

# Liquid Measurement Systems, Inc.

## STANDARD TERMS & CONDITIONS

**1. ACCEPTANCE AND AMENDMENTS:** This purchase order constitutes an offer by Liquid Measurement Systems, Inc. (“Buyer”) to purchase from Seller the goods and/or services referenced in this purchase order exclusively under these terms and conditions. Acceptance of this purchase order is expressly limited to these terms and conditions. No amendment, modification or waiver of any of these terms and conditions shall be effective against Buyer, except as set forth in writing, and signed by Buyer’s authorized representative. Terms and/or conditions proposed by Seller in its acceptance, or otherwise, which are additional to or different from these terms and conditions are objected to, without further notification from Buyer, and shall not become a part of this purchase order. All specifications, drawings and other data referred to in this purchase order, or submitted by Seller to Buyer prior to the date of this purchase order concerning goods or services purchased, are hereby made a part of the purchase order as if fully set forth herein.

This purchase order shall be deemed accepted by Seller, and shall constitute the entire agreement between the parties with respect to the subject hereof, upon any of the following: (a) Seller’s acknowledgement of the purchase order; (b) Seller’s commencement of performance; (c) Seller’s acceptance of any payment under this purchase order; or (d) Seller’s failure to deliver written notice of rejection to Buyer within ten (10) days of receipt of this purchase order.

**2. FLOW DOWN REQUIREMENTS:** The Seller shall assure all relevant purchase order requirements are flowed down to its sub-tier suppliers. The Seller’s sub-tier suppliers are required to comply with the same specifications and requirements found in this contract.

**3. QUALITY MANAGEMENT SYSTEM:** Seller shall establish and maintain a quality assurance system acceptable to Buyer for the goods and/or services purchased under this contract. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller’s approved inspection/quality control system and to advise Buyer promptly of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.

The Seller shall notify Buyer of any changes to its quality assurance system certification, registration or accreditation within (5) business days of receiving notification of the change or finding. Such changes include, but are not limited to suspension, expiration, issuance of a new certification, registration or accreditation.

**4. INSPECTION:** Seller shall maintain an inspection system acceptable to the Buyer. Seller shall, upon request, furnish Buyer with a report of details of materials and workmanship inspections, certified by an authorized representative of the Seller. Seller shall comply with any specifications incorporated on the face of, or by reference in, or attachment to the purchase order, and with any applicable US military or government specifications or industry standards.

Seller shall record inspection and test status of product throughout product realization. Seller shall establish controls for stamps, electronic signatures, passwords, and other acceptance authority media, when used.

**5. CERTIFICATE OF CONFORMANCE:** Certificates of Conformance are required for all processes and materials. Buyer’s part number and drawing number are required on all process C of C’s. Seller shall furnish a copy of any regular inspection report required with all shipments.

**6. RECORD RETENTION:** All records generated as a result of this contract shall be retained by Seller, and its sub-tier supplier(s), for at least five (5) years from the date of completion of the contract.

**7. OBSOLESCENCE MANAGEMENT:** Seller shall maintain an Obsolescence Management Program that includes ongoing review and identification of actual and potential obsolescence risks, including but not limited to, obsolescence of components, assemblies, sub-assemblies, and material for the goods. Seller shall perform all testing, qualification, non-recurring activities, and engineering services required to maintain its Program. In no event shall resolving any obsolescence risk 1) entitle Seller to a price increase, 2) entitle Seller to make a claim for equitable adjustment, or 3) waive, relieve or release Seller from fulfilling all its duties under the purchase order including, without limitation, compliance with specifications and delivery dates.

**8. COUNTERFEIT GOODS:** Seller shall not furnish Counterfeit Goods to Buyer, defined as goods or separately-identifiable items or components of goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller's 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, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this purchase order.

Seller shall implement a plan, appropriate to the goods being furnished to Buyer, to ensure that goods are not Counterfeit Goods. Seller's plan shall include, but is not limited to: the direct procurement of items from OEMs or authorized suppliers; approved testing or inspection to ensure the authenticity of items; and, when items are to be procured from non-authorized suppliers, appropriate certificates of conformance from such non-authorized suppliers that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.

With regard to any electronic parts procured by or on behalf of Seller for the Goods, Seller shall have a counterfeit electronic parts control plan that meets the intent of SAE standard AS5553A (Fraudulent or Counterfeit Electronic Parts: Avoidance, Detection, Mitigation, and Disposition).

If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller's expense, such Counterfeit Goods with OEM or Buyer-approved goods that conform to the requirements of this purchase order. For confirmed Counterfeit Goods, Seller shall implement GIDEP (Government and Industry Data Exchange Program) notification no later than sixty (60) days after discovery. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic Goods after Counterfeit Goods have been replaced.

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 clause.

**9. CHANGES:** Buyer reserves the right at any time prior to 7 days before the delivery date of this order, by written notice to Seller, to make changes to the drawings, designs or specifications of the goods ordered, the method of packing and shipping, the time, place or method of delivery, the quantity of goods ordered or the work covered hereby. If any such changes affect Seller's cost and/or delivery schedule, Seller shall notify Buyer immediately,

and, in the case of an increase in Seller's cost, within twenty (20) days of such notice Seller shall submit a detailed cost break-down comparing original requirements and costs to the changed requirements and costs. The parties will then discuss an equitable adjustment in purchase order price, delivery schedule or both; however, no adjustment will be binding on Buyer unless evidenced by a purchase order, change notice or revision to this purchase order signed by an authorized Buyer representative. Nothing in this clause shall excuse Seller from proceeding with this purchase order as changed.

**10. MATERIAL SUBSTITUTION PROHIBITION:** Unauthorized material substitutions are not permitted on Buyer's Goods. Unauthorized substitution includes any deviation from the engineering definition of a raw material. Engineering definition includes Buyer design drawing and applicable specifications, product specification, form, size, shape, chemistry, melt method, origin, temper/condition, product testing or surface finish. Alternate materials specified in the engineering definition do not constitute unauthorized material substitution. Seller shall notify LMS of changes to product, materials or manufacturing process, and location of manufacture.

**11. PACKING, MARKING AND SHIPPING, PACKING SLIPS:** Seller shall pack, mark and ship all goods in accordance with the requirements of this purchase order and good commercial practices, and in a manner which will permit the securing of the best transportation rates. Damage to any article resulting from improper packaging will be charged to the Seller. No additional charges will be allowed for containers, crating, boxing, bundling, dunnage, drayage, storage or transportation thereof, unless stated in this purchase order. Packing slips must accompany all shipments. The Buyer's count will be accepted as final and conclusive on all shipments not accompanied by packing slips. The Buyer's purchase order number and Seller's packing slip number, description and count must appear on all invoices, packages, and bills of lading. Packing peanuts are not to be used for any shipments due to FOD (foreign object debris) concerns. Seller shall mark containers or packages with necessary lifting, loading, and shipping information.

**12. DELIVERY:** Seller shall deliver in accordance with the delivery date(s) and quantities specified in this purchase order. Delivery shall not deviate from the purchase order schedule unless expressly authorized in writing by an authorized Buyer representative. If Seller's delivery of the purchased goods or services is not made as specified herein, Buyer reserves the right, without liability and in addition to any other rights and remedies, (i) to cancel this purchase order and to procure substitute goods or services, and charge Seller with any loss incurred, including lost profits and special damages, (ii) to deduct from subsequent payments, the damages and costs incurred by Buyer arising from Seller's untimely delivery or non-conforming goods or services, at Buyer's sole discretion. Buyer shall have the right to reject any goods or services which are tendered by Seller in advance of the date scheduled for delivery, to accept early delivery of goods or services and defer payment until after the scheduled delivery date, or to accept early delivery of goods and place such goods in storage at Seller's expense until the scheduled delivery date. Buyer may return any overshipments to Seller at Seller's risk and expense.

Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this purchase order. Such notice shall include a proposal of revised schedule, but such notice and proposal, or Buyer's receipt or acceptance thereof, shall not constitute a waiver to Buyer's rights and remedies hereunder.

**13. FORCE MAJEURE:** Seller shall be liable for any failure or delay in performance in connection with the purchase order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control, and without its fault or negligence, provided Seller gives Buyer, within three (3) days of Seller's learning of such cause, written notice to the effect that a failure or delay by the Seller will occur or has occurred (an "Excusable Delay"). If a failure or delay in performance is caused by an event affecting any of the Seller's sub-tier suppliers, such failure or delay shall not be excusable except unless such event is an Excusable Delay as defined above and the good or service to be provided by such sub-tier supplier is not obtainable by Seller from other sources in time for timely delivery of the goods or services to the Buyer. Buyer may cancel, without liability to Seller, its purchase of any Goods affected by Seller's failure or delay in performance and, if the delay is

expected to last for a period that could impact deliveries to Buyer's Customers, Buyer may cancel, without liability, any portion of or the entire order.

**14. SELLER'S WARRANTIES:** Seller warrants that all goods and services provided hereunder will conform to Buyer's instructions, specifications, drawings and data current as of date of this purchase order (unless otherwise specified in writing by Buyer), will be merchantable, free from defective materials or workmanship and will be fit for Buyer's purposes. Seller further warrants that the goods and services furnished under this purchase order shall conform to all representations, affirmations, promises, descriptions, samples or models which are a part of this purchase order. Seller agrees that these warranties shall survive acceptance of the goods and services. Seller further warrants that all services performed for or on behalf of Buyer will be performed by qualified personnel, in a competent, workmanlike manner, and shall be free from faults and defects. The warranties stated in this section are hereby extended to, and shall inure to the benefit of, Buyer and Buyer's affiliates, subsidiaries, successors, assigns and direct and indirect customers to whom the goods and services provided hereunder may be sold or transferred (jointly and severally "Buyer Entities").

In the event of breach of warranty, Buyer shall, in addition to the remedies identified in Section [Deliveries], be entitled to all rights and remedies available at law, including but not limited to credit, replacement or repair of nonconforming goods at Buyer's option, and cost to return the goods. In the event that defects in goods provided hereunder are not reasonably detectable by Buyer at incoming inspection, Seller shall also reimburse Buyer for 1) costs of removal of the goods from any component, assembly or system into which the goods may have been incorporated, and reinstallation of non-defective goods, and 2) for any incidental and consequential damages caused by such nonconforming goods including, but not limited to costs, expenses and losses incurred by Buyer: (a) in inspecting, sorting, repairing or replacing such goods; (b) resulting from production interruptions; (c) conducting any recalls or other corrective actions and (d) claims for personal injury or property damage.

**15. BUYER'S PROPERTY:** Unless otherwise stated to the contrary in this purchase order, all Special Property, and all tangible and intangible property furnished by Buyer to Seller, or based on or derived from Seller's confidential or proprietary information, or produced or purchased by Seller at Buyer's expense, for use in Seller's performance of this purchase order, and any replacement thereof, is and shall remain the exclusive property of Buyer. For purposes of this purchase order, "Special Property" includes, without limitation, dies, fixtures, molds, patterns, gauges, test equipment, information or similar items used in Seller's performance hereunder, that are especially acquired for Seller's performance hereunder or of such specialized nature that absent substantial alteration, their use is limited to the production of the goods or the rendering of the services referenced in this purchase order. Absent express agreement to the contrary, the amounts charged by Seller pursuant to this purchase order shall include payment for all Special Property. Hereinafter, Special Property and all property furnished to Seller by Buyer are collectively referred to as "Buyer's Property."

Seller shall not sell, encumber, transfer, assign, dispose of or modify Buyer's Property, and shall not use Buyer's Property for any purpose other than in the performance of this purchase order without Buyer's prior written consent.

At all times while Buyer's Property is in Seller's custody or control, Buyer's Property shall be held at Seller's risk and fully insured at Seller's expense at replacement cost payable to Buyer, and Seller shall provide routine maintenance at its expense.

Seller agrees that Buyer's Property shall remain personalty and shall not become a fixture attached to realty. Upon reasonable notice, Seller shall allow Buyer's representative to inspect Buyer's Property upon Seller's premises at any time. Seller hereby authorizes Buyer to file a form UCC-1 financing statement or its equivalent to enable Buyer to make its ownership rights in Buyer's Property of public record.

At any time upon the request of Buyer and in accordance with Buyer's instructions, Seller shall prepare for shipment, package and deliver Buyer's Property in good condition and at Seller's cost F.O.B. Seller's business location.

If provision is made on the face of this order for the furnishing by the Buyer to the Seller of any materials to be used in connection with the performance of this order, title to any such material shall remain in Buyer. The risk of loss or damage to such materials from any other cause from the time of delivery to the Seller to the time of redelivery to the Buyer shall be borne by Seller. Upon completion of this order, any of the materials furnished by Buyer and not consumed in performance of the order, shall be disposed of in accordance with instructions from Buyer. When Buyer furnishes any material, in whole or in part, for the manufacture of parts or assemblies, Seller shall not substitute material from any other source nor shall Seller alter its physical or chemical properties except in accordance with applicable Buyer specifications or except with Buyer's written approval. All Electrostatic Discharge Sensitive Devices must be properly marked and labeled as such. Failure to comply will result in rejection of the parts upon receipt.

**16. INSURANCE:** Seller represents that it has and will maintain the following types of insurance coverage and agrees to furnish certificates of insurance showing that Seller has insurance coverage in adequate amounts: (i) Workers Compensation - Statutory limits for the state(s) in which the work will be performed, (ii) General/Products Liability, (iii) Umbrella Liability, and (iv) Automobile Liability (Required only when Seller's vehicle will enter Buyer's premises).

Said certificates of insurance shall set forth the amount of coverage, the number of the policy and the date of expiration. Upon Buyer's request, Seller shall name Buyer or the Buyer Entities as an additional insured on its policies. If Seller is a self-insurer for workers compensation purposes, Seller shall provide Buyer with a copy of the self-insured certificate issued by the state(s) where work will be performed. Compliance by Seller with the insurance requirements stated in this clause shall in no way affect Seller's duty to indemnify Buyer under the Indemnification clause herein.

If this purchase order includes the sale of goods manufactured in whole or in part to Seller's designs or specifications, Seller agrees to provide to Buyer, upon request, a current certificate of product liability insurance and a supplier's endorsement naming Buyer as an additional insured on Seller's policy.

**17. INDEMNIFICATION:** Seller agrees to indemnify, defend and hold Buyer Entities harmless from and against any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogation, costs and expenses including court costs and attorneys fees, incurred by Buyer Entities arising from or relating to goods delivered or to services or labor performed pursuant to this purchase order, or breach of any of Seller's representations or obligations under this purchase order (hereinafter collectively referred to as "Claims") including Claims which are made by any third party including employees, workers, servants or agents of Seller or its subcontractors. Seller further agrees upon receipt of notification, to promptly assume full responsibility for the defense of any and all Claims which may be brought against the Buyer Entities, and in such event, Seller shall not consummate any settlement without Buyer's prior written consent. In the event "Buyer's Property", as defined in the Buyer's Property clause hereof, is used by Seller in the performance of this purchase order, Buyer's Property shall be considered to be in the full custody and control of Seller during the period of use by Seller. Seller's obligations pursuant to this Indemnification clause shall survive the completion of performance and the expiration or termination of this purchase order.

**18. ACCESS TO FACILITIES, AUDIT AND INSPECTION:** If this purchase order (a) includes specifications, or (b) is for the procurement of either (i) goods to be incorporated into Buyer's products or (ii) services to be used in the production of Buyer's products, then Seller's (and Seller's subtier suppliers who provide goods or services) plant, books and records pertinent to this or any related order (to the extent consistent with applicable laws and regulations) shall at all practical times be subject to review, inspection and audit by Buyer, its authorized

representative and any authorized representative of Buyer's customer and regulatory authorities to the extent necessary to verify compliance with Buyer's specifications or to enable Buyer to comply with its obligations to its customer(s).

**19. REMEDIES:** Buyer's remedies described herein shall be cumulative and in addition to any remedies allowed by law or in equity.

**20. PROPRIETARY RIGHTS:** All information (including materials that contain information) relating to this purchase order or to the goods or services to be provided hereunder which has been disclosed to Seller by or on behalf of Buyer (whether such information is owned by Buyer or by any other entity with whom Buyer is doing business) or which will be developed in the course of Seller's performance under this purchase order specifically for Buyer (collectively referred to as "Information"), has been and will be received and held by Seller in confidence. Such Information includes, but is not limited to, trade secrets, drawings, plans, designs, software code and software development plans and requirements, specifications, manufacturing, research and development data, inventions, know-how, processes, procedures, costs, suppliers, methods, sales, customer information and lists, financial data and business plans. Seller will not disclose the Information to other parties and will not use the Information for any purpose other than for the direct benefit of Buyer. Seller will acquire no right in or to such Information, and Seller will promptly return the Information to Buyer and discontinue all use of the Information upon expiration or termination of this purchase order or at Buyer's written request. Seller will not disclose to Buyer or use in the course and scope of Seller's performance hereunder any information of other entities that Seller does not have a lawful right to use or disclose. Seller will limit access to the Information to only those employees of Seller having a need to know such Information, and all such employees of Seller having access to Information shall be made aware of and agree to the obligations under this Proprietary Rights clause.

Any invention or development or copyrightable subject matter conceived, first reduced to writing, first reduced to practice or made by Seller, either solely or with others, in the course of Seller's performance under this purchase order is hereby assigned to Buyer, if such invention or development or copyrightable subject matter (i) results from services performed for Buyer, or (ii) is made using Buyer's time, materials, facilities or Information. All such copyrightable subject matter will be a work made for hire. Seller will disclose such inventions, developments or copyrightable subject matter promptly to Buyer and will cooperate with Buyer during and after the term of this purchase order in filing and prosecuting any patent or copyright applications thereon and in documenting ownership thereof by Buyer. Seller agrees that the payments pursuant to this purchase order are full and complete compensation for all obligations assumed by Seller hereunder, and the assignment of inventions or developments or copyrightable subject matter does not entitle Seller to any additional compensation.

The obligations of this Proprietary Rights clause shall survive in perpetuity.

**21. INDEMNITY FOR INFRINGEMENT:** Seller agrees upon receipt of notification, to promptly assume full responsibility for defending any claim, suit, action, or proceeding which may be brought against the Buyer Entities which alleges that any goods or services provided by Seller pursuant to this purchase order infringe any patent, trademark, copyright, trade secret or other proprietary right owned by a third party. Seller further agrees to indemnify Buyer against any and all expenses, losses, royalties, lost profits and damages, including court cost and attorney's fees, resulting from such claim, suit, action or proceeding, including any settlement, decree or judgment entered therein. Buyer may at its option, be represented and actively participate through its own counsel in any such claim, suit or proceeding, including any settlement, decree or judgment entered therein. Seller's obligations pursuant to this Indemnity for Infringement clause shall survive in perpetuity. Notwithstanding the foregoing, Seller shall have no obligation to defend or indemnify Buyer with respect to any claim which is directed to items delivered pursuant to this purchase order, the designs for which were specified entirely by Buyer.

**22. TERMINATION FOR CONVENIENCE:** In addition to any other rights, Buyer further reserves the right to terminate Seller's performance under this purchase order, in whole or in part, at any time, without cause, by giving written notice of termination, whereupon Seller will cease performance on the date and to the extent specified in the notice and will take such actions as are reasonably necessary to protect property in Seller's possession in which Buyer has an interest until Buyer has instructed Seller on disposition of such property. Seller will promptly advise Buyer of any items acquired in anticipation of completion of its performance and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding the disposition of such items. Seller will submit all claims resulting from such termination within sixty (60) days of its receipt of such notice. Buyer shall have the right to inspect, upon reasonable advance notice, Seller's records, facilities, work and materials relating to its performance or anticipated performance of the purchase order, for the purpose of establishing the value of Seller's claims. Buyer will pay Seller, without duplication, the purchase order price for finished work accepted by Buyer, and the cost to Seller of work in progress, and raw materials allocable to the terminated work based on Buyer's audit of Seller's records, using generally accepted accounting principles; however, the amount due Seller shall be reduced by the following:

- a. The market value or cost (whichever is higher) of any items used or disposed of by Seller without Buyer's consent;
- b. The agreed value of any items used or disposed of by Seller with the Buyer's consent; and
- c. The cost of any defective or destroyed materials.

Buyer will make no payments for finished work, raw material or other items fabricated or procured by Seller in excess of the lesser of (i) that ordered; (ii) that for which Buyer has issued shipment releases as of the date of the notice of termination released; or (iii) thirty days supply. Notwithstanding the foregoing, payments under this Termination for Convenience clause shall not exceed the price for the entire performance specified in this purchase order less payments that would otherwise be made to complete performance hereunder. Payment under this Termination for Convenience clause will constitute Buyer's sole and exclusive liability in the event Buyer elects to terminate this purchase order without cause by notice. This Termination for Convenience clause shall not apply to cancellation by Buyer hereunder.

**23. TERMINATION FOR DEFAULT:** Buyer may, by written notice, terminate the purchase order, or any portion thereof, for Seller's default, without any liability or obligation whatsoever to Seller for the portion terminated, in the following circumstances: Seller fails to perform any obligation hereunder, including a delivery obligation; when Buyer has reasonable grounds for insecurity, and Seller fails to provide adequate assurances of performance within ten (10) days following Buyer's demand therefore.

**24. CANCELLATION:** Buyer may cancel this purchase order and Seller's performance hereunder immediately, without incurring liability to Seller: (a) immediately upon (i) Seller's insolvency; (ii) filing of a voluntary petition in bankruptcy by Seller; (iii) filing of an involuntary petition in bankruptcy against Seller; (iv) appointment of a receiver or trustee for Seller; (v) execution or assignment for the benefit of creditors by Seller; or (vi) any comparable event, and (b) immediately upon written notice to Seller in the event of Seller's breach of contract or failure default, as stipulated in the Termination for Default clause herein.

**25. COMPLIANCE WITH LAWS, EXECUTIVE ORDERS, AND REGULATIONS:** Seller warrants that it will comply with all applicable laws, orders, rules, regulations, ordinances and conventions, including without limitation, those that relate to equal employment opportunity, wages, hours and conditions of employment, discrimination, occupational health/safety, motor vehicle safety, and environmental matters. At Buyer's request, Seller shall certify in writing its compliance with the applicable local, state or federal laws. Seller shall indemnify and hold Buyer harmless from and against any loss, cost, damage, expense or liability claim (including attorneys fees and other costs of defense) arising from or relating to Seller's violation of this clause.

**26. ORIGIN OF GOODS:** All goods supplied hereunder shall be manufactured substantially in the United States.

**27. EXPORT CONTROL:** Seller shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, (22 U.S.C. 2778), International Traffic In Arms Regulations (ITAR; 22 C.F.R. Chapter I, Subchapter M Parts 120-130), Export Administration Act (Pub.L.96-72), and applicable Export Administration Regulations.

**28. ASSIGNMENT AND SUBCONTRACTING:** The obligations of Seller under this purchase order may not be assigned or subcontracted, in whole or in part, nor may any assignment of any money due or to become due hereunder be made by Seller without the prior written consent of Buyer, and any prohibited assignment shall be null and void for all purposes. Seller may assign its interest or a security interest in the proceeds of this order pursuant to a bona fide financing arrangement, provided that Buyer receives timely notice, that only one such assignment is made, that the interest so assigned shall not be subject to re-assignment, and that any such assignment is expressly made subject to set off any indebtedness or other claim Buyer may have against Seller.

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

**30. MISCELLANEOUS:**

**30.1 REJECTION/REVOCATION:** Payment for any goods under this purchase order shall not constitute acceptance thereof and Buyer reserves the right to inspect all goods purchased hereunder at Buyer's discretion and at Buyer's option, and to reject nonconforming goods or services, or revoke acceptance of non-conforming goods or services. Buyer furthermore reserves the right to withhold payment for nonconforming goods. At Buyer's option and at Seller's risk and expense, Buyer may return non-conforming goods to Seller, require Seller to grant a full refund or credit to Buyer for non-conforming goods, hold nonconforming goods for disposition by Seller, or rework nonconforming goods to detect and correct nonconformities. In the event of multiple nonconforming goods or services, Seller shall, within 20 days from notice thereof by Buyer, submit a written corrective action report to Buyer. Such report shall identify the root cause of the nonconformance, identity of affected goods and services, and a corrective action plan, for Buyer's review and approval. Buyer shall not be liable for failure to accept any part of the goods or services purchased hereunder if such failure is the result of any cause beyond the control of Buyer including without limitation, fires, floods, acts of God, strikes, differences with employees, casualties, delays in transportation, inability to obtain necessary materials, utility services for machinery, or total or partial shutdown of Buyer's facilities for any cause. Acceptance of any part of the goods ordered hereunder shall not bind Buyer to accept future shipments or waive its right to revoke acceptance of goods previously delivered.

Seller must have a system in place for prompt reporting to Buyer if a product or article has been released from that Seller and subsequently found not to conform to the applicable design data.

**30.2 GOVERNING LAW:** This Contract and any disputes arising out of, or relating to, this Contract shall be governed by the laws of the State of Vermont, without regard to the conflict of law rules thereof, provided that (i) contract provisions that have been incorporated directly from or by express reference to the FAR or FAR supplements, (ii) contract provisions that have been flowed down from a contract with the U.S. Government, and (iii) the Changes and Termination for Convenience articles, shall be construed and interpreted according to the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.



**30.3 DISPUTES:** Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

**30.4 WAIVER/SEVERABILITY:** Buyer's failure to insist upon the performance of any term or condition of this purchase order or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of Buyer's right to demand future performance of such term or condition or to exercise such right in the future. If any term or portion of this purchase order is held to be invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term or portion shall be deemed reformed or deleted as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of this contract shall remain in full force and effect.

**30.5 US GOVERNMENT PROVISIONS:** If this order is placed, in whole or in part, pursuant to a Government prime contract, or subcontract, the following contract clauses as set forth in the Federal Acquisition Regulations (FARs) and the Defense Federal Acquisition Regulations (DFARs) are incorporated herein and are applicable as determined by the type of subcontract, except for those contract clauses from which the Seller is expressly exempt. The term Contractor shall mean Seller, the term Contract shall mean this order, and the terms Government, Contracting Officer, and equivalent phrases shall mean Buyer. All referenced provisions refer to current revisions in effect as of the date of the respective Government contract including any modifications to the prime contract in effect at the time of this purchase order.

## **FAR Part 52**

### **Clause Title**

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