

	PURCHASE ORDER TERMS AND CONDITIONS	Form –
		Rev. 0

PART I - DEFINITIONS

1. **Definitions** The following definitions will apply to all purchase orders:

Contractor or Buyer	Obera LLC (OBERA)
Purchasing Agent	The only individual authorized to commit OBERA (the Buyer)
Subcontractor, Supplier, Seller or Vendor	The legal entity to whom this Purchase Order (P.O.) is issued

PART II - OBERA STANDARD TERMS

2. **Certification of Independent Price Determination.** Seller certifies that the price(s) proposed have been arrived at independently, without consultation, communication, or agreement with any others for the purpose of restricting competition, and that Seller has not and will not knowingly disclose the price(s), directly or indirectly, to any other bidder.
3. **Price Warranty.** Seller warrants that the price(s) charged for the supplies/services specified in this order are equal to or better than the selling price(s) Seller charges its most favored customer for the same or substantially similar items, whether sold to the Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller further agrees that in the event of an announced priced reduction prior to complete shipment of supplies or performance of services, said price reduction shall be passed on to Buyer for supplies remaining to be shipped or services still to be performed.
4. **Payment Terms.** Unless otherwise specified in the Purchase Order, terms of payment are Net 30 days. If a discount for prompt payment of Seller's invoice is allowed, payment shall be made within the allowable period to qualify for such discount. The time allowable for payment shall begin after both: (a) Buyer's receipt of Seller's complete and correct invoice, and (b) delivery of acceptable supplies or performance of satisfactory services.
5. **Quantity.** It is Seller's responsibility to furnish the quantity of supplies/services called for in this Order. No variation in the quantity specified herein will be accepted as compliance with this Order. Buyer reserves the right to return excess shipments at Seller's expense.

6. **Invoices.** All invoices shall be submitted to OBERA Accounts Payable via email

AP@oberallc.com, purchase order number, line item number and details should be listed on all invoices.

Payment of invoices may be delayed pending correction of any errors or omissions.

7. **Assignment/Subcontracting.** Seller shall not assign this Purchase Order, or any rights, interest, or payments, or the performance of any of its duties under this order without the prior written consent of SCM/Buyer. Except for standard commercial items, raw materials, or other supplies identified in Seller's proposal as procured from others, Seller shall not subcontract the complete or any substantial portion of the work without the prior written consent of Buyer. Any attempted or purported assignment/subcontracting by Seller without Buyer's prior written consent shall be void and not binding upon Buyer.



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

- 8. Work on Buyer's or Buyer's Customer's Premises.** If this order requires Seller to perform work on Buyer's or Buyer's customer's premises, Seller shall take all necessary precautions to prevent any injury to persons or damage to property during the progress of such work. Additionally, except to the extent that any injury to persons or damage to property is due solely and directly to Buyer's or its customer's fault or negligence, Seller agrees to indemnify Buyer and its customer against all loss or liability resulting from any act or omission of Seller, its employees, agents, or subcontractors.
- 9. Gratuities.** Seller warrants that is has not offered or given, and will not offer or give to any employee, agent, or representative of Buyer, a payment, gratuity, or kickback for obtaining or rewarding favorable treatment by Buyer with respect to the terms, conditions, price, performance, or award of an Order. A breach of this warranty shall be considered a material breach of the Order and may result in Buyer's termination of the Order and/or notification to Buyer's customer of such breach.
- 10. No Extra Charges.** The total price payable to Seller shall be stated in this Purchase Order. The price shall not be increased to cover any future seller price increases and shall be inclusive of packing, packaging, and cartage, premium transportation charges, reusable containers, service or carrying charges, permits, fees, and licenses, or any other charges whatsoever unless specifically agreed to in writing by Buyer.
- 11. Buyer's Property and Information.** Buyer's property, such as drawings, specifications, data and the like, furnished to Seller for performance of the work shall remain the property of Buyer, shall be considered private and confidential Buyer information, and shall not be used by Seller for its own purposes or given to a third party without the express written consent of the Buyer. Any designs, drawings, dies, molds, tooling, technical data/information, materials, equipment, etc., that Seller makes or buys from others for producing the supplies/services and charges to Buyer's account, shall become Buyer's property, with transfer of full legal and equitable title, immediately upon manufacture or procurement. When practical, all such Buyer property shall be marked as belonging to Buyer, shall be physically segregated from the property of the Seller or third party property located on Seller's premises, and shall be used exclusively to perform the work requirements of this Purchase Order. Upon order completion, all Buyer-furnished property shall be returned to the Buyer in the same condition as received, allowing for reasonable wear and tear, except to the extent that the property has been incorporated into supplies delivered or consumed in the performance of the work. With the prior authorization of the Buyer and Buyer's Customer, the Seller may be permitted to use any Buyer-furnished, Government-owned property/information to furnish supplies or services for direct sale to the Government on a noninterference basis with this Purchase Order. Seller shall be responsible for all loss or damage to Buyer furnished property.
- 12. Seller Contacts with Buyer's Customer and other Vendors.** If Seller is a subcontractor to Buyer under a Buyer prime contract, Buyer shall be responsible for all liaisons and communications with Buyer's customer and Buyer's other vendors for the term of this Purchase Order. Seller shall not communicate with Buyer's customer or Buyer's other vendors regarding this Purchase Order unless authorized to do so by Buyer. This clause does not affect the rights of any government entity to initiate communication with the Seller regarding this Purchase Order, and the Seller shall not be considered in breach of this clause under such circumstances. The Seller shall report such communications to the Buyer as soon as practicable.
- 13. Unauthorized Changes to Supplies/Services.** Upon Buyer's approval of Seller's drawings, designs, specifications, etc., Seller shall make no changes affecting form, fit, or function of the supplies without Buyer's prior written approval. Any approvals by Buyer shall not relieve Seller of responsibility for any errors or deficiencies that may exist, or for performing the work and furnishing the supplies/services in strict accordance with the Purchase Order requirements.



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

- 14. Permits, Fees, and Licenses.** Except as may be otherwise provided in this Order, Seller shall obtain and pay for all permits, fees, and licenses required for the work at no additional charge to Buyer.
- 15. Stop-Work Order.** Buyer may, at any time, by written notice to Seller, stop all or any part of the work hereunder for up to ninety (90) days. Upon receiving a stop-work order, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional costs allocable to such work. If the stop work order results in an increase in price or schedule, the Seller must submit a claim for equitable adjustment within thirty (30) days after the resumption of work.
- 16. Termination for Convenience.** Buyer reserves the right, at any time, in its own best interest, and without liability, to terminate this order in whole or in part, by written notice of termination for convenience to Seller. Seller shall submit a claim for equitable adjustment within thirty (30) days of receipt of the termination notice. If the termination involves only services, Buyer shall be obligated to pay only for services performed before the termination date, plus reasonable administrative costs to prepare the claim. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller's claim.
- 17. Termination for Default.** Buyer may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this order in whole or in part by written notice of default if Seller; (a) fails to deliver the supplies or perform the services within the time specified; (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or (c) fails to comply with any of the other instructions, terms, or conditions of the subcontract. Buyer's right to terminate for default may be exercised if Seller does not cure the failure within ten (10) days after receiving Buyer's notice of such failure. If Buyer terminates this order in whole or in part, Buyer may purchase similar supplies or services from others and Seller shall be liable for any additional costs above the original price for the terminated supplies/services. In the event of a partial termination, Seller shall continue the work not terminated. Seller shall not be liable for any additional costs if failure to perform arises from causes beyond Seller's or Seller's subcontractor's control and without fault or negligence of either of them; provided, however, that the supplies/services to be furnished by Seller's subcontractor (at any tier) were not obtainable from others in time for the Seller to meet the order delivery requirements. Buyer shall pay Seller the order price for any completed supplies/services delivered and accepted. Buyer and Seller shall agree on the amount of payment for manufacturing materials (parts, tools, dies, jugs, planes, drawings, etc.) delivered and accepted by the Buyer. Buyer may withhold from any payments due Seller, any sum necessary in order to protect Buyer against any liability or expenses due to the termination for default. Seller shall provide any supporting information necessary to document the reasonableness of Seller's termination for default claim.
- 18. Failure to Comply.** If Seller fails to comply with any of the Purchase Order requirements, Buyer may exercise its option to terminate the Order for default or invoke applicable warranties for nonconformance. In lieu of this, however, Buyer may waive the Seller deficiency. In return therefore, Seller agrees to negotiate an equitable reduction in the Purchase Order price in such instance.
- 19. Cessation of Production.** If Seller plans to permanently discontinue production of any of the supplies, parts, support services, etc., provided to Buyer hereunder at any time during the useful life of the equipment, Seller shall give Buyer at least six (6) months advance written notification of such discontinuance and, during this time, agrees to accept Buyer's orders for such items.
- 20. Insolvency.** If Seller ceases to conduct normal business operations (including inability to meet its obligations), or if any proceedings under bankruptcy or insolvency laws are brought by or against Seller, or a receiver for Seller is appointed or applied for, or Seller makes an assignment for the benefit of creditors, Buyer may terminate this Order, without liability, except for deliveries previously made and for supplies completed and subsequently delivered in accordance with the terms of the



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

Order. In the event of Seller's insolvency, Buyer shall have the right to procure the balance of this Order from others without liability.

- 21. Performance/Payment Bonds.** The proper and timely submission of any performance and payment bonds required hereunder is a material condition for award/performance of this Order. Seller is not authorized to proceed with the work unless all required bonds have been obtained and are acceptable to Buyer.
- 22. Notice of Labor Disputes.** When an actual or potential labor dispute or other condition delays or threatens to delay the timely performance of this Order, Seller shall immediately notify Buyer in writing. Such notice shall include all relevant information regarding such dispute or other condition. Seller shall insert the essence of this provision in all subcontracts or Purchase Orders issued hereunder.
- 23. Order of Precedence.** The following descending order of precedence shall apply in the event of an ambiguity, discrepancy, or conflict in the documents comprising this Purchase Order: (a) the Purchase Order including the terms and conditions, (b) the Statement of Work, (c) the technical specification, (d) the drawing(s), and (e) any other documents referenced or appended to the Purchase Order. However, in the event of an ambiguity, discrepancy, or conflict in any of the technical requirements of drawings, Seller shall immediately consult Buyer for a resolution.
- 24. Interpretation of Purchase Order.** This Purchase Order and any documents incorporated by reference or attached constitute the parties' complete agreement. No prior representations or agreements, either written or oral, shall be considered to change, add to, or contradict this Purchase Order. Any ambiguity, conflict, or inconsistency in the Purchase Order shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time of contracting.
- 25. Acceptance of Purchase Order.** This Purchase Order supersedes all written or verbal representations and agreements between the parties with respect to the subject matter hereof and becomes a binding agreement, subject to the specific terms and conditions stated herein, upon Seller's acceptance by acknowledgment or commencement of work. This Purchase Order contains the entire agreement of the parties and expressly limits acceptance to the terms and conditions stated. Any terms and conditions proposed by Seller inconsistent with or in addition to the terms and conditions hereof are objected to and void unless agreed to in writing by the Buyer.
- 26. Applicable Law and Disputes.** Regardless of the place of execution or performance of this contract, all disputes between the parties (including without limitation, any controversy, dispute, or other matter arising out of, relating to, or connected with this contract or its performance) shall be governed according to the laws of the Commonwealth of Virginia, without regard to its rules on choice or conflict of laws. Even if a dispute arises, Seller shall proceed diligently with performance of this contract and in accordance with Buyer's instructions; Seller agrees that non-payment to Seller shall not be a material breach of this contract excusing further performance, and Seller's remedy shall be to seek relief in court.

The parties agree that any claim, suit, action, proceeding, or request for injunctive or interim relief concerning any matter between them shall be filed, heard, and resolved exclusively in the U.S. District Court for the Eastern District of Virginia, or in the Circuit Court of Fairfax County Virginia, if the U.S. District Court for the Eastern District of Virginia lacks subject matter jurisdiction. The parties consent and irrevocably submit to the jurisdiction and venue of the U.S. District Court for the Eastern District of Virginia and the Circuit Court of Fairfax County Virginia and waive any right they may have to object to jurisdiction or to seek a change of venue. If any party files an action outside of these courts, such party shall be liable for reasonable attorneys' fees associated with any motion to enforce this provision, to dismiss for lack of venue or to transfer venue to one permitted by this



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

provision. In any action filed against OBERA, electronic discovery from OBERA shall be limited to the documents from sources that OBERA keeps and maintains in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from archives, back-up servers, tapes or other such media, personal devices or personal accounts of its employees, or documents held by third-parties, nor shall OBERA be required to produce any meta-data. Any reference to other disputes procedures in any provisions or clauses incorporated by reference into this contract shall be deemed superseded by this clause. The rights and obligations described in this clause shall survive completion and final payment under this contract.

- 27. Compliance with Laws.** Seller shall comply with all applicable federal, state, and local laws, rules, regulations and orders in effect on the date of this order, including, but not limited to the following, as amended: (a) the Fair Labor Standards Act of 1938; (b) the Federal Occupational Safety and Health Act of 1970 (OSHA); (c) the Toxic Substances Control Act of 1976; (d) the Walsh-Healy Public Contracts Act; and (e) any other federal law concerning labor relations, nondiscrimination in employment, minimum wages, overtime compensation, and hours of employment. Seller agrees to indemnify and hold Buyer harmless against any loss or liability due to Seller's violation or noncompliance with such regulations. Upon Buyer's request, Seller shall furnish evidence demonstrating such compliance.
- 28. Setoff.** Buyer shall have the right at all times to setoff any amount due or payable to Seller hereunder against any claim or charge Buyer may have against Seller.
- 29. Taxes.** The price of the supplies/services procured hereunder includes all applicable federal, state and local taxes and duties unless otherwise stated in the Purchase Order.
- 30. Title and Risk of Loss.** Title to all materials, supplies, equipment, or data shall pass to the Buyer immediately upon payment for such items. Seller shall not permit liens of any kind to be placed against such items in which title has vested to Buyer. In the event such liens are filed, Seller shall take immediate steps to satisfy the lien or arrange for the release of the lien. Unless otherwise provided in this Purchase Order, the F.O.B. point shall be the delivery destination indicated in this Order, and risk of loss or damage shall pass to Buyer upon Buyer's acceptance of the supplies regardless of where Buyer takes physical possession. If the F.O.B. point is designated as the Seller's location, then title and risk of loss or damage to the supplies shall pass to Buyer upon Seller's delivery of the supplies to the carrier.
- 31. Information Disclosed to Buyer.** Any information or knowledge Seller discloses to Buyer regarding this order shall not be deemed confidential or proprietary unless expressly agreed upon by the parties in writing. Any such unpatented information or knowledge shall be acquired by Buyer free of any restrictions.
- 32. Public Release of Information.** No public release of information, news release, announcement, advertisement, denial or confirmation of this Order or the subject matter hereof, shall be made without Buyer's prior written approval.
- 33. Patent, Copyright, and Trademark Indemnity.** Seller agrees to indemnify, defend, and hold harmless Buyer, its officers, agents, and employees, its customer and its officers, agents, and employees, and those for whom Buyer may act as agent, from any costs, expenses, damages, or liability that Buyer may incur as a result of any proceedings charging infringement of any patent, copyright, or trademark out of the manufacture or delivery of supplies, the performance of services, the construction, alteration, modification, or repair of real or personal property, or the sale or use of any supplies/services/data furnished by Seller. Seller shall have no liability, regarding alleged patent infringement for supplies furnished to Buyer in accordance with Buyer's design specifications.



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

- 34. Warranty of Supplies/Services.** Seller warrants that all supplies/services furnished under this Purchase Order shall conform to the Buyer's drawings, specifications, or other description and will be of good material and workmanship and free of defects. Seller further warrants that the supplies/services will meet Seller's published specifications and standards, will be new (not used or reconditioned), merchantable and suitable for the purpose intended. These warranties shall survive inspection, acceptance, and payment. Supplies/services that do not conform to the above warranties may, at any time within twenty-four (24) months after delivery to Buyer, may be rejected and returned to Seller, at Seller's expense, for correction or replacement. If Seller does not promptly correct or replace same, Buyer may correct or replace the nonconforming supplies/services at Seller's expense. The forgoing warranties are in addition to all other warranties expressed or implied by law including incidental or consequential damages.
- 35. Changes.** Buyer's Purchasing Agent may, at any time, in writing, make changes to this order. If any such change causes an increase or decrease in the cost or time required for performance of the work, the price (or cost and fee) and/or delivery schedule shall be equitably adjusted and the Purchase Order so modified. Seller must notify the Buyer's Purchasing Agent of Seller's intent to request equitable adjustment within ten (10) days of Seller's knowledge of the change. The Seller shall submit any request for adjustment to Buyer within twenty (20) days following receipt of Buyer's written Change Order. Failure of the parties to agree to an adjustment shall be considered a dispute under the Disputes clause hereof; however, pending resolution of any dispute, Seller shall immediately proceed with the work as changed.
- 36. Waiver of Rights.** Failure of either party to insist on performance of any provision of this Order shall not be construed as a waiver of that provision or a waiver of Buyer's or Seller's right to require compliance with such provision in any later instance. If any provision of this Order is found to be illegal or unenforceable under law, that provision shall be deleted; however, all other provisions of this Order shall not be affected thereby, and shall remain in full force and effect.
- 37. Insurance.** Supplier/ Subcontractor/ Vendor, from the time of start of the Services hereunder until completion of the Services, shall provide at its own expense and maintain in effect the following types and amounts of insurance with terms and with insurance companies satisfactory to OBERA(**as applicable**):

Aviation Liability Insurance: When supplier performance involves use of aircraft or aviation related services are present, the Supplier, and their Suppliers, as applicable, shall procure and maintain at all times Aviation Liability Insurance (Including War Risk Coverage and/ or Hangarkeepers Liability Coverage if applicable) against death, bodily injury, and property damage claims. Such insurance shall be designated to protect the personnel including all OBERA employees, and shall indemnify and defend OBERA from all claims arising out of acts or omissions of the Seller and/or participants under this Purchase Order and all Task Order/Subcontracts issued under this Purchase Order. This insurance shall be procured and maintained with limits of not less than \$3,000,000 per person/passenger; \$3,000,000 with respect to any one person/passenger injured or killed; \$3,000,000 per occurrence for property damage; and, subject to that limit per person/passenger, an aggregate limit of \$50,000,000 with respect to any number of persons injured or killed as a result of any one accident.

Automobile/Motor Liability Insurance: The Supplier, and their Suppliers, as applicable, shall procure and maintain at all times Business Automobile/Motor Liability Insurance. The policy shall provide for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The amount of liability coverage on



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

Workers' Compensation, Defense Base Act, and Employers' Liability: The Supplier is required to comply with all applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, such occupational diseases shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Supplier's commercial operations that it would not be practical to require this coverage. Employer's liability limits shall be not less than \$500,000 for bodily injury by accident and \$500,000 bodily injury by disease policy limit. Workers Compensation insurance applies to Workers' Compensation Law of the states, territories and countries working under, except in states with exclusive or monopolistic funds that do not permit worker's compensation benefits to be written by private insurance companies. Monopolistic states certificate of insurance coverage is required if applicable. An alternate employer endorsement shall also be maintained and a copy of the endorsement sent to Obera Risk Management. If Workers Compensation under the Defense Base Act (DBA) is applicable to the contract or location of services performed, DBA insurance shall be secured and made evident in the form of a certificate of insurance with an authorized insurance carrier approved by the US Dept of Labor.

Commercial General Liability: The Supplier, and their Suppliers, as applicable, shall provide commercial general liability for bodily injury and property damage liability insurance including contractual liability coverage written on the comprehensive form of policy of at least \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Coverage will not be limited to the territory or regions provided in the SOW or SOP (Program Manager Directed)

Vessel Liability: When supplier performance involves lease or charter of vessels, the Supplier, and their Suppliers, as applicable, shall provide vessel liability and protection and indemnity insurance as determined by Obera Corporate Risk Management.

Excess Liability: The Supplier, and their Suppliers, as applicable, shall provide umbrella and or excess liability to include bodily injury and property damage covering general liability, automobile liability, and employer's liability. The insurance provided under this section must be in the amount of not less than \$4,000,000 per occurrence and be excess over all underlying insurance coverage listed.

Cargo Insurance: For contracts that involve marine Cargo shipments, including the use of a Freight Forwarding company, Supplier must notify OBERA Risk Management in advance of any shipment to ensure proper Obera cargo insurance requirements are met.

Professional Liability Insurance: For projects involving Professional Services (Architects, Engineers, Consultants, etc.), the supplier shall maintain professional liability coverage during the term of this agreement. The limits of this coverage shall be a minimum of \$3,000,000.00 combined single limit. This requirement shall extend to all professional subcontractors employed by the prime consultant, engineer or surveyor. Supplier shall provide certification of such insurance and a copy of the policy upon request.

Insurance Policies: All insurance policies shall bear an appropriate endorsement whereby the insurance carrier waives any right of subrogation acquired against OBERA and the United States of America by reason of any payment under such policy, and such policy shall further provide that OBERA receives 30 days prior notice before cancellation of such policy or reduction of coverage there under can be effective. For all insurance policies, the Supplier shall, prior to the performance of this contract and the performance of an option period or 30 days prior to the expiration of insurance coverage, submit to OBERA either (a) a certified copy of the insurance



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

policy actually procured and maintained, or (b) an insurance certificate issued by the insurance company verifying coverage in conformity with this contract.

Insurance Deductible: The Supplier shall be responsible for all deductibles associated with any accident, incident or damage either against an aircraft or personnel or property. OBERA will not assume any liability including, but not limited to the insurance deductible.

Additional Insured: The Supplier shall identify OBERA LLC as additional insured on all Policies associated with this Subcontract except for Workers Compensation.

Lower Tier Insurance: Supplier shall require its lower tier Suppliers to provide the same insurance coverages and requirements as described herein, unless otherwise agreed in writing between the parties.

Certificate(s) of Insurance: The Supplier shall furnish the Buyer with a current certificate of insurance as evidence of the insurance required, within five (5) calendar days after execution of this Purchase Order. In addition, the Supplier shall furnish evidence of a commitment, by the insurance carrier, to notify the Buyer in writing of any material change, expiration or cancellation of any of the insurance policies required not less than thirty (30) calendar days before such change, expiration or cancellation is effective. When coverage is provided by self-insurance, the Supplier shall not change or decrease the coverage without the Buyer's approval.

38. Indemnification. The Seller shall indemnify, defend, and hold harmless Buyer, Buyer's customers, and each of Buyer's owner(s), affiliates, directors, officers, employees and agents from all damages, claims, liabilities, losses, demands, causes of action, law suits and expenses (including reasonable attorney's fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) its negligence, fraud or willful misconduct in entering into or performing under this Agreement; (ii) products or services including, without limitation any claims that such products or services infringe any United States patent, copyright, trademark, trade secret, or any other proprietary right of any third party or; (iii) any breach of any representation, warranty, or covenant made herein.

If Seller's liability arises by reason of the negligence of Buyer, its agents, employees, officer, and/or directors, then the Seller shall not be liable hereunder except to the extent of the Seller's contributory negligence.

Buyer shall promptly notify Seller of any claim against Buyer covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent Buyer in, or take charge of, any litigation in connection therewith.

39. Cost Accounting Standards Price Redetermination Indemnification. Seller hereby indemnifies and agrees to hold the Buyer harmless from any loss, damage, expense or liability, including any prime contract price or cost changes, and any cost disallowances or no recognition of costs asserted against or suffered by the Buyer as a result of any failure, in whole or in part, of the Seller or any of its subcontractors at any tier to comply fully with the requirements of the Cost Accounting Standards, and Price Reduction for Defective Cost or Pricing Data, if required.

40. Limitation of Liability.

SELLER AGREES THAT BUYER AND ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AND EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, AND LOSS OF OR



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

CORRUPTION OF DATA) ARISING OUT OF OR RELATING TO SELLER'S PERFORMANCE OF THIS SUBCONTRACT OR SELLER'S BREACH OF ANY TERM OR CONDITION OF THIS PURCHASE ORDER, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER AND ITS OWNERS, AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS SHALL NOT BE LIABLE FOR ANY DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, REGARDLESS OF CAUSE, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATING TO (I) THE USE OF, INABILITY TO USE OR DELAY CAUSES BY ANY DATA PROVIDED BY BUYER, INCLUDING WITHOUT LIMITATION ANY ERRORS AND OMISSIONS AND ANY UNTIMELINESS; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; (III) ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH OR FROM BUYER; (IV) MESSAGES OR CONTENT RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM BUYER, INCLUDING WITHOUT LIMITATION COMPUTER VIRUSES; (V) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, REGARDLESS OF WHETHER SUCH INTERRUPTION, SUSPENSION OR TERMINATION WAS JUSTIFIED, NEGLIGENT OR INTENTIONAL, INADVERTENT OR ADVERTENT.

- 41. Entire Agreement.** This Purchase Order constitutes the entire agreement between Buyer and Seller regarding this procurement and supersedes all previous written or oral agreements and commitments. No terms or conditions of sale set forth in Seller's quotation or acknowledgment shall be included as a part hereof, nor shall any prior course of dealing, custom, or usage in the trade supersede or modify any Purchase Order provisions. Any subsequent additions, deletions or modifications to this agreement shall not be binding upon the parties unless same are mutually agreed upon and incorporated herein in writing.

PART III - CATEGORY SPECIFIC TERMS

42. MATERIAL (aka SUPPLIES or PRODUCT) SPECIFIC TERMS

- 42.1 Deliveries.** Seller agrees that time is of the essence in the performance of this Purchase Order. Deliveries shall be strictly in accordance with the Order delivery schedule. Buyer reserves the right to refuse or return, at Seller's expense, any excess shipment or deliveries made in advance of the Order schedule. Invoices for early deliveries, when accepted, may be deferred until the scheduled delivery date. Seller agrees to advise Buyer, as soon as possible, of any delays in meeting the Order delivery schedule and the reasons therefore. If a delay is due to causes beyond Seller's and, when applicable, its subcontractor's control, and without fault or negligence of either of them, Buyer may, as its sole discretion, either adjust the delivery schedule or terminate the Order for convenience. If the delay is due to Seller's or its subcontractor's failure, and the failure is not cured within ten (10) days after Seller's receipt of Buyer's notice thereof, Buyer may, at its sole discretion, either accept a revised delivery schedule and an equitable reduction in the Order price or terminate the Order for default. Acceptance of late deliveries shall not constitute a waiver thereof by Buyer.
- 42.2 Packaging / Packing.** Seller shall be responsible for properly packing and packaging supplies in suitable containers for protection during shipment in accordance with transportation regulations and good commercial practice. No additional charge will be allowed for packing and packaging unless specifically agreed to in writing.
- 42.3 Labeling.** Seller shall label each package with the corresponding Purchase Order number




**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

- 42.4 **Packing List.** Seller shall prepare an itemized packing list bearing the Purchase Order number, description of items, part number, and quantity shipped for each package.
- 42.5 **Inspection and Test.** Inspection and Test. Buyer and its customer may inspect and/or test materials, work in progress, and completed supplies at all reasonable times and places during performance of the work and prior to shipment. Rejected supplies shall be corrected or replaced at the Buyer's discretion. Rejected services shall be re-performed in an acceptable manner. If inspection and tests are made on Seller's premises, Seller shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of the inspectors performing these duties. Inspections and tests shall be performed in such a manner as not to unduly delay work in progress. Unless otherwise agreed in writing, all supplies furnished under this Purchase Order are subject to Buyer's inspection and acceptance or rejection at destination, notwithstanding any previous Buyer or its customer's source inspection or test. Inspection/test at source or at destination shall not relieve Seller of its responsibility to furnish the supplies/services in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and its customer. Upon Buyer's request Seller shall furnish Buyer the records of inspection/test for supplies and services furnished hereunder at any time during the warranty period or as may be required by Federal Aviation Regulations.
- 42.6 **Transportation Charges.** Unless otherwise provided in this Purchase Order, transportation charges shall be paid by the Buyer as specified in the Purchase Order utilizing the Obera designated Freight Forwarder. The Freight Terms of Sale unless specifically identified otherwise in the Purchase Order will be FOB Destination, Freight Collect. No premium transportation costs will be allowed unless authorized by Buyer. Risk of loss, regardless of cause, is Seller's responsibility until the supplies/services/data are delivered. If Seller is delinquent in delivery, Buyer may require shipment by the fastest means available, and any premium transportation charges therefore shall be Seller's responsibility.
- 42.7 **NEW MATERIAL – NO COUNTERFEIT MATERIAL**
DEFINITIONS: The term *Material*, as used in this clause, includes, but is not limited to raw material, parts, components, assemblies and end items. The term *New*, as used in this clause, means Original Equipment Manufacturer (OEM) or Original Component Manufacturer (OCM) Material previously unused or composed exclusively of previously unused Material, allowing for conventional use including, but not limited to integration, installation, assembly, test, burn-in, training, troubleshooting, and rework as required. The term *Counterfeit Material* means Material salvaged, produced or altered to resemble a product without authority or right to do so, with the intent to mislead or defraud by presenting the imitation as New Material. Unless Prime specifies in writing otherwise; Subcontractor shall deliver New Material under this Purchase Order that is fully warranted. Subcontractor shall not deliver Counterfeit Material to Prime under this Purchase Order. Subcontractor represents and warrants that all electronic parts delivered under this Purchase Order are obtained from OEMs, OCMs, or their authorized dealers. If electronic parts cannot be obtained from OEMs, OCMs, or their authorized dealers and must be procured from alternative source(s), Subcontractor shall obtain Prime's written approval before making such procurements. Subcontractor shall employ, or cause to be employed, inspection, testing and authentication processes reasonably designed to detect and avoid Counterfeit Material and shall provide written description of Subcontractor's detection and avoidance processes and a certification of Subcontractor's use of such processes to Prime on or before delivery. If applicable. Subcontractor shall immediately notify Prime when Material is found or suspected to be Counterfeit Material. Notice must be in writing and must be provided to Prime within 10 days of discovery. Upon request, Subcontractor shall provide OEM/OCM documentation that enables traceability of the affected Material to the applicable OEM/OCM. Should any Material delivered under this Contract be found to constitute or include Counterfeit Material, Subcontractor shall, at its expense, promptly replace such Counterfeit Material with genuine parts conforming to the

	PURCHASE ORDER TERMS AND CONDITIONS	Form –
		Rev. 0

requirements of this Contract. Notwithstanding any other provision in this Purchase Order, Subcontractor shall be liable for all costs relating to the removal and replacement of Counterfeit Material, including, without limitation, Prime's costs of removing Counterfeit Material, of installing replacement New Material and of any testing/corrective action necessitated by the replacement of Counterfeit Material with New Material. The remedies contained in this paragraph are in addition to any remedies Prime may have at law, equity or under other provisions of this Purchase Order. Subcontractor shall include this clause or equivalent provisions in any Purchase Orders that Subcontractor issues for the delivery of New Material that will be included in or furnished to Prime.

43. SERVICES SPECIFIC TERMS

43.1 Intentionally left blank.

PART IV - GOVERNMENTAL & FAR REQUIREMENTS

44. INTERNATIONAL ANTI-CORRUPTION

44.1 Compliance with International Anti-Corruption Laws. Seller (including the Seller's subcontractors, suppliers, employees, agents, or representatives) represents and certifies that it will perform under this agreement in accordance with the U.S. Foreign Corrupt Practices Act (FCPA), U.K. Bribery Act, similar foreign laws, and Buyer's FCPA and U.K. Bribery Act Policies and shall not offer, promise, authorize, or approve to pay or actually pay money or anything of value (including gifts), directly or indirectly, to a foreign official in connection with the performance of this agreement that are contrary to the laws of the United States, Seller's country, or the laws of any foreign country in which Buyer performs under this agreement. Buyer may take any action or combination of actions listed below against the Seller and its individual employees for violations of this provision, including, but not limited to: immediate termination of this agreement; removal of individuals found to be in violation of this provision; suspension of payments under this agreement; and/or termination of this agreement for convenience or default. The Seller shall include this provision, including this sentence, in all lower-tier agreements. The Seller represents and warrants that it shall, at all times, comply with any and all applicable laws, ordinances, statutes, rules, and regulations of the United States and any foreign country in which Buyer performs under this agreement.

45. INTERNATIONAL TRADE COMPLIANCE.

- 45.1 It is the policy of Buyer to follow all international trade regulations, and Buyer will not conduct business with any sanctioned or embargoed countries without prior approval from the proper Government agency(ies). Regulations can change at any time. The Seller is responsible for and expected to keep up with the most current version of international trade regulations and be in full compliance at all times. If the Seller has knowledge of, or suspects that a violation may occur or may take place they are required to notify Buyer immediately.
- 45.2 The services, products, technology and/or technical data provided or disclosed in performance of this Agreement may be subject to required and continuing U.S. Government approvals, clearances, regulations, and export/import and re-export requirements, including the U.S. Department of State International Traffic in Arms Regulations (ITAR – Title 22, CFR Parts 120–130), the U.S. Department of Commerce Export Administration Regulations (Title 15, CFR 730-774), Office of Foreign Asset Control (OFAC) (Title 31, Chapter V and appropriate amendments) and any other U.S. Government regulation applicable to the export/import, re-export, or



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

disclosure of such controlled technical data (or the products thereof) to parties who are not considered U.S. Persons under U.S. export controls whether within, or outside, the U.S., including those employed by, or otherwise associated with, the Seller.

- 45.3 The Seller shall take those measures necessary to ensure compliance with all International Trade regulations including the Department of State (DoS), Directorate of Defense Trade Control (DDTC), International Traffic in Arms Regulations (ITAR)) governing the export of defense articles, technical data, and the provision of defense Services; the Department of Commerce (DoC), Bureau of Industry and Security (BIS), Export Administration Regulations (EAR) governing the export and re-export of commercial and dual use items and technology, and the Department of the Treasury, Office of Foreign Assets Control (OFAC) regulations.
- 45.4 All export and licensing transactions performed under this Agreement shall fully comply with the applicable federal regulations. Furthermore, the Seller represents that “Neither the applicant, its chief executive officer, president, vice presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) nor any member of its board of directors is: a. The subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in ITAR 120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976); or b. Ineligible to contract with, or to receive a license or other approval to import defense articles or defense Services from, or to receive an export license or other approval from any agency of the U.S. Government.”
- 45.5 OFAC administers a number of U.S. economic sanctions and embargoes (which are published on the OFAC website at www.treas.gov/ofac) that target geographic regions and governments, and U.S. persons, including foreign branches of U.S. depository institutions and trading companies, are prohibited from engaging in any transactions, including purchase, sale, transportation, swap, financing, or brokering transactions related to goods or services of sanctioned and embargoed country origins, or services owned or controlled by sanctioned and embargoed country Governments.
- 45.6 The United Nations maintains a number of Arms Embargoes, details of which are available on the UN Security Council Sanctions Committee website at <http://www.un.org/sc/committees>.
- 45.7 U.S. anti-boycott laws require that U.S. firms refuse to participate in foreign boycotts that the United States does not sanction. In addition, the laws prevent U.S. firms from being used to implement foreign policies that are counter to U.S. policy. Although the anti-boycott laws apply to all non-U.S.-sanctioned boycotts imposed by foreign countries, the Arab League's boycott of Israel is the principal foreign economic boycott concerning U.S. firms. Anti-boycott law prohibitions include:
- 45.7.1 Agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies.
- 45.7.2 Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- 45.7.3 Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies.
- 45.7.4 Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person
- 45.8 The Seller acknowledges and agrees to comply with all such U.S. regulations regarding the purchase, sale, transportation, swap, financing, brokering transactions related to goods or services of sanctioned and embargoed country origins, services owned or controlled by sanctioned and embargoed country Governments, export/import, re-export, or disclosure and will obtain any and all such registrations, licenses, permits, agreements, approvals and/or certifications, as may be required by regulation for the products, services, and/or technical data that may be provided to Buyer under this Agreement before initiating performance.



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

46. Federal Acquisition Regulations

47.1 FAR 52.244-6 Subcontracts for Commercial Items.

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Items (Dec 2010)

(a) Definitions. As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the Purchase Order exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
- (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the Purchase Order is funded under the Recovery Act.
- (iii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), if the Purchase Order offers further subcontracting opportunities. If the Purchase Order (except Purchase Orders to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212(a));
- (vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).
- (vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
- (viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
- (ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontractor for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in Purchase Orders awarded under this contract.



**PURCHASE ORDER TERMS AND
CONDITIONS**

Form –

Rev. 0

47.2 Other FAR required clauses in Supplier's performance under this Purchase Order.

(a) (1) The following FAR clauses also apply:

- (i) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
- (ii) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
- (iii) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) (41 U.S.C. 351, et seq.).
- (iv) 52.222-54, Employment Eligibility Verification (Jul 2012).
- (v) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (vi) 252.204-7008 Export-Controlled Items
- (vii) 252.225-7993 Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations (Jan 2012) (Deviation 2012-O0005)
- (viii) 252.225-7994 Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (Jan/2012) (Deviation 2012-O0005)

*****Additional Far clauses may accompany the purchase order and all must be flowed down to the and any second tire subs***