the physical inspection. Seller shall deliver such written inventory report to Buyer’s Authorized Procurement Representative within thirty (30) calendar days. If, upon Buyer’s demand to return any Property, Seller fails to return such Property, Buyer shall have the right, upon reasonable notice, to enter Seller’s premises and remove any such Property without being liable for trespass or damages of any sort. Seller shall promptly report the loss of any Property to Buyer, in a written report, for all losses outside the normal process variation, such as losses due to theft, inadequate storage, lack of physical security, or “Acts of God.”

9. PAYMENT

Payment due date and cash discount period are calculated from the later of the date of Buyer’s receipt of an accurate invoice, the scheduled delivery date or the actual delivery date. Payment terms will be set forth on the face of the Order. Payment is deemed made on the date Buyer’s check is mailed or payment is otherwise tendered in United States dollars. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer against any amount payable by Buyer to Seller.

10. RESERVED**11. TARIFF – BENEFITS PASS-THROUGH**

- a. Vendor Credits. Supplier is required to use commercially reasonable efforts to obtain any and all credits, rebates, discounts, or other reimbursements (collectively, “Vendor Credits”) resulting from any costs incurred and invoiced under this Agreement. Buyer is entitled to all Vendor Credits resulting from work delivered under this Agreement. The Supplier agrees to promptly pay or credit to the Buyer any Vendor Credits that the Supplier receives from its own suppliers, vendors or other agencies related to the goods or services provided under this Agreement.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- b. Notification and Payment. The Supplier shall provide written notice to the Buyer within thirty (30) days of receiving any Vendor Credit. The Supplier will pay the full amount of the Vendor Credit to the Buyer within sixty (60) days of its receipt, either by direct payment or by a credit memo applied against the next outstanding invoice due from the Buyer.
- c. Audit Rights. During the term of this Agreement and for a period of six (6) years thereafter, the Supplier shall maintain accurate and complete records pertaining to all related Vendor Credits received. The Buyer, or its designated representative, shall have the right to inspect and audit such records to ensure compliance with this clause.
- d. Remedies for Non-compliance. In the event the Supplier fails to pass through any Vendor Credit as required by this clause, the Buyer may, in addition to any other remedies available, deduct the amount of the Vendor Credit, plus interest at the rate of 1.5% per month, from any amounts otherwise due to the Supplier.

12. RESERVED**13. INSPECTION, QUALITY CONTROL AND CAPABILITY**

- a. Buyer, and Buyer's Customer, shall be permitted, at no additional cost and upon reasonable notice to Seller and at reasonable times and places, to inspect, test, review, and evaluate Seller's applicable information, facilities, plants, and Work, including before shipment and during and after the manufacturing and performance in order to review, evaluate and assess quality, progress and performance in accordance with and pursuant to the Order. Seller and its lower-tier subcontractors shall provide Buyer and Buyer's Customer such access to applicable facilities and assistance to enable Buyer and Buyer's Customer to perform such inspections, tests, reviews, evaluations, or such other activities safely and conveniently, as Buyer requires, to determine Seller's orderly, timely and satisfactory compliance with the requirements of the Order. Seller shall flow these inspection, test, review, evaluation and assessment rights to its subcontractors to allow Buyer the same rights for Seller's subcontractors. Whether or not Buyer performs these inspections, tests, reviews, evaluations, or assessments, Seller shall not be relieved from responsibility to perform all activities and take all measures as are necessary to comply with Seller's obligations and the requirements of the Order.
- b. Seller shall have and maintain a quality management system acceptable to Buyer and that meets industry recognized quality standards and complies with the quality clauses or requirements specified in the Order. Seller shall permit Buyer, its Customer, and regulatory authorities to have access to its facilities and information during reasonable times and upon reasonable notice to Seller. During such access, Buyer, its Customer, and regulatory authorities shall be permitted to conduct reviews of Seller's procedures, practices, processes and related documents to determine Seller's compliance with the quality management system that was accepted by the Buyer. Seller shall keep and maintain current and complete records of all Seller reviews, inspections, testing, or other surveillance of its quality management system. Seller shall not substitute materials, parts, components, subcomponents, items, tooling, processes or accessories, even if Seller believes they are of superior quality, without prior written consent from Buyer's Authorized Procurement Representative. Such quality records and other documents shall be made available to Buyer promptly upon request. Seller shall insert the substance of this Inspection, Quality and Capability clause, including this sentence, in its subcontractors contracts.
- c. Seller shall have a continuing obligation to promptly notify Buyer of any known or reasonably suspected violation of or deviation from Seller's quality management system and to promptly advise Buyer of the quantity and specific identity of any Work delivered to Buyer that may be affected.

14. ACCEPTANCE OR REJECTION OF WORK

- a. Within a reasonable time after the date of delivery of Work to Buyer, Buyer shall have the right to inspect and test the Work to assess, in Buyer's reasonable opinion, whether the delivered Work is defective or non-conforming and whether it meets the obligations and requirements of the Order. Notwithstanding the foregoing sentence, no payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance will relieve Seller of any obligations under the Order or impair any rights or remedies of Buyer, including revocation of acceptance.
- b. If Seller delivers defective or non-conforming Work without prior written approval from Buyer's Authorized Procurement Representative, Buyer may, at its option:

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- i. reject all or a portion of the Work and require Seller to immediately correct, reperform or replace all or a portion of defective or non-conforming Work;
 - ii. accept all or part of defective or non-conforming Work at an equitable price reduction or credit against any amounts owed to Seller; or
 - iii. if Seller is unwilling, unable or incapable of immediately repairing, reperforming or correcting defective or non-conforming Work, Buyer shall have the option to: (x) repair or modify the Work, or have a third party repair or modify the Work, to comply with the Order requirements and obligations, at Seller's expense (y) obtain replacement Work from another source and Seller shall be responsible for such expenses and costs, or (z) terminate the Order in whole or in part, without penalty to Buyer.
- c. Return to Seller of defective or non-conforming Work and redelivery to Buyer of corrected or replaced Work shall be at Seller's expense. Seller shall not redeliver corrected or rejected Work without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken.
- d. The Buyer's rights contained in this Acceptance or Rejection of Work clause is in addition to and shall not in any way impact or replace Buyer's rights as set forth in the Warranty clause contained herein.

15. WARRANTY

- a. Seller warrants that all Goods furnished pursuant to the Order will, for a one (1) year period after acceptance of Work by Buyer:
- (i) be new,
 - (ii) be free from defects in design, material, and workmanship,
 - (iii) conform to all requirements of the Order, including drawings, samples, or other description applicable under the Order, and
 - (iv) if ordered to specifications, conform to the specifications and be free of specification defects.
- b. Seller further warrants that all Services shall be performed with the degree of professional skill, sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.
- c. These warranties will begin upon acceptance pursuant to the Acceptance or Rejection of Work clause and will survive inspection, test and payment for the Work.
- d. If any Goods fail to comply in any respect to the warranties set forth in this Warranty clause, Seller shall, at Buyer's option and in a time frame reasonable determined by Buyer, promptly repair or replace the Goods. Return of defective or nonconforming Goods and transportation of replacement Goods will be at Seller's expense. If repair or replacement of Goods is not timely, Buyer may elect to return, repair, rework, replace, or re-procure the defective or nonconforming Goods, as Buyer deems applicable, at Seller's expense.
- e. If any Services fail to comply in any respect to the warranty set forth above, Seller shall, at Buyer's option and in a time frame reasonable determined by Buyer, promptly correct or re-perform the Services. If correction or re-performance of Services is not timely, Buyer may elect to correct, re-perform or re-procure the defective or nonconforming Services, as Buyer deems applicable, at Seller's expense.
- f. Work required to be repaired, corrected or replaced shall be subject to the requirements of the Order in the same manner and to the same extent as Work originally delivered under the Order. All statutory warranties will apply. Warranties will run to Buyer, its successors, assigns, and customers.

16. COUNTERFEIT PARTS

- a. "Counterfeit Parts" mean parts or separately identifiable items or components of Goods that:
- (i) are an unauthorized copy or substitute of an Original Component Manufacturer or Original Equipment Manufacturer (collectively, "OCM/OEM") item;
 - (ii) are not traceable to an OCM/OEM sufficient to ensure authenticity in OCM/OEM design and manufacture;
 - (iii) do not contain proper external or internal materials or components required by the OCM/OEM or are not constructed in accordance with OCM/OEM design;

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- (iv) have been reworked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OCM/OEM design but not disclosed as such or are represented as OCM/OEM authentic or new; or
 - (v) have not passed successfully all OCM/OEM required testing, verification, screening, and quality control processes.
- b. Seller shall not deliver Counterfeit Parts or suspected Counterfeit Parts to Buyer under the Order. Counterfeit Parts are deemed nonconforming to the Order.
- c. Notwithstanding the foregoing, Goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked without legal right to do so, will not be deemed Counterfeit Parts.
- d. Seller shall implement an appropriate strategy to ensure that Goods furnished to Buyer under the Order are not Counterfeit Parts. Seller's strategy will include the direct procurement of items from OCMs/OEMs, OCM/OEM authorized distributors/suppliers, and ability to provide clear unbroken chain of custody documentation to Buyer upon request.
- e. If product is not available directly through OCM/OEM authorized distribution (defined as the OCM/OEM and its authorized distributors only), Seller shall immediately notify Buyer. Seller may not pursue the order without express written authorization from Buyer to deviate from authorized distribution.
- f. If Seller becomes aware or suspects that it has furnished Counterfeit Parts to Buyer under the Order, Seller shall promptly notify Buyer in writing. At Seller's expense, and in no case later than thirty (30) days from discovery, Seller shall replace such Counterfeit Parts with OCM/OEM Goods that conform to the requirements of the Order. Seller shall be liable for all costs related to the replacement of Counterfeit Parts and any testing or validation necessitated by the installation of authentic Goods after Counterfeit Parts have been replaced.
- g. Seller bears responsibility for procuring authentic Goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Counterfeit Parts clause.

17. DIMINISHING MANUFACTURING SOURCES

- a. Seller shall immediately notify Buyer with all necessary details as soon as Seller becomes aware of any Diminishing Manufacturing Sources and Material Shortage (DMSMS) issue regarding the Work including any of the following which are out of production, going out of production, no longer commercially available, whether supplied by the Seller or by the Seller's lower-tier subcontractor(s):
- i. items, materials, parts, subcomponents, and/or components;
 - ii. electronics in equipment, assemblies, subassemblies, parts, components or items delivered or to be delivered under the Order, and/or
 - iii. repair services
- b. Seller shall notify Buyer in writing with a "last time buy" (LTB) notice for such "end-of-life" (EOL) items as soon as Seller is aware or at least twelve (12) months prior to their anticipated date of discontinuance or unavailability. To the extent practicable, Seller will continue to provide LTB or EOL notifications after the last delivery of Goods to Buyer. Seller shall specifically identify those items by name or title, part number(s), function, where used in the item, and the name and address of the manufacturer, if other than the Seller. Seller shall take all reasonable steps to investigate an alternate, similar or replacement part.
- c. All notifications required from Seller to Buyer under this Diminishing Manufacturing Sources clause will be given in writing to Buyer's Authorized Procurement Representative and a copy will be sent, via email, to DL-AS-Obsolescence-Mgmt@ga.com.

18. CHANGES

- a. Buyer's Authorized Procurement Representative may, at any time, issue written directions to Seller requiring changes within the general scope of work being performed under the Order; including, but not limited to, changes to:
- iv. drawings, designs, and/or specifications, when Goods are being specifically manufactured for Buyer in accordance with the drawings, designed and/or specifications;
 - v. description of Services to be performed;
 - vi. time of performance of Services (*i.e.*, hours of the day, days of the week, etc.);

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- vii. method of shipment, packaging, or packing;
- viii. place of inspection, delivery, or acceptance.

Seller shall proceed with all Work, including Work subject to change, as directed by Buyer.

b. If any such direction from Buyer results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be negotiated and the Order shall be modified in writing as agreed. Any claim by Seller for an adjustment under this Changes clause must be:

- (i) asserted in writing, and delivered to Buyer Authorized Procurement Representative, within fifteen (15) calendar days from the date of receipt by Seller of the written notification of change from Buyer, and
- (ii) a fully supported proposal delivered to Buyer within thirty (30) calendar days after Seller's receipt of Buyer's written change direction.

Seller shall provide additional documentation as reasonably requested by Buyer to support the amount of Seller's claim for equitable adjustment to meet Buyer's Prime Contract requirements. Whether made pursuant to the Changes clause or by mutual agreement, changes shall not be binding upon Buyer until Buyer agrees in writing, as set forth in the Writings Required clause herein.

c. The issuance of information, advice, approvals, assistance or instructions by Buyer's technical personnel or other representatives will be deemed expressions of personal opinions only and no such action shall be deemed to be a change under this Changes clause and will not be the basis for any equitable adjustment. Furthermore, such expressions of personal opinions will not constitute a modification or change to the Order.

d. Failure to agree after negotiation to an equitable adjustment will be a dispute within the meaning of the Disputes clause herein and shall be resolved pursuant to the Disputes clause. Further, the Parties agree that neither the inability to negotiate an equitable adjustment pursuant to this Changes clause nor any other provision of this Changes clause shall excuse Seller in any way from proceeding without delay in the performance of the Work under the Order.

19. RESERVED

20. WRITINGS REQUIRED; APPLICABLE LANGUAGE

- a. No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order will bind either Party unless provided in writing. No oral statement of any person whatsoever will in any manner or degree modify or otherwise affect the terms of the Order. No extra charge of any kind or change in the price or schedule of the Order will be allowed unless specifically agreed to in writing and signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.
- b. The Parties agree that the Order, as well as all contractual documents, correspondence, invoices, notice, and other documents, whether technical or non-technical in nature, will be used and delivered in American English. Any conversations and communications shall be in English. Measurements shall be employed in the unit of measure customarily used by Buyer in the United States of America, unless otherwise specified by Buyer in writing.

21. RECORDS

Seller agrees that its non-financial books, documents, papers and records pertaining to the manufacturing, distribution, warehouse or other facilities, or such part of any manufacturing plant or distribution or warehouse or other facilities as may be engaged in the performance of the Order shall be subject to examination at reasonable times by any person designated by Buyer. Such records shall include, but shall not be limited to, specifications, production, inspection, test, quality, shipping and export, certifications, receipt records, and inventory records. Such books and records shall date back to the time the Order was issued and shall be maintained by Seller for a period of five (5) years after final payment is made under the Order.

22. STOP WORK ORDER

- a. Buyer's Authorized Procurement Representative may, at any time, by written notice to Seller issue a Stop Work Order (SWO) requiring Seller to stop all or part of the Work called for by the Order for a period of one hundred twenty (120) days. Seller shall immediately comply with the SWO and take all reasonable steps to minimize incurring costs allocable to the Work covered by the SWO during the period of work stoppage. Seller shall continue any Work not directly covered by the SWO.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders - GOODS & SERVICES (WORK)

- i. Within one hundred twenty (120) days after the SWO is delivered to Seller, Buyer shall either: extend the SWO,
- ii. withdraw the SWO and direct Seller to resume the Work, either in full or in part, or
- iii. terminate the Work covered by the SWO and the Order, or part thereof, pursuant to the appropriate provision of the Order.
- iv. Buyer and Seller shall negotiate an equitable adjustment in the price, performance, or delivery schedule if: the Order is not canceled or terminated,
- v. the SWO results in a change in Seller's cost of performance or ability to meet the Order delivery schedule; and
- vi. Seller submits a written claim for adjustment within thirty (30) days after the end of the period of work stoppage, provided; however, Seller shall not be entitled to any equitable adjustment for any SWO issued due to Seller's performance problems or default under the Order.

23. TERMINATION

The following clauses set forth Buyer's termination rights under the Order:

- a. Buyer may, by written notice as set forth in Subsection c. below, terminate Seller pursuant to this Subsection a. of the Termination clause for any one or more of the following reasons:
 - (i) Seller fails to deliver the Work within the time specified by the Order or any written extension; or
 - (ii) Seller fails to comply with any provision of the Order or fails to make progress, so as to endanger performance of the Order, and, in either of these two circumstances, within ten (10) business days after receipt of notice from Buyer specifying the failure, does not cure the failure or obtain Buyer approval of a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) business days; or
 - (iii) Seller becomes subject to bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any unauthorized assignment, reorganization, or arrangement by Seller for the benefit of its creditors.

Seller shall immediately notify Buyer in writing at such time as it becomes aware of the possible occurrence of any of a.(i), (ii), or (iii).

- b. In the event Buyer terminates the Order in whole or in part pursuant to Subsection a, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, Work similar to the Work so terminated, and Seller shall be liable to Buyer for any excess costs for such replacement Work. Notwithstanding, Seller shall continue the performance of the Order to the extent not terminated pursuant to this Termination clause. Furthermore, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any
 - (i) completed Work, and
 - (ii) any partially completed Work and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the terminated portion of the Order.

Upon direction from Buyer, Seller shall also protect and preserve Property in its possession in which Buyer or its Customer has an interest. Buyer shall pay the Order price for completed and accepted Work. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of such Property shall be in an amount agreed upon by Buyer and Seller. Buyer may withhold from any amount due under the 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.

- c. Buyer may, by written notice as set forth in Subsection d below, terminate Seller at any time pursuant to this Subsection c if Buyer's Authorized Procurement Representative determines that such termination is in the Buyer's interest. Subject to the terms of the Order, within ninety (90) calendar days after the effective date of termination under this Subsection c of the Termination clause, Seller may submit to Buyer a claim reflecting the percentage of the Work performed prior to the effective date of such termination, plus substantiated costs that Seller can demonstrate to the satisfaction of Buyer have resulted from such termination. 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 or any amount in excess of the aggregate Order price. A termination of Seller by Buyer pursuant to

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

this Subsection c shall not limit or affect the right of Buyer to thereafter terminate all or a part of the Order pursuant to Subsection a.

d. In order to conduct a termination under this Termination clause, Buyer's Authorized Procurement Representative must deliver to Seller a written notice of termination specifying whether the termination is being conducted pursuant to Subsection a or c above, the extent of such termination, and the effective date.

e. In the event of a termination pursuant to this Termination clause, Seller shall immediately discontinue all terminated Work hereunder and shall immediately cause any and all of its suppliers and/or subcontractors to terminate such Work. Seller shall take any necessary action to protect Property in Seller's possession in which Buyer or its Customer has an interest, and Seller shall direct its subcontractors to do the same.

f. Seller agrees to continue working on all Work not specifically terminated under this Termination clause. The rights and remedies of Buyer provided in this Termination clause will not be exclusive and are in addition to any others provided by law or the Order.

24. RESERVED

25. PROPRIETARY INFORMATION/CYBERSECURITY

Proprietary Information

- a. Buyer and Seller shall each keep each other's information that is received solely in connection with the Order as confidential and protect it from unauthorized use and disclosure, whether intentional or inadvertent, during the term of the Order, and for a period of twenty (20) years thereafter:
 - i. confidential, proprietary and/or trade secret information disclosed solely in connection with the Order, whether disclosed orally or visually and identified as confidential or proprietary at the time the information was disclosed, or in writing, electronically or in other tangible form, 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 disclosed solely in connection with the Order; and
 - iii. tooling for the Order that is obtained, directly or indirectly, from the other Party, including tooling of Buyer's customer, where such tooling is disclosed solely in connection with the Order.

The foregoing information described in (i), (ii) and (iii) are collectively referred to as "Proprietary Information".

- b. Unless otherwise expressly stated in the Order or another clause of these Terms and Conditions, all Proprietary Information exchanged or disclosed pursuant to the Order shall be governed by this Proprietary Information/Cybersecurity clause, and such exchanges and disclosures made pursuant to this Proprietary Information/Cybersecurity clause shall supersede any prior agreement, documents or instruments between Buyer and Seller to protect such Proprietary Information that is exchanged or disclosed in support and performance of and pursuant to the Order.
- c. Seller shall only use Buyer's Proprietary Information for the purpose of the Order and in performing the obligations, providing support and meeting the requirements of the Prime Contract, and Seller shall comply with all proper proprietary markings and restrictive legends applied by Buyer. Seller shall maintain appropriate processes and systems to adequately protect Buyer's Proprietary Information provided hereunder. Seller may disclose Buyer's Proprietary Information to its subcontractors solely as required for the performance of Seller's obligations pursuant to the Order, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller pursuant to this Proprietary Information /Cybersecurity clause and under the Order. Seller shall be liable to Buyer for any breach of such obligation by its subcontractors.
- d. If Buyer or Seller, as a receiving Party, is legally required by a court of competent jurisdiction or a United States Government entity to disclose any Proprietary Information of the other Party, as a disclosing Party, other than as set forth in this clause, it will give the disclosing Party prompt written notice of the request prior to such disclosure (if legally permissible), and use its best efforts to limit disclosure and to obtain confidential treatment or a protective order and allow, to the fullest extent possible, the disclosing Party to participate in the proceeding. If the receiving Party is nonetheless compelled to disclose any of disclosing Party's Proprietary Information, the receiving Party may disclose such Proprietary Information solely to the minimal extent necessary to comply with the legal requirement.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- e. Buyer and Seller shall take all reasonable measures to protect each other's Proprietary Information, which measures shall be at least equal to those with which a Party uses to protect its own confidential or proprietary information, but in no event less than reasonable care.
- f. Seller agrees to retain in confidence and return to Buyer promptly on completion or termination of the Order, all Buyer's Proprietary Information, including designs, drawings, specifications, and technical information of every kind furnished to Seller in connection with the Order, unless specifically directed otherwise in writing by Buyer.
- g. The obligations of this Proprietary Information/Cybersecurity clause will not apply to any Proprietary Information that a receiving Party can demonstrate
 - i. was in the receiving Party's rightful possession free of any obligation of confidence prior to its first receipt from disclosing Party,
 - ii. is publicly known through no fault of the receiving Party (except that information will not be deemed to be publicly known simply because a portion thereof is embodied in a general disclosure or because individual features, components or combinations thereof are known to the public),
 - iii. is obtained from a third person who had a right to disclose it, or
 - iv. was independently developed without access to any Proprietary Information of the disclosing Party.
- h. The Parties' obligations associated with this Proprietary Information/Cybersecurity clause shall survive any expiration or termination of the Order, provided that a receiving Party shall have no further right to use or disclose any Proprietary Information of the disclosing Party.

Cybersecurity

- a. Definitions.
 - "Adequate Security" means security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information received from, or pertaining to, Buyer. Adequate Security shall be determined by the Seller, but at a minimum shall include the cybersecurity requirements as documented in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171.
 - "Cyber Incident" means actions taken against an Information System that result in a compromise or an actual or potentially adverse effect on an Information System and/or the information residing therein.
 - "Information Systems" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. Seller's Information Systems includes all computers, servers, networks, electronic mobile devices, communications equipment, software, software as a service or other electronic device that is used by the Seller to store, process, analyze, receive, or transmit information related to its business interests with Buyer.
- b. Seller agrees that it shall maintain Adequate Security on its Information Systems for the purpose of safeguarding information related to the business activities between Buyer and Seller.
- c. System Security Plan; Plan of Action and Milestones.
 - (i) Upon the effective date of the Order, Seller shall have documented in a System Security Plan (SSP) its implementation of the cybersecurity requirements defined in the NIST SP 800-171 and, for any cybersecurity requirements that Seller has not yet implemented as of the date of the Order, Seller shall have documented such in an associated Plan of Action and Milestones (POAM) (see NIST SP 800-171, Section 3.12.2 for POAM information and requirements).
 - (ii) Seller shall have conducted a self-assessment of each of its Information Systems that will store, process, analyze, receive, or transmit information related to its business interests with Buyer in accordance with the published NIST SP 800-171 DoD Assessment Guide and shall have reported its self-assessed summary score to Buyer. If the summary score reported to Buyer is less than 110, Seller shall have delivered to Buyer the date Seller anticipates achieving a summary score of 110 as determined by their POAM.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- (iii) Seller shall regularly and vigilantly monitor the cybersecurity threat landscape and shall adhere to cybersecurity best practices. Further, Seller shall remediate known cybersecurity vulnerabilities in its Information System as soon as practical.
- d. Cyber Incident Reporting.
 - (i) If Seller discovers a Cyber Incident that affects Seller's Information System or the information residing therein, or that affects Seller's ability to perform to the requirements of the Order, Seller shall notify Buyer in writing within 72 hours after discovery of a Cyber Incident.
 - (ii) Further, Seller shall provide Buyer with written updates as they become available, for the duration of the remediation efforts, to include: date of the incident, status of remediation efforts, determination of whether Buyer's information was compromised, impact to outstanding orders, and anticipated time to recovery.
- e. Subcontractors. Seller shall include the substance of this Cybersecurity subclause in its subcontracts supporting the Order, ensuring that such subcontractors supporting the Order shall meet the requirements as set forth in this Cybersecurity subclause, unless the subcontractor is providing exclusively Commercial Off-The-Shelf (COTS) Goods or Services.

26. INTELLECTUAL PROPERTY

a. Definitions:

"Intellectual Property" or "IP" means inventions, discoveries and improvements, concepts, products, ideas, know-how, technical data, copyrightable materials, copyrights, service marks, trademarks, trade names, drawings, specifications, process information, reports and documented information, computer software, software code, patents, industrial designs, trade secrets, mask work registrations, other works of authorship and the like.

"Background IP" means all Intellectual Property (i) conceived, originated, created or first reduced to practice by a Party prior to the period of performance of the Order, or (ii) that can be proven by clear and convincing evidence to have been conceived, originated, created, or first reduced to practice by a Party after the effective date of the Order, independent of the Work and without use or access to the other Party's Intellectual Property or Proprietary Information.

"Foreground IP" means Intellectual Property conceived, originated, created, or first reduced to practice by, for or with a Party either alone or with others in the performance of the Order.

b. Background IP. Intellectual Property that is Seller's Background IP is and will remain the Background IP of the Seller and Seller retains all right, title and interest thereto. Intellectual Property that is Buyer's Background IP is and will remain the Background IP of Buyer and Buyer retains all right, title and interest thereto.

c. Seller hereby grants to Buyer an nonexclusive, transferable (to its Customer only), irrevocable, perpetual, fully paid-up, royalty-free, worldwide right and license to Seller's Background IP to use, reproduce, execute, display, perform, modify, and prepare derivative works of Seller's Background IP, and to make, have made, offer for sale, sell, distribute, and import or export Goods and deliverables under the Order that incorporate or embody Seller's Background IP, to the extent necessary for Buyer to make use of the Work performed or the Goods and other deliverables under the Order and to authorize others to do so in performance of Buyer's Prime Contract obligations with its Customers. Seller grants to Buyer such license rights in the event Buyer cancels all or part of the Order for Seller's default in accordance with the Termination for Default clause of these Terms and Conditions.

Foreground IP. All Foreground IP will be the exclusive property of the Buyer and Buyer will have and retain title to and ownership of all Foreground IP ("Buyer's Foreground IP"). Seller shall promptly notify Buyer in writing of all Buyer's Foreground IP. For the avoidance of doubt, Seller hereby transfers, conveys, and assigns all right, title and interest in Buyer's Foreground IP free of charge to Buyer.

d. All Buyer's Background IP and Buyer's Foreground IP will remain the property of Buyer even if provided to Seller for its performance of or for the purpose of the Order.

e. Seller shall at Buyer's sole election, defend Buyer, Buyer's officers, affiliates, agents, employees, and Customers (collectively, "Indemnitees") from and against all suits, claims, or causes of action (collectively, "IP Claims") and shall indemnify and hold harmless all Indemnitees from and against any and all losses, damages, liabilities, costs, fees and expenses, including attorney's fees, and other costs, fees and expenses of litigation/settlement, judgments, liens, court costs, and awards (collectively, "Losses") for any asserted or actual trademark, copyright, or patent infringement, misappropriation or wrongful use of information or documents, whether actual, asserted or alleged, or other asserted or actual violations of the Intellectual Property rights of a third

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders - GOODS & SERVICES (WORK)

party arising out of or resulting from the manufacture, use, reproduction, sale or distribution of any Work performed, furnished or delivered to Buyer under the Order. If an injunction is obtained against Buyer due to or resulting from a IP Claim pursuant to this Intellectual Property clause, Seller shall either

- i. procure for Buyer and its customer the right to continue using the Work or
- ii. replace or modify the Work so it becomes non-infringing.

This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of the Order except with regard to allowable insurance costs.

- f. Seller's personnel, and if the Order also includes contract labor, then contract laborers, shall execute an inventions and copyright agreement under which all Work performed by Seller personnel or contract laborers under the Order shall be construed as Work performed by employees of Buyer, and Seller shall require its personnel and contract laborers to execute such acknowledgment form as is requested by Buyer.
- g. All works of authorship (including, but not limited to, documents, data, drawings, software, software documentation, photographs, video tapes, sound recordings, and images) created by, for, or with Seller in the course of any Work performed under the Order, together with all copyrights subsisting therein, shall be the sole property of Buyer. To the extent permitted under United States copyright law, all such Work will be "works made for hire," with the copyrights therein vesting in Buyer. The copyrights in all other such Work, including all the exclusive rights therein, will be promptly transferred and formally assigned free of any additional charges to Buyer.

27. ADVERTISING, USE OF NAME

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer the Work provided for in the Order. Seller shall require that its subcontractors at any tier adhere to this same policy and shall be responsible for any breach of such obligation by any of its subcontractors. Seller agrees that it shall not use the Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without the Buyer's prior written consent in each instance.

28. RESERVED**29. INSURANCE AND PRECAUTIONS**

- a. **Insurance:** Seller shall procure and maintain during the term of the Order, and at its expense, insurance in sufficient amounts to ensure its obligations and liabilities hereunder. Such insurance shall include at a minimum the following:
 - i. Automobile liability insurance coverage for all owned, non-owned and hired vehicles protecting the Seller from automobile bodily injury and property damage liability with limits of at least \$1,000,000 per occurrence.
 - ii. Commercial general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises-operations, independent contractors and subcontractors. Coverage will be on a per occurrence basis with limits of liability no lower than \$1,000,000 per occurrence and \$1,000,000 general aggregate.
 - iii. Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances, including employer's liability coverage for injury, disease and death, with coverage limits of not less than \$1,000,000 per accident and employee.
 - iv. Insurance against any loss or damage of any Property in which Buyer, its supplier or Customer has or acquires an interest hereunder and such insurance coverage will be provided for the benefit of Buyer, on an all-risk basis and value will be at replacement cost. Upon request of Buyer, Seller shall provide Buyer with adequate proof of such insurance against such loss or damage.
- b. For (a)(ii) above, such policies will name Buyer as additional insured when requested by Buyer.
- c. **Certificates of Insurance:** Upon Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller. The Seller shall provide an endorsement on each policy in (a) above providing that Buyer shall receive 30 days prior written notification from the insurer of any termination or cancellation of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- d. Self-Assumption: Any self-insured retention, deductibles and exclusions in coverage in the policies required under this Insurance and Precautions clause will be assumed by, for the account of and at the sole risk of Seller or its subcontractor which provides the insurance and, to the extent applicable, will be paid by Seller or its subcontractor. In no event will the liability of Seller or any of its subcontractors thereof be limited to the extent of any of the minimum limits of insurance required herein.
- e. Protection of Property: If Seller's work under the Order involves operations by Seller on Buyer's or its Customer's premises, Seller agrees to comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's Customer, and take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all fines, penalties, or loss incurred by reason of failure to comply with this Insurance and Precautions clause.

30. INDEMNIFICATION

- a. Seller shall defend Buyer, Buyer's officers, affiliates, agents, employees, and Customers ("Indemnities") from and against all suits, claims or causes of action ("Claims"), and shall indemnify and hold harmless all Indemnities from and against any and all losses, damages, liabilities, costs, fees and expenses, including attorney's fees and other costs, fees and expenses of litigation/settlement, judgments, liens, appeals, court costs, and awards ("Losses") for:
 - i. any breach of representations, certifications, and warranty of Seller hereunder, and
 - ii. Losses of any kind and nature whatsoever incurred by Buyer or any third party for property damage, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof), as a result of, arising out of or in any way related to any act or omission of the Seller's officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of Seller's obligations under the Order.
- b. Buyer shall notify Seller in writing of such Claims and Buyer shall provide Seller with reasonably necessary information and assistance, at Seller's expense, for the defense thereof.

31. TAXES

- a. Unless Buyer furnishes a valid exemption certificate or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order or transaction.
- b. Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (a) of this Taxes clause as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.
- c. Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this Taxes clause when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

32. RESERVED

33. FORCE MAJEURE

- a. Neither Party shall be responsible for its failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to any cause, event, or circumstance that is not foreseeable and is beyond the control and without the fault or negligence of the Party affected and which by exercise of reasonable diligence of the Party affected, such cause, event, or circumstance prevents a Party from performing its obligations under the Order. Such causes, events or circumstances include, but are not limited to:
 - i. acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, epidemics, terrorism, quarantine restrictions, freight embargoes, or unusually severe weather affecting either party; or
 - ii. similar causes, events, or circumstances beyond the affected Party's control and which are not foreseeable.
- b. The Party whose performance is so affected shall notify the other Party in writing within ten (10) business days after the beginning of any such causes, events, or circumstances. In all cases, the Parties shall use reasonable efforts to avoid or minimize all such failures or delay in performing their obligations hereunder, including exercising work-around plans or obtaining the Work from other sources.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders - GOODS & SERVICES (WORK)**34. COMPLIANCE WITH LAWS**

Seller agrees that in performing its duties under the Order, Seller shall comply with all applicable Federal, State, foreign and local laws, statutes, ordinances, and regulations in effect on the date of the Order. Seller represents and warrants that neither Seller nor any of its principals, consultants, subcontractors, shareholders, directors, officers, employees or agents has performed or will perform any act, which would constitute a violation of the requirements set forth in this Compliance with Laws clause. If at any time Seller becomes aware of information or circumstances that suggest this representation and warranty may not be accurate, it shall notify Buyer immediately in writing, but not more than seven (7) calendar days after becoming aware of such circumstances.

35. EXPORT CONTROLS

- a. Information exchanged pursuant to the Order may include/involve the use/provision of, or access to, Technical Data/Technology or Defense Services defined in and subject to export controls pursuant to 22 Code of Federal Regulations 120 –130 (International Traffic in Arms Regulations) or 15 Code of Federal Regulations 730-774 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as “Export Regulations”). U.S. Law prohibits the transfer or provision of Technical Data/Technology or Defense Services without an export authorization to any employee or other person who is not a U.S. person, as well as to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States.
- b. In relation to the Order, each Party shall comply with all Export Regulations of the United States Government and the equivalent regulations of the government of any country in which the Party conducts business pursuant to the Order. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining such), Seller shall immediately notify Buyer’s Authorized Procurement Representative.
- c. Each Party shall provide all information reasonably requested by the other Party for compliance with the Export Regulations and equivalent regulations in relation to the Order, including, but not limited to trade control classifications, end-user/end use certificates and certificates of origin. Each Party covenants that all such information shall be true, complete, and correct (to the best of the Party’s knowledge and belief at the time) and shall provide the other Party with prompt written notice if any such information is no longer true, complete, or correct.
- d. Each Party shall indemnify and save harmless the other Party from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney fees, arising out of claims, suit, allegations or charges of a Party’s failure to comply with all applicable Export Regulations of the United States and equivalent regulations in relation to the Order. Any failure of a Party to comply with the provisions of this Export Controls clause may be deemed a material breach of the Order by the other Party. Each Party acknowledges that it will be responsible for ensuring that all applicable U.S. Government export control requirements are conveyed to all its sub-tier suppliers or subcontractors that will be provided or may have access to Technical Data/Technology or Defense Services supplied by the other Party under the Order.

36. INDUSTRIAL PARTICIPATION OBLIGATIONS

- a. Notwithstanding that the Order may or may not be issued in direct support of a foreign sale, Seller agrees to support Buyer’s Industrial Participation Obligations. “Industrial Participation Obligations” means the past, present and future industrial participation, co-production, and offset obligations or any similar obligations that Buyer undertakes, in order to market or sell its Work, and to meet other Customer country national objectives
- b. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates or its designees may use the value of the Order to satisfy Industrial Participation Obligations that Buyer may have with Seller’s country. Seller shall provide documentation or information which Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or Industrial Participation Obligations credits.
- c. Seller agrees to identify and retain for Buyer’s use any Industrial Participation Obligations credits generated from the content of Work which Seller either produces itself and/or procures from suppliers for work arising out of or related to the Order. Promptly after selection of a non-U.S. supplier for work under the Order, Seller shall notify Buyer of the name, address, supplier point of contact (including telephone number) and dollar value of the subcontract. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates or its designees may use the value of such credits to satisfy Industrial Participation Obligations that Buyer may have.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)

- d. Buyer reserves the right to assign Industrial Participation Obligation credits generated through Seller's efforts under the Order to third parties.
- e. Seller shall include the substance of this Industrial Participation Obligations clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to the Order.

37. COMMUNICATIONS

Except as required by law, Buyer shall be solely responsible for all liaison and coordination with Buyer's Customer as it affects the Prime Contract, the Order and any other related contract. Seller shall not communicate with Buyer's Customer, without Buyer's prior written consent.

38. ASSIGNMENTS, CHANGES TO NAME AND PLACE OF MANUFACTURE

- a. Seller will not assign or transfer the Order, including by operation of law, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. In the event written consent is granted, Seller shall promptly supply Buyer with documentation supporting any such assignment.
- b. Payment to an assignee of any claim hereunder will be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.
- c. Seller shall provide at least 30 calendar days prior written notice to Buyer of any proposed name changes, mergers or acquisitions affecting the Order. Seller shall not change the location of manufacture of the Goods or performance of the Services to be provided to Buyer under the Order or the place of performance of any Work without first providing at least ninety (90) days written notice to Buyer prior to the date of initiation of the relocation activity and obtaining Buyer's prior written consent.

39. DISPUTES

- a. All disputes between Buyer and Seller, under the Order will be submitted in writing for resolution through mutual agreement to ascending levels of management of the respective Parties. If the Parties' ascending levels of management are unable, after good faith efforts, to settle the dispute within sixty (60) calendar days after the dispute is submitted in writing, or such later date as the Buyer and the Seller may have agreed in writing, either Party may submit the dispute to a court of competent jurisdiction. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES TO WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.** Notwithstanding the above, either Party may seek injunctive or other equitable relief, at any time, in any court of competent jurisdiction.
- b. Pending final resolution of any dispute, Seller shall proceed with performance under the Order unless otherwise instructed by Buyer. The rights and obligations of this clause shall survive completion of and final payment under the Order.

40. APPLICABLE LAWS

- a. The Order and any dispute arising hereunder will be governed by the laws of the state of California, without regard to its conflicts of law provisions.
- b. Contract provisions that have been flowed down from a Prime Contract with a foreign non-government Customer, where such Customer is a company or business entity formed or located in a country that is other than the United States, will be construed and interpreted according to the laws of the state of California.
- c. Jurisdiction and venue will lie in the State of California.
- d. The 1980 U.N. Convention on Contracts for the International Sale of Goods will not apply to any sales transactions governed by these terms and conditions.

41. NON-WAIVER

The failure of either Party to insist, in one or more instances upon performance or to exercise any rights will not waive or relinquish to any extent such Party's right to assert or rely upon any such terms or rights on any future occasion.

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders -GOODS & SERVICES (WORK)**42. ENTIRE AGREEMENT**

These Terms and Conditions and those referenced on the face of the Order to which this form is attached, including other specifications or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller, and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral, between the Parties related to the subject matter of the Order. No course of prior dealings between the Buyer or Seller, and no usage of trade, will be relevant to supplement or explain any term used in the Order. No agreement or understanding varying or extending these Terms and Conditions of the Order will be binding unless executed in writing by Buyer's Authorized Procurement Representative. If any provision of the Order is declared to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of the provisions in the Order will remain valid, enforceable and in full force and effect, and the Parties will negotiate in good faith to substitute a provision of like economic intent and effect.

43. SURVIVABILITY

Seller's obligations that, by their very nature, must survive expiration, termination, or completion of the Order, shall survive expiration, termination, or completion of the Order, including, but not limited to, obligations under the following: Applicable Laws, Diminishing Manufacturing Sources, Disputes, Export Controls, Indemnification, Intellectual Property, Proprietary Information/Cybersecurity, Records, and Warranty and all Customer flow-down provisions that, by their nature, should survive.

44. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Seller represents, after conducting a reasonable inquiry, that it will not provide to Buyer, or use, telecommunications equipment or services in the performance of the Order that is produced or provided by Huawei Technologies Company, or any subsidiary or affiliate of those entities, and video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of those entities, owned or controlled by the People's Republic of China. Seller agrees to contact Buyer's authorized purchasing representative immediately in the event Seller is not able to fully comply with this representation. Buyer reserves the right to enhance or minimize this representation pursuant to changes to Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.