

## STANDARD TERMS AND CONDITIONS

This purchase order is an offer by **PRODUCTION PRODUCTS MANUFACTURING & SALES CO., INC. doing business as P2 Mission Solutions**, a Missouri corporation, with its principal place of business at 1285 Dunn Rd., St. Louis, Missouri 63138 (“P2” or “Buyer”) for the purchase of the goods and/or services (the “Goods”) from the party to whom the purchase order is addressed (the “Seller”) in accordance with these terms and conditions (the “Terms”; together with the terms and conditions on the face of the purchase order, the “Order”). P2 and Seller are individually referred to as a “Party” and collectively as the “Parties.”

This Order expressly limits Seller’s acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with this Order. These Terms apply to any repaired or replacement Goods required by and provided by Seller under this Order. Buyer is not obligated to any minimum purchase or future purchase obligations that are not expressly stated in this Order.

### 1. Definitions

The following definitions apply to this Order and to any supplemental terms and conditions attached to this Order unless otherwise specifically stated:

- A. Buyer’s Purchasing Representative: Buyer’s designated purchasing representative responsible for issuing Orders and any amendments or changes thereto.
- B. Contracting Officer: The Government official(s) authorized to commit the Government contractually under a Government Prime Contract, or the authorized representatives of these officials acting within the scope of their authority.
- C. Customer: P2’s customer, which may be the Government or another entity, including a prime contractor to the Government.
- D. DFARS: The Department of Defense Federal Acquisition Regulation Supplement.
- E. Days: Calendar days (unless specified otherwise).
- F. FAR: The Federal Acquisition Regulation (Title 48 Code of Federal Regulations Chapter 1).
- G. Government: The United States of America, acting in its contractual capacity.

### 2. Acceptance of This Order

This Order is not binding on P2 until Seller accepts the Order. Any of the following shall constitute Seller’s unqualified and irrevocable acceptance of this Order, which is subject solely to the Order:

- Seller’s written acceptance of the Order,
- Seller’s commencement of any performance under the Order and written notification to P2 of that commencement or planned commencement, or
- Seller’s acceptance of any payment under the Order.

P2 may modify or withdraw the Order at any time before it is accepted by Seller. Such modification or withdrawal shall not constitute a change under Article 15 or termination under Articles 17 or 18.

In the event that this Order does not state price or delivery terms, Buyer will not be bound to any prices or delivery terms to which it has not specifically agreed in writing. Any Seller-proposed terms and conditions that are inconsistent with or in addition to the terms and conditions contained in this Order shall be void and of no effect unless specifically agreed to in writing by Buyer, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.

### **3. Acceptance of Goods and Services**

A. All Goods provided by Seller under this Order shall be in accordance with the requirements of this Order, including all applicable exhibits and attachments, and shall be subject to rejection if such Goods are nonconforming. No inspection or evaluation performed by Buyer (and/or Customer) shall in any way relieve Seller or its suppliers of their obligation to furnish all required Goods in strict accordance with the requirements of this Order. If any of the Goods provided by Seller do not conform with the requirements of this Order, Buyer may require Seller to replace the Goods or perform the work and/or services again in conformity with the applicable requirements at no cost to Buyer.

B. At Buyer's sole option, any rejected items may be returned for credit or replacement at Seller's risk and expense, and all handling and transportation expenses, both ways, shall be assumed by Seller. No items returned as defective shall be replaced without written authorization from Buyer.

C. Written acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

### **4. Parties' Relationship**

A. Seller may be a subcontractor to Buyer. All contractual communications with the Customer relative to P2's prime contract shall be exclusively conducted by Buyer personnel. Throughout the term of this Order, Seller shall not, without the prior written consent of Buyer, contact or communicate directly with Customer personnel concerning the terms of this Order or P2's prime contract. If the Customer is the Government, nothing in this provision or the remainder of the Order restricts Seller from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

B. This Order does not create a joint venture, pooling arrangement, partnership or formal business organization, and nothing in this agreement shall be construed as doing so.

C. Seller is an independent contractor, and the employees, agents, or representatives of Seller are not employees, agents, or representatives of Buyer for any purpose including, but not limited to, federal, state, and local tax obligations, unemployment and worker's compensation obligations, social security, and any and all other benefits.

D. Neither Party has the authority to bind the other, except as expressly stated in this Order.

### **5. Invoices and Payment**

A. Seller's invoices or vouchers shall contain all certifications required by Buyer and shall include the invoice date, the Order number, as well as a complete breakout of the prices by line item for the Goods encompassed by the invoice or voucher.

B. Unless stated otherwise on the face of this Order, this Order is a firm, fixed-price order. The price for all Goods provided by Seller is all-inclusive and encompasses any and all federal, state, local or foreign

taxes and duties that may be applicable, and all installation, testing, debugging, warranty charges, any and all license or use fees, and any other cost of every kind and description associated with Seller's work.

C. Buyer shall pay Seller after receipt of Seller's proper invoices or vouchers for Goods are delivered and accepted, less any deductions provided for in this Order. Unless otherwise mutually agreed in writing and stated on the face of the Order, payment terms are net 30 Days from receipt of invoice or 10 Days from Buyer's receipt of payment for the Goods from the Customer, whichever is later.

## **6. Shipping, Packing and Marking**

A. Except as otherwise explicitly provided in an Order, all Goods are sold f.o.b. destination. No insurance or premium transportation costs will be allowed unless authorized in writing by Buyer's Purchasing Representative. Risk of loss from any casualty to Goods ordered hereunder, regardless of cause, shall be Seller's responsibility until the Goods have been delivered in compliance with terms of transportation required by this Order. If Seller does not comply with the stated delivery schedule, Buyer may, in addition to any other rights which it may have at law or in equity, require delivery by the most expeditious way, and any charges resulting from the premium transportation shall be fully prepaid and absorbed by Seller. Title to all Goods passes at Buyer's dock unless otherwise specified on the face of this Order.

B. Seller shall pack, mark and ship all Goods and supplies in accordance with the requirements of this Order and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection against damage from weather and shipment, including any applicable federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge shall be payable by Buyer for containers, crating, boxing, handling, storage or any other services unless specifically stated on the face of the Order or otherwise agreed to by Buyer in writing. Seller shall mark each container with the Order number and shall enclose a packing slip with the Order number in an envelope attached to each container. Damage resulting from improper packing or shipping will be charged to Seller.

C. Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the Parties. If no delivery date is specified or agreed upon, Seller shall deliver the Goods within 30 Days of Seller's receipt of the Order. Acceleration of delivery is not authorized unless specified in writing by Buyer's Purchasing Representative.

D. Buyer reserves the right to refuse or return at Seller's risk and expense any shipments made in excess of the quantities stipulated on the face of the Order or received in advance of the required delivery schedule, or to keep the Goods received in advance of the required delivery schedule and defer payment as if the delivery was made per the required delivery schedule.

## **7. Non-U.S. Origin Shipments**

When possible, Seller should ship the order to Buyer from a location within the United States. Any shipments originating outside the customs territory of the United States, will import under the terms of sale DDP Buyer facility Incoterms 2010. Seller shall communicate its customs clearance instructions to its International Third-Party supplier prior to the product's arrival into the United States to avoid any delays in delivery to Buyer. Under no circumstances is Buyer to be listed as the importer of record (or consignee for shipments delivered via courier) on customs documents for any orders shipped directly to Buyer from a foreign location and Seller expressly agrees to accept all liability associated with said customs entries for any such orders.

## **8. Time of the Essence**

Time is and shall remain a material element of this Order, and no acts of Buyer, including without limitation modifications of this Order or acceptance of late deliveries or performance, shall constitute a waiver of this provision. Seller shall notify Buyer in writing immediately of any actual or potential delay in the deliveries or performance of this Order, and such notice shall include a revised schedule using Seller's best efforts; provided, however, that Buyer's receipt of such notice shall not constitute a waiver to Buyer's rights and remedies for such late deliveries or performance. Buyer reserves the right to cancel this Order without liability to Buyer and without waiver of any other remedies of Buyer if delivery or performance is not effected as specified in the Order or on written shipping authorizations that may be furnished by Buyer.

## **9. Inspection**

Buyer and Customer through any authorized representatives, have the right at all reasonable times and places to inspect and test the Goods being supplied under this Order, including by Seller's suppliers. Buyer assumes no contractual obligation to perform any inspection or test unless otherwise specifically set forth on the face of the Order. Buyer's failure to inspect or test any Goods shall not relieve Seller from responsibility for any defective or nonconforming Goods. If any inspection or evaluation is made by Buyer or Customer on the premises of Seller or any of Seller's suppliers, Seller or its suppliers shall provide at no additional charge all reasonable facilities and assistance for the safety and convenience of the personnel conducting the inspection or test.

## **10. Warranty**

A. Seller warrants to Buyer, its successors and assigns, that all goods provided under this Order shall be (i) merchantable, (ii) free from defects in material and workmanship, (iii) with regard to Goods designed by Seller, free from defects in design, (iv) suitable for the purposes intended whether expressly or reasonably implied, (v) in compliance with all applicable specifications, drawings, and performance requirements, (vi) free and clear of all liens, security interests, or other encumbrances, (vii) not infringe or misappropriate any third party's patent or other intellectual property rights, and (viii) new. "New" for purposes of this Article means an unused good that is composed of previously unused components and is of identical appearance and quality as of the day manufacturing was complete. Seller also warrants to Buyer, its successors and assigns that all services provided hereunder shall be (i) free from defects in workmanship, (ii) suitable for the purposes intended whether expressed or reasonably implied, (iii) performed in a professional and workmanlike manner, and (iv) in compliance with all applicable specifications, drawings, and performance requirements.

B. If any nonconformity under this warranty appears within one (1) year after final acceptance of the Goods, Seller shall promptly and diligently repair, replace or correct (by re-performance or otherwise) such nonconformity at no cost to Buyer (including any transportation costs associated therewith). If repair, replacement or correction is not made in a timely manner to Buyer's satisfaction, then Buyer may, at its election and in addition to any other remedies available to Buyer at law or in equity, correct or have corrected such nonconformity at Seller's expense.

C. If the product requires shelf life code markings to be applied, Seller shall mark and warranty the Goods as per the stated shelf life code markings.

D. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties.

## **11. Proprietary Information**

A. Unless otherwise expressly agreed by Buyer in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller under this Order, whether or not marked with any restrictive or proprietary designations, shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction in any way in the conduct of its business. Seller's sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents shall be determined only by any valid pre-existing patent rights of Seller as related to the manufacture, use, or sale of Goods covered by this Order. Seller agrees to promptly notify Buyer in writing of any such pre-existing patents or any other similar form of protection which Seller may hold or know of which relates to the Goods to be provided under this Order.

B. If any pre-existing patents, inventions, copyrights, technology, designs, works of authorship, mask works, technical information, computer software, or other information or data of Seller (hereinafter "Seller's Intellectual Property") are used, included, or contained in the Goods provided under this Order, Seller grants Buyer an irrevocable, transferable, non-exclusive, world-wide, royalty-free license to use Seller's Intellectual Property with such Goods.

C. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller and paid for by Buyer under this Order, shall be the exclusive property of Buyer, shall be maintained by Seller as proprietary to Buyer, shall be used only for purposes of providing Goods to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer shall be promptly returned to Buyer on request or upon completion or earlier termination of this Order.

## **12. Buyer's Property**

A. All information as well as all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer shall be and remain the sole property of Buyer, and Buyer shall have the right to enter Seller's premises and remove any such property and Seller's records with respect thereto at any time without being liable for trespass or for damages of any sort.

B. All such items shall be used only in the performance of work under this Order unless Buyer consents otherwise in writing.

C. Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.

D. Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be responsible for all loss or damage to the property except for normal wear and tear.

## **13. No Public Announcements or Trademark Use**

Unless expressly permitted by Buyer in writing, Seller shall not:

A. Make any statement (whether oral or in writing) in any press release, website, external advertising, marketing, or promotion materials regarding the existence or subject matter of this Order, including the Customer, unless it is required to do so by law.

B. Use any of Buyer's trademarks, including logos.

## **14. Intellectual Property**

A. Seller warrants that the sale, use or incorporation into manufactured products of any machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder (collectively "Items") which are not of Buyer's design, composition or manufacture shall be free and clear of infringement or misappropriation of any valid patent, copyright, trademark or other third party intellectual property rights. Seller shall indemnify, defend and save Buyer and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits or actions alleging such infringement or misappropriation, including proceedings under 28 U.S.C. § 1498, which claims, suits or actions Seller agrees to defend with counsel acceptable to Buyer. Buyer agrees to give Seller written notice of any such suit or action promptly after notice is received by Buyer and Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, that Buyer may, at its own election and expense, at any time supersede Seller in any such defense in which event Seller shall thereby be released from its obligation under this Article with respect to the particular suit or action involved.

B. Seller further agrees to indemnify, hold harmless and defend, at Seller's own expense, Buyer against all liens, security interests, and/or encumbrances whatsoever asserted against such Items or Goods, including claims to said merchandise, asserted by others. To the extent that the Goods delivered hereunder are manufactured pursuant to the designs originated by Buyer, Seller hereby assigns to Buyer, without reservation, all patent rights, copyrights and trademark rights relating to the Goods and all related documents, models, computer drawings and other electronic expression, photographs, related documents, models, computer drawings and other electronic expression, photographs, drawings, specifications or other materials ("Protected Materials"). Buyer, in turn, grants to Seller a non-exclusive, non-transferable license to reproduce the Protected Materials for purposes related solely and directly to Seller's performance of its obligations to Buyer hereunder. No other Protected Materials may be reproduced for any other purpose without the express written permission of Buyer. This non-exclusive license shall terminate immediately upon termination of this Order.

C. Seller may replace or modify infringing Goods or Items with comparable Goods or Items acceptable to Buyer of substantially the same form, fit and function so as to remove the source of infringement, and shall extend this provision to such comparable Goods or Items. If the use or sale of any of the above Items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and Buyer's customers the right to use and sell the Items.

D. Any invention or intellectual property first made, developed or conceived by Seller in the performance of this Order or which is derived from or based on the use of information supplied by Buyer, in whole or in part, alone or with others, shall be the sole property of Buyer, and Seller hereby conveys, transfers and assigns to Buyer all rights, title and interest in and to any such invention or intellectual property. Any original works of authorship created by Seller hereunder are considered "works made for hire" under U.S. Copyright Law (17 U.S.C. §101). This Order shall operate as an irrevocable assignment from Seller to Buyer of all rights to such inventions or intellectual property including all rights, title and interest throughout the world.

## **15. Changes**

A. Buyer shall have the right at any time to (i) suspend all or any portion of Seller's work, and/or (ii) make changes within the general scope of this Order that affect any one or more of the following:

- (1) drawings, designs, specifications, or quantities of Goods to be provided hereunder;
- (2) the statement of work or description of services;
- (3) method of shipment or packing;

- (4) the time or place of performance, inspection, delivery, or acceptance of Goods; and
- (5) the amount of Buyer-furnished or customer-furnished property or facilities.

B. If any such suspension or change causes a change in the cost of, and/or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both, and the Order shall be modified in writing accordingly. Any claim by Seller for such an adjustment must be made in writing within 20 Days from the date of receipt of a written order from Buyer's Purchasing Representative directing such a suspension or change.

C. Nothing in this clause, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with the Order as changed. Any disagreement between the Parties arising out of this clause shall be resolved in accordance with the clause entitled "Disputes Under This Order."

D. The pricing of any equitable adjustment or of any other adjustment under this Order shall be in accordance with the cost principles enunciated in Part 31 of the Federal Acquisition Regulation in effect on the date of this Order.

E. No constructive changes: Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's Purchasing Representative and that states that it constitutes an amendment or change to this Order.

**16. Record Retention and Access to Records**

Seller shall maintain all records related to its performance of this Order for a minimum of three years from its receipt of Buyer's final payment. Buyer and Customer shall have access to all records of Seller's performance hereunder for so long as the records exist.

**17. Termination for Convenience**

A. Buyer, by written notice, may terminate this Order at any time, in whole or in part, without cause and/or for Buyer's convenience, prior to final delivery of Goods and/or completion of services, and such termination shall not constitute a default. In such event, Buyer shall have all rights and obligations accruing both at law and in equity, including Buyer's rights to title and possession of any Goods paid for. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit (based on the quality of performance and not to exceed 10%) for work performed up to the date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.

B. Seller shall submit any termination claim to Buyer within 60 Days after the effective date of the termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Order price. This Subsection does not limit or affect Buyer's right to terminate this Order for default.

**18. Termination for Default**

A. Buyer may, by written notice of default to Seller, terminate this Order for default in whole or in part if Seller fails (i) to deliver the Goods and/or perform the services within the time specified in the Order or any extension thereof, (ii) to perform any of the other provisions or meet any of the requirements of this Order, or (iii) to make progress so as to endanger performance of this Order in accordance with its terms and, in either of the second or third circumstances, does not cure such failure within 10 Days after receipt of written notice from Buyer specifying such failure.

B. If Buyer terminates this Order for default in whole or in part it may acquire, upon such terms as it deems appropriate, Goods similar to those terminated. Seller shall be liable to Buyer for any excess cost for such similar Goods, provided, however, that Seller shall continue performance of this Order to the extent not terminated under the provisions of this Article and, provided, further, that Buyer shall pay the price set forth in this Order for Goods delivered and accepted.

C. The rights and remedies of Buyer in this Article are in addition to any other rights and remedies provided by law or in equity, or under this Order.

D. If Buyer terminates this Order for Default, Buyer will not reimburse Seller for any costs incurred for work performed after the date of termination.

## **19. Set-Off**

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

## **20. Disputes Under This Order**

A. This Order shall be interpreted under the laws of the State of Missouri, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.

B. The Parties shall attempt amicably to resolve all disputes arising from or related to this Order. If the Parties are unable to resolve amicably such a dispute within a reasonable time, either Party may seek adjudication of the dispute in a court of competent jurisdiction in the State of Missouri, unless such dispute is governed by Article 21 (Disputes Under a Government Prime Contract).

C. Pending resolution or settlement of any dispute arising under this Order, Seller shall proceed diligently as directed by Buyer with the performance of this Order.

## **21. Disputes Under a Government Prime Contract**

A. If this Order is placed under a Government prime contract, it is subject to a disputes clause that governs the resolution of questions of law or fact relating to the prime contract. All Seller claims, controversies, or disputes concerning matters that pertain to disputes cognizable under the disputes clause of the prime contract shall be governed by this Article, and Seller shall provide Buyer with a timely and detailed written notice of any such claims or controversies.

B. If a Government Customer interprets any provision or requirement of an applicable prime contract, and the same or substantially similar provision or requirement is contained in this Order, such interpretation shall be binding between Buyer and Seller.

C. Any contracting officer's final decision relating to this Order or the Seller's performance shall be conclusive and binding upon the Seller unless appealed and reversed as provided below.

i. Buyer may elect to appeal the final decision pursuant to the prime contract's disputes clause. In such instances, Seller shall provide Buyer with reasonable assistance in the prosecution of such appeal, including reasonable access to the Seller's personnel and non-privileged documents.

ii. In the event Buyer elects not to appeal any final decision pursuant to the prime contract's disputes clause, Buyer shall notify the Seller in writing within 30 Days of Buyer's receipt of the final decision. If, within 10 Days of receipt of Buyer's notice of a decision not to appeal any such



final decision, Seller requests in writing that Buyer appeal the contracting officer's final decision, Buyer shall do so at the sole expense of the Seller, provided that such an appeal would not be in violation of any statute, regulation, or Buyer contractual obligation and provided further that Seller provide any and all information requested by Buyer to justify, verify, or support Buyer's certificates required by the disputes clause or statute. If Buyer appeals the dispute on Seller's behalf pursuant to this Article, Seller shall provide to Buyer advance copies of all briefs and other documents that it will request Buyer to file on its behalf and shall provide such other information as Buyer may request. Buyer may participate in and consult on any and all parts of the disputes process, including negotiations and alternative dispute resolution. Seller shall reimburse Buyer for all reasonable legal and attorneys' fees that Buyer incurs under this Subsection.

D. As used in this provision, the term "appeal" includes any and all proceedings taken by Seller under this provision before any board of contract appeals or federal court.

## **22. Indemnification**

In addition to any other indemnification provision of this Order, Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, and employees, from any and all claims, liabilities, losses, offsets, damages, costs (including interest), cost or price reductions, and expenses, including attorneys' fees--

- i. for actual or alleged (a) injury to or death of any person, (b) damage to any property, or (c) violation of any law, ordinance, or regulation, arising from or related to Seller's (or Seller's subcontractors') performance of work in connection with this Order (including, if applicable, Seller's violation of the Truth in Negotiations Act or any implementing or comparable regulation, including FAR Part 15);
- ii. for any civil or criminal penalty or fine incurred by Buyer which is caused to any degree or any extent by Seller, its employees, agents, representatives, suppliers, or subcontractors;
- iii. for certified cost or pricing data submitted by Seller or its lower-tier subcontractors that is not accurate, current or complete as certified by Seller;
- iv. for the failure by Seller or its lower-tier subcontractors to disclose and consistently follow applicable cost accounting practices and standards or otherwise comply with pertinent parts of the FAR, applicable agency supplements thereto, and standards and regulations promulgated by the Cost Accounting Standards Board;
- v. arising out of or relating to Seller's failure to comply with the provisions of the Anti-Kickback Act or FAR 52.203-7;
- vi. arising out of or relating to Seller's failure to comply with 52.203-13, Contractor Code of Business Ethics and Conduct, if applicable to this Order; and/or
- vii. arising out of or relating to certificates or certifications Seller provided to Buyer under or related to this Order.

## **23. Contract Cost Principles and Procedures**

Seller agrees that to the extent applicable, costs allocated to this Order shall be in full compliance with Subpart 31.2 of the FAR (Subpart 31.3 for Educational Institutions) and DFARS Subpart 31.2. In the event such compliance is not maintained, Seller agrees to compensate Buyer to the full extent of any prices or costs, including any penalties or interest that are determined by Customer to be unallowable or unreasonable or not allocable, under Buyer's contract with its Customer.

## **24. Design Changes**

A. During performance of this Order, Seller shall not make any changes in the design of Goods to be furnished by Seller under the Order without advance written notification to and written approval of Buyer.

This requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

B. Buyer approval of any design change shall not exempt Seller from compliance with any of these Terms.

## **25. Export Control**

Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the United States pertaining to the export of any hardware, software, defense service, information or technical data provided by, through or with the cooperation of Buyer in the performance of this Order, whether in the United States or abroad. This Order may involve information or items that are subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) and that may not be released to Foreign Persons inside or outside the United States without the proper export authority.

The ITAR defines a "Foreign Person" as any person who is not a U.S. citizen, a lawful permanent resident as defined by 8 USC § 1101(a)(20), or a protected individual as defined by 8 USC § 1324b(a)(3). Foreign Person is also defined as a corporation, a business, an association, a partnership, or any other entity that is not incorporated or organized to do business in the United States and as international organizations, foreign governments, and any agency or subdivision of foreign governments (*e.g.*, diplomatic missions).

Seller further agrees that it will not export or re-export, directly or indirectly, any hardware, software, defense service, information or technical data provided by, through or with the cooperation of Buyer to any Foreign Person, including persons employed by or associated with, or under contract with Seller or Seller's lower-tier suppliers without the prior written consent of Buyer and without first obtaining any required export license or other approval.

In addition, should Seller participate in the performance of this Order at Buyer's facilities, Seller shall inform Buyer in advance in writing of the country of citizenship (or countries, in the case of dual citizenship) of each Foreign Person employee, agent, or representative of Seller or of Seller's suppliers prior to such person being allowed access to Buyer's facilities. Seller's and Seller's suppliers' Foreign Person employees, agents, or representatives shall not participate in the performance of this Order at Buyer's facilities without Buyer's written consent.

Seller shall comply with the registration requirements of the International Traffic in Arms Regulations at 22 CFR §122.1, as applicable.

Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees and other expenses arising or resulting from Seller's failure to comply with this clause.

## **26. Compliance with Laws**

Seller shall comply with the applicable provisions of all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder, and such compliance shall be a material requirement of this Order.

## **27. Notification of Employee Rights Under Federal Labor Laws**

Seller shall comply, as applicable, with the requirements of 29 CFR Part 471 -- Notification of Employee Rights Under Federal Labor Laws, and 29 CFR Part 471, Appendix A to subpart A is incorporated by reference into this Order with the same effect as though set out in full text herein. Seller, by accepting this Order, hereby certifies compliance with the requirements of 29 CFR Part 471.

## **28. Duty to Proceed**

Except as expressly authorized in writing by Buyer, no failure of Buyer and Seller to reach agreement with respect to any dispute relating to or arising under this Order shall excuse Seller from proceeding diligently with the performance of the work required by this Order.

## **29. Insurance**

For the term of this Order (including any warranty period), Seller shall at its own expense, maintain and carry in full force and effect commercial general liability insurance (including product liability) in a sum no less than \$500,000.00 and all-risk property insurance covering any of Buyer's property in Seller's possession or control for its full replacement value with financially sound and reputable insurers. Upon Buyer's reasonable request, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage specified in this Article. Seller shall provide Buyer with 20 Days' advance written notice in the event of a cancellation or material change in such insurance policy. Seller waives and Seller shall cause its insurers to waive, any right of subrogation or other recovery against Buyer and its insurers.

## **30. Certificates and Certifications**

A. Seller shall furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Article, the word "certificate" shall include any plan or course of action or recordkeeping function.

B. Further, Seller certifies that each good provided under this Order complies with all country-of-origin requirements and all cargo-transportation requirements set forth in this Order.

C. The Seller also certifies that the organization or any of its principals are not presently debarred, suspended, proposed for debarment or declared ineligible for the award of contracts by any Federal agency. In the event Seller is proposed or debarred by any Federal agency during the term of this Order, Seller shall notify Buyer's contractual representative immediately in writing.

## **31. Incorporation of Supplemental Terms & Conditions**

A. Unless explicitly provided for otherwise on the face of this Order, the clauses set forth by citation in the Supplemental Terms and Conditions, in Supplement 1 and Supplement 2 are clauses from the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement that are incorporated by reference into this Order with the same force and effect as though set out in full text herein.

B. The clauses in effect on the date of this Order are the versions incorporated. To the extent that an earlier version or an alternate of any such clause is included in P2's prime contract or higher-tier subcontract under which this Order is issued, the date of the clause and/or alternate as it appears in such prime contract or higher-tier subcontract shall be controlling and the version incorporated herein. The FAR and DFARS clauses included in Government prime contracts is publicly available, and Seller acknowledges that Seller has the ability to determine the applicable prime contract or higher-tier clauses prior to accepting the Order or can otherwise request such information from P2 prior to accepting the Order.

C. In all such clauses, unless the context of a clause requires otherwise, the term "Contractor" shall mean Seller, the term "Contract" shall mean this Order, and the term "Government" "Contracting Officer" and equivalent phrases shall mean Buyer and Buyer's Purchasing Representative, respectively. It is

intended that the referenced clause shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer, to insure Seller's obligations to Buyer and to the United States Government, and to enable Buyer to meet its obligations under its prime contract or subcontract.

D. Seller shall include all such clauses in the Supplemental Terms and Conditions in contracts with or orders to lower-tier subcontractors or suppliers, to the extent required by the terms of those clauses or as necessary to carry out Seller's obligations.

### **32. Order of Precedence**

A. In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following descending order of precedence: (i) typed provisions set forth on the face of this Order; (ii) documents incorporated by reference on the face of this Order; (iii) the Terms of this Order, including the Supplemental Terms and Conditions; (iv) the Statement of Work; and (v) specifications attached to this Order or incorporated by reference. Buyer's specifications shall prevail over any specifications of Seller.

B. In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples (whether or not approved by Buyer), and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller shall, before proceeding, consult Buyer, whose written interpretation shall be final and binding on the Parties.

### **33. Construction**

The construction of this Order shall be governed by the law specified in the article entitled "Disputes Under This Order." The title designations of the numbered articles and provisions to this Order are for convenience only and shall not affect the interpretation or construction of this Order. Notwithstanding any other provisions of these terms and conditions, upon prior written notice to Buyer and to the extent that such use will not interfere with Seller's performance of this Order between Seller and Buyer, Seller, with the Customer's written authorization, may use any furnished property, data, information or other items, which the U.S. Government owns and/or for which it has the right to authorize use on other U.S. Government contracts or subcontracts.

### **34. Assignment and Subcontracting**

Seller shall not sell, assign, or in any manner transfer this Order or its rights, duties, and obligations under this Order without first obtaining the written consent of Buyer. This prohibition includes transfers of obligations to subcontractors. Any attempted assignment without such consent shall be void. The foregoing shall not apply to circumstances that result only in a change of Seller's name. Notwithstanding the foregoing, in the event of an approved sale, assignment or transfer as provided hereunder, Seller shall remain liable, jointly and severally, to Buyer for all obligations arising under or resulting from this Order.

### **35. Notices**

All notices required or permitted to be sent by either Party shall be deemed sufficiently given when delivered by hand delivery or sent by electronic mail where receipt is confirmed, or when delivered via a recognized overnight courier service or certified mail with a return receipt, to the Parties at the addresses shown on the front of this Order for each Party and to the attention of the individual who enters into this Order on behalf of the Party to whom the notice is sent. All notices shall be deemed given (i) on the date of delivery if delivered by hand or sent by electronic mail, (ii) on the next business day if sent by recognized overnight courier service and (iii) on the third business day following the date sent by certified mail with a

return receipt. Either Party may designate, in writing, a different manner of address for notices under this Order.

**36. Survival**

Seller's obligations under the warranty, proprietary information, Buyer's property, no public announcement or trademark use, indemnification, and intellectual property provisions of this Order and all provisions regarding disputes (including those pertaining to choice of law, venue, and the prime contract) shall survive completion or any earlier termination of this Order.

**37. Waiver, Remedies, and Severability**

A. The failure or delay of Buyer to insist on performance of any provision of this Order, or to exercise any right or remedy available under this Order, shall not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this Order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

B. Unless otherwise expressly stated in this Order, the rights and remedies of both Parties hereunder shall be in addition to their rights and remedies at law or in equity; provided, however, that in no event shall Buyer be liable to Seller for any anticipatory profits or for any special (including multiple or punitive), indirect, incidental, or consequential damages howsoever arising.

**38. DPAS Priority Rating**

If so identified on the face of the Order, this Order is a "rated order" certified for national defense use, and Seller's acceptance of this Order constitutes acceptance of requirements under the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

**39. Entire Agreement**

The Parties hereby agree that this Order, including any exhibits, attachments and documents incorporated by reference, constitutes the entire agreement between Buyer and Seller, and shall supersede and replace any and all prior representations, agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order, whether oral or written. No amendment or modification of this Order shall be binding upon either Party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller.

## Supplement 1

### Federal Acquisition Regulation (FAR) Clauses

The full text of all clauses may be found at 48 CFR Part 52.

<b>FAR Reference</b>	<b>Title of Clause</b>
52.203-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-7	Anti-Kickback Procedures
52.203-8	Cancellation, Rescission, and Recovery of Funds for illegal or Improper Activity
52.203-10	Price or Fee Adjustment for illegal or Improper Activity
52.203-12	Limitation on Payments to Influence Certain Federal Transactions
52.203-13	Contractor Code of Business Ethics and Conduct ( <i>if the Order exceeds the threshold specified in FAR 3.1004 on the date of the Order and has a performance period of more than 120 days</i> )
52.203-14	Display of Hotline Poster(s)
52.203-15	Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (if the Order is funded under the Recovery Act)
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards
52.204-19	Incorporation by Reference of Representations and Certifications.
52.204-21	Basic Safeguarding of Covered Contractor Information Systems (unless the Order is for a commercially available off-the shelf item, if flowdown is required by FAR 52.204-21)
52.204.23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
52.209-9	Updates of Publicly Available Information Regarding Responsibility
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations
52.211-5	Material Requirements
52.211-15	Defense Priority and Allocation Requirement
52.215-2	Audit and Records –Negotiations
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data – Modifications
52.215-13	Subcontractor Certified Cost or Pricing Date –Modifications
52.215-14	Integrity of Unit Prices
52.219-8	Utilization of Small Business Concerns (if the Order offers further subcontracting opportunities, unless the Seller is a small business concern, if the Order exceeds the applicable threshold specified in FAR 19.702(a) on the date of the Order, the Seller must include this clause in lower-tier subcontracts that offer subcontracting opportunities)
52.222-3	Convict Labor
52.222-19	Child Labor – Cooperation with Authorities and Remedies
52.222-21	Prohibition of Segregated Facilities
52.222-26	Equal Opportunity
52.222-35	Equal Opportunity for Veterans

52.222-36	Equal Opportunity for Workers with Disabilities
52.222-37	Employment Reports on Veterans
52.222-40	Notification of Employee Rights Under the National Labor Relations Act
52.222-50	Combating Trafficking in Persons <i>(including any alternates, as specified)</i>
52.222-54	Employment Eligibility Verification
52.222-25	Minimum Wages under Executive Order 13658 <i>(if flowdown is required in accordance with FAR 52.222-55(k))</i>
52.222-62	Paid Sick Leave Under Executive Order 13706 <i>(if flowdown is required in accordance with FAR 52.222-62(m))</i>
52.223-6	Drug-Free Workplace
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving
52.224-3	Privacy Training <i>(if flowdown is required in accordance with FAR 52.224-3(f)) (including any alternates, as specified)</i>
52.225-5	Trade Agreements
52.225-8	Duty-Free Entry
52.225-13	Restrictions on Certain Foreign Purchases
52.225-26	Contractors Performing Private Security Functions Outside the United States
52.227-1	Authorization and Consent
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
52.227-3	Patent Indemnity
52.227-6	Royalty Information
52.227-11	Patent Rights - Ownership by the Contractor
52.227-14 Alt I	Rights in Data—General (May 2014) – Alternate 1
52.228-7	Insurance - Liability to Third Persons
52.229-3	State and Local Taxes
52.229-3	Federal, State and Local Taxes
52.232-40	Providing Accelerated Payments to Small Business Subcontractors <i>(if flowdown is required in accordance with FAR 52.232-40(c))</i>
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels <i>(if flowdown is required in accordance with FAR 52.247.64(d))</i>

## Supplement 2

### Defense Federal Acquisition Regulation Supplement (DFARS) Clauses

The full text of all clauses may be found at 48 CFR Part 252.

252.203-7002	Requirement to Inform Employees of Whistleblower Rights
252.203-7004	Display of hotline posters
252.204-7000	Disclosure of information
252.204-7003	Control of government personnel work product
252.207-7012	Safeguarding covered defense information and cyber incident reporting
252.204-7015	Notice of authorized disclosure of information for litigation support
252.204-7018	Prohibition On The Acquisition Of Covert Defense Telecommunications Equipment Or Services
252.205-7000	Provision Of Information To Cooperative Agreement Holders
252.209-7004	Subcontracting With Firms That Are Owned Or Controlled By The Government Of A Country That Is a State Sponsor Of Terrorism
252.211-7005	Substitutions For Military Or Federal Specifications And Safeguards
252.211-7006	Passive Radio Frequency Identification
252.211-7007	Reporting Of Government Furnished Property
252.223-7001	Hazard Warning labels
252.223-7008	Prohibition of Hexavalent Chromium
252.223-7006	Prohibition On Storage, Treatment, And Disposal Of Toxic Or Hazardous Materials
252.225-7001	Buy American and Balance of Payments Program – Basic
252.225-700	Qualifying Country Sources As Subcontractors
252.225-7005	Identification Of Expenditures In The United States
252.225-7012	Preference For Certain Domestic Commodities
252.225-7013	Duty-Free Entry - Basic
252.225-701	Trade Agreements - Basics
252.225-7048	Export-Controlled Items