



**ITT**

*Engineered for life*

**ITT Cannon, LLC**  
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## **PURCHASE ORDER TERMS AND CONDITIONS**

1. **ACCEPTANCE:** For all orders over \$10,000, if the Order is DX rated the attached Acceptance Copy must be signed and returned by Seller within five (5) days of receipt by Seller; otherwise, if not so rated, within ten (10) days after receipt. The receipt by Buyer of the signed Acceptance Copy or the initiation of performance under this Order shall constitute acceptance of the Order by Seller, including all of the terms and conditions therein. This order expressly limits acceptance to the terms stated herein. Any additional or different terms proposed by Seller, including any contained in Seller's acknowledgement form, are rejected unless expressly agreed to in writing by an authorized representative of Buyer's procurement Department.
2. **APPLICABLE LAW AND DISPUTES:** Any dispute over any question of fact or law arising under this Order shall be governed by the law of the State of California. Any litigation under this Order, if commenced by Seller, must be brought exclusively in a Court of competent jurisdiction in the State of California. Pending the resolution of any dispute, Seller shall proceed as directed by Buyer in writing.
3. **ARTICLE HEADINGS:** The headings and subheadings of Articles contained herein are used solely for convenience and ease of reference and do not limit the scope or intent of the Article.
4. **ASSIGNMENT AND SUBCONTRACTING:** This Order or any interest hereunder shall not be assigned or transferred by Seller without the prior written consent of Buyer. Seller shall not subcontract the furnishing of any of the complete or substantially complete items required by this Order without the prior written approval of Buyer.
5. **AUDIT INSPECTION OF RECORDS:** Seller shall keep reasonably detailed records of direct labor costs, material costs, and all other costs of the performance of this Order, which shall be subject to audit by Buyer in the event of termination, or other equitable adjustment, or with respect to any Order for which the price is based on time and cost of material.
6. **BANKRUPTCY:** (A) Buyer may terminate this Order for default, in whole or in part, by written notice to Seller if: (1) Seller shall become insolvent or make a general assignment for the benefit of creditors; or (2) a petition under any bankruptcy act or similar statute is filed by or against Seller and not vacated with ten (10) days after it is filed. (B) If seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Seller shall furnish by certified mail written notification of bankruptcy to Buyer which shall include the date on which the bankruptcy petition was filed and the identity of the court in where the bankruptcy petition was filed.
7. **BUYER'S RIGHT TO USE INFORMATION DISCLOSED BY SELLER:** Unless otherwise expressly set forth in this Order or a separate written agreement, Buyer shall have the right to use, for any purpose, information concerning Seller's products, manufacturing methods or processes which Seller has disclosed to Buyer, without restrictions, prior to, during or after the performance of this Order. No patent license is implied hereby.
8. **CALENDAR DATES:** All periods of days referred to in this Order shall be measured in calendar days.
9. **CHANGES:** Buyer may at any time, by written instructions from Buyer's Procurement Department to Seller, make changes in the work to be performed or the items to be furnished hereunder in any one or more of the following: (a) Drawings, designs or specifications; (b) method of shipment or packing; (c) time and/or place for delivery; and (d) the quantity of items ordered. If any change under this Article causes an increase or decrease in the price due under the Order or the time required to perform, an equitable adjustment shall be made and the Order modified in writing accordingly. Any claim hereunder must be asserted by Seller in writing within fifteen (15) days from the date the change is ordered. Nothing contained herein shall excuse Seller from Proceeding without delay with the Order as changed, including failure of the parties to agree upon any adjustment to be made under this Article. Whether made pursuant to this Article or by mutual agreement changes shall not be binding upon Buyer, except when confirmed in writing by a member of Buyer's Procurement Department. The issuance of information, advice, approvals or instructions by Buyer's technical personnel or other representative shall be deemed expressions of personal opinion only, and shall not affect Buyer's and Seller's rights and obligations hereunder, unless the same is in writing signed by an authorized representative of Buyer's Procurement Department and which expressly states that it constitutes an amendment to this Order.
10. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** In furnishing the supplies, equipment, and/or services under this Order, Seller shall comply with all applicable Federal, State and Local laws, ordinances and all orders, rules and regulations thereunder, including but

not by way of limitation, the applicable provisions, as amended, of the Fair Labor Standards Act of 1938, and the Occupational Safety and Health Act of 1970, and all regulations and standards and any amendments issued pursuant thereto. Seller shall notify ITT of any aspect of Seller's performance that is prohibited under any legal requirements, at the earliest opportunity, but in all events sufficiently in advance of Seller's performance of such obligation, so as to identify and implement alternative methods of performance.

- 11. CONFIDENTIAL RELATIONSHIP:** Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish, or release for publication any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer items and/or services required by this Order, or quote the opinion of any employees of Buyer. Seller shall not disclose any information relating to this Order to any person not authorized by Buyer to receive it. Seller shall use the information supplied by Buyer only to accomplish work covered by this Order and for no other purpose. Upon completion, all information is to be returned to Buyer upon Buyer's written request.
- 12. DEFAULT:**
- (A) Buyer may cancel this Order in whole or in part by written notice: (1) if Seller shall become insolvent or make a general assignment for the benefit of creditors; or (2) if a petition under the Federal Bankruptcy Act is filed by or against Seller; or (3) if Seller fails to make delivery of the supplies or to perform the services within the time specified in this Order; or (4) if Seller fails to perform any of the other obligations of this Order, or fails to make progress, so as to endanger performance of this Order, in accordance with its terms; or (5) if Seller's financial condition shall endanger completion of performance, provided with respect to (4) and (5) Seller shall fail to remedy any such condition within seven (7) days from the date of receipt of a notice from Buyer concerning the existence of the condition.
- (B) In the event Buyer cancels this Order in whole or in part as provided in paragraph (A) of this Article, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, items or services similar to those canceled, and Seller shall be liable to Buyer for any excess and incidental costs of similarly procured items or services. Seller shall continue the performance of this Order to the extent not canceled under the provision of this Article.
- (C) After receipt of notice of such cancellation, and upon Buyer's direction, Seller shall transfer title and deliver to Buyer satisfactorily completed work and such work in process as directed by Buyer.
- (D) If, after notice of cancellation of this Order, it is determined that Seller was not in default under the provisions of this Article, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to Article 32 hereof, "Termination for Convenience".
- (E) If this Order is issued under a U.S. Government contract, and Buyer notifies Seller of a substitution of terms, e.g., the term "Contractor" shall mean Seller, the Term "Contract" shall mean this Order, and the terms "Government", "Contracting Office" and equivalent phrases shall mean "Buyer," then the rights and remedies of Buyer provided in this Article shall not be exclusive, and are in addition to any other rights and remedies provided by law and under this Order.
- 13. DELAYS AND NOTICE OF LABOR DISPUTES:** (A) Seller shall not be liable for any delays in delivery caused by circumstances beyond its control including acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes or embargoes. When any delays in delivery occur, Seller shall immediately give notice thereof to Buyer. (B) Whenever an actual or potential labor dispute is delaying or threatening to delay the performance of this Order, Seller shall immediately give notice thereof to Buyer. (C) Notwithstanding the above, if such delays extend for more than sixty (60) days from the delivery or performance date or threatens Buyer's delivery commitments under its Prime Contract, Buyer may terminate such part of this Order remaining to be performed without liability to Buyer except for the fair value of work already completed.
- 14. DELIVERY:** Buyer reserves the right to refuse shipments made in advance of the schedule set forth in this Order. Buyer may return early deliveries at Seller's expense. Over shipment allowances, if authorized, will be applied to the entire Order. If Buyer agrees to accept deliveries after the delivery date has passed. Buyer shall have the right to direct Seller to make shipments by the most expeditious means and the total cost of such expedited shipment and handling shall be borne by Seller. Acceptance of late deliveries shall not be deemed a waiver of Buyer's right to hold Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of Seller's obligation to make future deliveries in accordance with the delivery schedule set forth in this Order.
- 15. GENERAL RELATIONSHIP:** Seller's relationship to Buyer in the performance of this Order is that of an Independent Contractor. Neither Seller nor any of the persons utilized by Seller to furnish materials or perform work or services under this Order are employees of Buyer. Seller shall, at its own expense, comply with all applicable laws and regulations and assume all liabilities and obligations imposed by such laws and regulations with respect to this Order.
- 16. GRATUITIES:** Buyer may, by written notice to seller, terminate the right of Seller to proceed under this Order if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer's customer of Buyer, for the purpose of obtaining this Order or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Order.
- 17. INSPECTION/REJECTION:** (A) Buyer and/or its customer, to the extent practicable at all times and places, including the place of manufacture, may inspect and test material, work in process, and supplies. (B) Buyer shall have the right to reject any items or lots of items which are defective in material or workmanship or otherwise not in conformity with the requirements of this Order and to require correction or replacement. Rejected items shall be removed, or if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails to promptly replace, correct, or remove such items or lots of items which are required to be removed, Buyer may: (1) replace or correct such items and charge to Seller the cost occasioned Buyer thereby; (2) pay for such items at a reduced price which is equitable under the

circumstances; or (3) cancel this Order for default as provided in Article 10 entitled "Default." (C) If any inspection or test is made by Buyer and/or its customer on the premises of Seller or a lower tier subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer and/or customer inspectors in the performance of their duties. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Buyer and/or its customer shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to Seller any additional cost of inspection and test when items are not ready at the time such inspection and test was requested by Seller or when reinspection or retest is necessitated by prior rejection. Unless otherwise provided herein, final inspection and acceptance of rejection of items shall be made as promptly as practicable after delivery to Buyer's facility. Buyer's failure to inspect or accept or reject items in a timely manner shall neither relieve Seller from full compliance with all requirements of this Order, nor impose responsibility on Buyer therefore. (D) Seller shall provide and maintain an inspection system acceptable to Buyer covering the items hereunder. Records of all test and inspection work by Seller shall be kept complete and available to Buyer and/or its customer for three (3) years following completion of this Order, or for six (6) years following completion of an order pursuant to a U.S. Government contract or subcontract. (E) Inspection and test by Buyer or its customer of any items or lots thereof does not relieve Seller from any responsibility regarding defects or other failures to meet Order requirements which may be discovered prior to acceptance or during the warranty period set forth in Article 34. (F) If, prior to or at the time of final acceptance or within the warranty period, it was known or should be known by Buyer that said items would not or did not conform to the requirements of this Order, Final acceptance shall not be construed as a waiver of any rights Buyer may have with respect to the items purchased under this Order, notwithstanding the failure of Buyer to timely inform Seller of such nonconformance.

- 18. RISK OF LOSS; INDEMNIFICATION; INSURANCE:** All personal property belonging to Buyer in Seller's custody or possession shall be a Seller's risk from loss or damage from all hazards. If Seller is required to enter premises owned, leased, or occupied by or under the control of Buyer during the performance of this Order, Seller agrees to indemnify and hold harmless Buyer, its officers and employees, from any loss, cost, damage, expense of liability by reason of property damage or personal injury, including death, of whatsoever nature or kind arising out of or as a result of Seller activity, whether arising out of the actions of Seller or of its employees, subcontractors, and low tier subcontractors. Seller and its subcontractors and lower tier subcontractors shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above and will maintain required worker's compensation insurance covering all employees engaged in the performance of this Order.
- 19. INVOICING AND PAYMENT:** A separate invoice shall be issued for each shipment must reference the Order number and line number. Unless otherwise specified in this Order, an invoice shall not be issued prior to shipment of items and payment shall not be made prior to receipt of items and correct invoice. Credit and discount periods will be computed from the date of receipt of the correct invoice to the date Buyer's check is mailed. Unless freight and other charges are itemized, the discount will be taken on full amount of invoice.
- 20. MODIFICATION OF ORDER:** This Order contains all the agreements of the parties with respect thereto and no course or dealing or usage of the trade shall be applicable unless expressly incorporated in this Order. The terms and conditions contained in this Order may not be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer's Procurement Department and delivered by Buyer to Seller. Each shipment received from Seller shall be deemed to exclusively upon the terms and conditions contained in this Order notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice, correspondence or other documents of Seller, and notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer.
- 21. NO WAIVER OR CONDITIONS:** Buyer's failure to insist upon strict compliance with any aspect of this Order shall not be deemed a waiver of any of Buyer's rights hereunder, and waiver of a right under this Order shall not constitute a waiver of any other right.
- 22. OFFSET/COUNTERTRADE CREDIT:** In connection with the sale of Buyer's products to certain foreign government customers, Buyer may incur direct and/or indirect offset/counter trade obligation. Seller hereby exclusively grants to Buyer all offset or counter trade credit that may be obtained from this order, or from Seller's placement of its purchase orders and subcontracts, for Buyer's use on the offset/counter trade program of Buyer's choose. Buyer retains the right to assign any such offset or counter trade credits to Buyer reserves the right to review such record not more often than every six months to determine offset availability.
- 23. ORDER FOR DEFENSE ARTICLES OR SERVICES IN EXCESS OF \$500,000:** If this Order is in an amount of \$500,000 or more, or if this Order is amended so that the total amount of the Order is in an amount of \$500,000 or more, and the items provided by Seller are "defense articles" or "defense services" within the meaning of 22 C.F.R. Sections 120.6 or 120.9, then Seller shall, within fifteen (15) days of the date of this Order, or such amendment, inform Buyer in a written statement if Seller has paid, offered to pay in respect of the sale for which the items will be used: (1) political contributions or (2) fees or commissions, within the meaning of 22 C.F.R. Part 130. Seller's statement shall conform to the requirements of 22 C.F.R. part 130. Failure of the Seller to provide Buyer with such a statement shall constitute a certification by Seller that it has not paid, offered, or agreed to pay such political contributions, fees or commissions.
- 24. PACKING:** Unless otherwise specified in this Order, Seller shall be responsible for safe and adequate packing which shall conform to the requirements of carriers' tariffs or, in absence of such requirements, conform to the best commercial practices. Seller shall separately number all cases, packages, etc., showing the corresponding numbers on the invoices. An itemized packing slip, bearing this Order number must be placed in each container. No extra charge shall be made for packaging or packing materials unless authority therefore is set forth in this Order.
- 25. PATENT INDEMNITY BY SELLER:** If the detailed design of any item purchased hereunder is not supplied by Buyer, Seller shall defend and hold harmless Buyer, its customers and those for whom Buyer may act as agent, from all loss of damage by reason of any and all actions or proceedings charging infringement or wrongful use of any patent, trademark, trade secret, copyright or other intellectual property rights in connection with any items, software or data furnished hereunder. If the use or sale of such item, in respect to which Seller indemnifies Buyer, is enjoined as a result of such action or proceeding, Seller, at no expense to Buyer, shall obtain for Buyer and its customers, the right to use and

sell said item or shall substitute an equivalent item acceptable to Buyer and extend this patent indemnity with respect to such equivalent item. In the event that Seller is unable to secure such right of use for Buyer or its customer or to secure an equivalent item as a substitute, Seller will indemnify Buyer and its customer for any and all losses or damages sustained by reason of such injunction.

- 26. RIGHTS IN DATA AND INVENTIONS:** (A) If this Order is not placed under a U.S. Government contract or subcontract. Buyer shall have full ownership and rights, including patent rights, to all inventions, data, designs, computer software and information (“Inventions”) conceived, made or developed under this Order. Seller shall disclose to Buyer in writing any such Inventions and cooperate, at Buyer’s expense, in obtaining patent or other intellectual property protection on such Inventions. Seller further agrees to execute assignments to Buyer of any associated patents or patent applications. With respect to copyrightable works developed under this Order, Buyer and Seller agree that any such works which qualify as commissioned works under the Copyright Act are considered “works made for hire” with copyright ownership in Buyer; otherwise, Seller agrees to assign copyright ownership of the works to Buyer. Seller shall not, unless otherwise authorized in writing by Buyer, disclose to anyone other than Buyer any Inventions or other data developed under this Order or any data disclosed to Seller by Buyer and shall not use such Inventions or data for any purpose other than the performance of this Order. (B) If this Order is placed under a U.S. Government contract or subcontract which includes a cost sharing arrangement between the U.S. Government (or higher tier contractor) and Buyer, Buyer shall be granted free license use rights for Inventions of a scope not less than such rights which are granted to the U.S. Government.
- 27. PRODUCT SUPPORT:** (A) Seller shall support the items purchased hereunder during the operational life of the items or for a period of ten (10) years, from the date of final shipment under this Order. Said support includes, but is not limited to, technical service and maintenance of Seller’s stock of subassemblies and spare parts as may be required to be ordered to support the operation of the items. (B) In the event Seller discontinues manufacture of the aforementioned items, subassemblies and spare parts, therefore, and does not provide for another qualified source. Seller shall give Buyer not less than six (6) months notice of such decision to discontinue and thereupon make available to Buyer all drawings, specifications, data and know-how which will enable Buyer or its customers to manufacture or procure and items, subassemblies and spare parts under a royalty-free license which is hereby granted.
- 28. SHIPPING INSTRUCTIONS:** Seller shall comply with Buyer’s Routing and Shipping Instructions. If such instructions are not attached hereto or have not been previously received. Seller shall immediately request instructions from Buyer.
- 29. SUSPENSION OF WORK:** (A) Buyer shall have the right to direct Seller in writing to suspend all or any part of the work for a period of time not to exceed ninety (90) days. (B) If work is suspended, an adjustment shall be made for any increase in the time and/or the cost (exclusive of profit) of performing this Order necessarily caused by such suspension, and this Order shall be modified in writing accordingly. (C) A claim shall not be allowed under this Article unless the claim, in an amount stated, is asserted in writing within thirty (30) days after the termination of the suspension. When the suspension has been terminated, Seller shall immediately commence performance, notwithstanding the fact that there is no agreement as to a revised schedule or the cost of completing this Order.
- 30. TAXES:** Unless otherwise notified by Buyer in writing, Seller shall be responsible for the payment, and where applicable, inclusion in the Order price, of any federal, state, or local tax, transportation tax, or other tax which is required to be imposed upon the items ordered hereunder, or shall obtain any applicable exemptions. Any such taxes included in this Order shall be itemized separately in Seller’s invoice.
- 31. TERMINATION FOR CONVENIENCE:** (A) Buyer shall have the right to terminate this Order in whole or in part at any time, and from time to time, by written notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer’s instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to this Order. In the event of such termination, Seller shall be paid an amount in settlement to be mutually agreed upon by the Parties which shall cover Seller’s reasonable costs of performance incurred prior to termination in connection with the items for which this Order is terminated plus a reasonable profit based upon such costs. In no event, however shall the said payment exceed the price specified herein for such items. Seller shall advise Buyer, in writing, of Seller’s claim, if any, for termination costs within thirty (30) days after receipt of the notice of termination. Termination in accordance with this Article shall not affect Buyer’s obligation to pay for items accepted by Buyer prior to such termination. (B) Nothing contained in paragraph (A) hereof shall in any way limit or affect Buyer’s right to terminate this Order for Seller’s default. (C) If this Order is issued under a U.S. Government contract and Buyer notifies Seller in writing that the termination was directed by the U.S. Government, settlement will be in accordance with Section 52.249-2 of the Federal Acquisition Regulations, which is hereby incorporated by reference and is applicable in its entirety to this Order with appropriate substitution of terms, e.g., 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.”
- 32. TITLE AND RISK OF LOSS:** Seller shall bear the risk of loss and damage to all items to be supplied hereunder until final acceptance by Buyer. Buyer shall have equitable title to all items for which partial or progress payments have been furnished to Seller.
- 33. TOOLS, MATERIALS AND INFORMATION:** If any designs, sketches, drawings, blueprints, patterns, dies, molds, models, tools, gauges, equipment or special appliances should be made or procured by Seller especially for producing the items covered by this Order, then immediately upon manufacture or procurement they shall become the property of Buyer. Seller shall maintain a current inventory list of the foregoing. Any such item or any materials or any engineering data or other technical or proprietary information furnished by or paid for by Buyer shall: (A) Become and shall be identified as property of Buyer, (B) Be held by Seller on consignment at Seller’s risk. (C) Be used exclusively in the production for Buyer of items required by this Order, and (D) Be subject to disposition by Buyer at any and all times and upon demand they shall be returned to Buyer. Seller shall maintain procedures for the adequate accountability, storage, maintenance and inspection of such items and shall make such records available to Buyer upon request.

- 34. WARRANTY:** (A) Seller warrants that all the items furnished hereunder shall: (1) conform fully with all requirements of this Order; (2) conform to approved sample or samples, if any; (3) unless detailed designs have been furnished by Buyer, be fit for the use intended by Buyer; and (4) be free from defects in material, workmanship, design and fabrication. (B) In the case of latent defects, the Buyer's rights to corrective action by Seller shall commence upon Buyer's discovery of the latent defect and notification of Seller thereof. (C) If, any failure appears, Buyer shall have the right to take the following actions: (1) Retain such defective item(s) and an equitable adjustment will be made in the Order Price, or (2) Reject such defective item(s) and an equitable adjustment will be made in the Order price, or (2) Reject such defective item(s) and require Seller to promptly remove and repair or replace such defective item(s) at Seller's sole expense (including shipping costs), with risk of loss and damage for the rejected, corrected or replacement item(s) while in transit shall be borne by Seller; or (3) Correct or replace such defective item(s) with similar item(s) and recover the total cost (including shipping costs) thereof from Seller. Item(s) rejected shall be removed promptly by Seller at its expense and its risk. (D) Upon discovery of any defect or failure provided hereby, the following conditions shall apply: (1) Buyer shall furnish written notice to Seller of the item(s) involved and set forth the nature of the defect(s) or failure(s) discovered: (2) As required by Buyer's corrective action policies, after receipt by Seller of such notification, Seller shall provide in writing to Buyer the following information: (i) Acknowledgment of the notification given by Buyer of the defect or failure, (ii) The corrective action to be taken by Seller to remedy the defect or failure, (iii) Disposition instructions regarding the defective material or equipment, (iv) The date that the defective items will be repaired, corrected or replaced as applicable and redelivered to the appropriate destination as directed by Buyer, or (v) With the advance approval of Buyer, submit a proposed price reduction to this Order for Buyer's consideration pursuant to (C) (1) above. (E) Approval by Buyer of Seller's design or material used shall not relieve Seller from any obligations under the warranties set forth in this Article. (F) The word "item(s)" as used herein includes materials, equipment, services and data required under this Order. (G) Any items(s) corrected or replaced pursuant to this Article shall be subject to all provisions of this Article to the same extent as item(s) initially delivered. (H) The aforesaid warranties shall survive acceptance and payment and shall run to Buyer, its customers and the users of these item(s) and shall not be deemed to be the exclusive rights of Buyer but shall be in addition to other rights of Buyer under law, equity, and the terms of this Order.
- 35. MOST FAVORED CUSTOMER:** Seller warrants that the prices for the items or services covered hereby are not less favorable than those currently extended to any other customer for the same or similar items or services in similar quantities. In the event Seller reduces its price during the term of this order. Seller agrees to reduce the price hereof accordingly.
- 36. FINANCIAL RECORDS AND AUDIT.** Seller shall retain all financial records and documents pertaining to the Goods for a period of no less than three years after final payment. Such records and documents shall date back to the time this contract was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all such records related to pricing and incurred costs.
- 37. AUDIT RIGHT RESERVED / RIGHT OF ENTRY**  
 ITT, ITT Partnerships, ITT Customers and Government/Regulatory Authorities reserve the right to perform audits and/or inspections at ITT Suppliers' and/or ITT Suppliers' subcontractor's facilities to:
- Examine all pertinent documents, data and other information relating to ITT products, tooling, or any ITT purchase order
  - View any facility or process relating to ITT products or any ITT purchase order
  - Audit any facility or process to determine compliance with the requirements of any ITT purchase order
  - Dispatch an inspection service to perform ITT directed independent verification of ITT Suppliers product at the ITT Supplier's premises and with ITT Supplier's inspection equipment
- When on-site verification of Contract / Purchase order conformance is required, ITT Suppliers provide the equipment, facilities, complete and accurate paperwork, and personnel necessary for ITT representatives to verify compliance.  
 Any Audit activity as described above will be conducted during normal business hours and with advance written notice to ITT Suppliers.  
 Any findings as a result of the above audit activity will be acted on promptly by the Supplier.
- 38. COUNTERFEIT WORK**  
 (a) For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable. (b) Seller agrees and shall ensure that Counterfeit Work is not delivered to Buyer. (c) Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. (d) Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. (e) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Contract. (f) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails. (g) Seller shall include paragraphs (a) through (d) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Buyer.

**39. ORDER OF PRECEDENCE:** All of the provisions of this Order shall be construed and interpreted as consistent whenever possible. In the event of a conflict between any of the following clauses that apply to the Order and the preceding Articles 1 through 35, the following clauses shall have precedence over the preceding Articles.

**40. FARS, DFARS, NFS AND ADDITIONAL ARTICLES APPLICABLE TO ORDERS PLACED UNDE UNITED STATES GOVERNMENT CONTRACTS OR SUBCONTRACTS:** If this order indicates that it is placed under a U. S. Government contract or subcontract, the following clauses of the Federal Acquisition Regulation (FAR), Department of Defense FAR supplement (DFARS), and NASA FAR Supplement (NFS), if included in Buyer's contract, shall apply to this Order, as specified.

**A. FARS AND DFARS INCORPORATED BY REFERENCE.** The following clauses of the Federal Acquisition Regulations (FAR) and of the Department of Defense FAR Supplement (DFARS) are hereby incorporated by reference. However, whenever the following clauses include a requirement for the settlement of disputes between the parties in accordance with the "Disputes" clause, the dispute shall be disposed of in accordance with Article 2, entitled "Applicable Law and Disputes". Clauses referenced below, with the exception of FAR 52.230-2 entitled "Cost Accounting Standards", shall be those in effect on the effective date of the prime contract. If the effective date of the prime contract is not set forth in the body of this order. Seller should contact Buyer for the applicable date.

**B.** Wherever necessary to make the context of the clauses set forth below applicable to this Order, 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, except the terms "Government" and "Contracting Officer" do not change when the context of these names clearly indicate otherwise, such as when a right, act, or authorization can be granted only by the Government: (1) In the Phrases "Government property", "Government Furnished Property", "Government-owned Property", "Government Equipment", and "Government-Owned Equipment", (2) when a right , act, authorization or obligation can be granted or performed only by the Government or the prime noted below, and (3) In: 52.203-3,52.203-6,52.211-15,52.214-26,52.215-2,52.215-10,52.215-11,52.227\*1,52.227-2,52.230-2,52.230-3,52.230-6,52.245-9,52.246-23,52.246-24,52.246-25,52.227-7013,52.227-7014,52.227-7015,52.227-7016,52.227-7018,52.227-7026,52.221-7027 and 52.227-7037.

52.202-1	Definitions
52.203-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-6	Restrictions on Subcontractor Sales to the Government (Applicable to Orders over \$100,000)
52.203-7	Anti-Kickback Procedures (excluding par. (c) (1) (In par. (c) (3), after "with" add "Buyer") and (In par. (a) (4) (ii), delete "Government" after "unless the" and substitute "Buyer" therefore. (Applicable to Orders over \$100,000)
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (note 1 applies)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity.
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to Orders over (\$100,000)
52.203-12	limitation on payments to influence Certain Federal Transactions (Applicable to Orders over \$100,000)
52.203-13	Contractor Code of Business Ethics and Conduct
52.204-2	Security requirements (The term "Government" does not change in par. (c). (note 2 applies)
52.204-9	Personal Identity Verification of Contractor Personnel
52.208-8	Helium Requirement Forecast and Required Sources for Helium
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (par. (b) only) (Seller shall furnish to Buyer the information required by par. (b)) (Applicable to Orders over \$30,000)
52.211-5	Material Requirements
52.211-15	Defense Priority Allocation Requirements
52.214-26	Audit and Records – Sealed Bidding (Applicable to Orders over \$500,000 placed under sealed bidding prime contracts).
52.214-27	Price Reduction for Defective Cost or Pricing Data – Modifications – Sealed Bidding (Applicable to Orders and Pricing Adjustments over \$500,000 placed under sealed bidding prime contracts) (Note 1)
52.214-28	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Applicable to Orders over \$650,000)
52.215-2	Audit and Records—Negotiation (Applicable to Orders over \$100,000)
52.215-10	Price Reduction for Defective Cost or Pricing Data (notes 1 and 6) (Applicable to Orders over \$650,000)
52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications (notes 1 and 6) (Applicable to Orders over \$650,000)
52.215-12	Subcontractor Cost or Pricing Data (Applicable to Orders over \$650,000)
52.215-13	Subcontractor Cost or Pricing Data – Modifications (Applicable to Orders over \$650,000)
52.215-15	Termination of Defined Benefit Pension Plans (notes 1, 5 and 6 apply) (Applicable to Orders over \$650,000)
52.215-18	Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (notes 1, 5 and 6 apply) (Applicable to Orders over \$650,000)
52.215-19	Notification of Ownership Changes (notes 5 and 6 apply) (Applicable to Orders over \$650,000)
52.217-9	Option to Extend the Term of the Contract (note 1 applies)
52.217-28	Subcontractor Cost or Pricing Data – Modifications – Sealed Bidding (Applicable to Orders over \$500,000 placed under sealed bidding prime contracts).
52.214-28	Subcontractor Cost or Pricing Data – Modifications – Sealed Bidding (Applicable to Orders over \$500,000 placed under sealed bidding prime contracts).

52.215-2	Audit and Records – Negotiation (Applicable to noncommercial Orders that exceed the simplified acquisition threshold and are placed under negotiated prime contracts.) (Note 10)
52.215-10	Price Reduction for Defective Cost or Pricing Data (Applicable to Orders placed under negotiated prime contracts) (Note 1)
52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications (Applicable to Orders and pricing adjustments over \$500,000 placed under negotiated prime contracts) (note1)
52.215-12	Subcontractor Cost or Pricing Data (applicable to Orders and pricing adjustments over \$500,000 placed under negotiated prime contracts) OR
52.215-13	Subcontractor Cost or Pricing Data – Modifications (Applicable to Orders and pricing adjustments over \$500,000 placed under negotiated prime contracts)
52.215-14	Integrity of Unit Prices (Excluding par. (b)) (Not applicable to commercial items) (Applicable to Orders over \$100,000)
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) other than pensions (Applicable to Orders which meet the applicability requirements of FAR 15.804-8(j))
52.215-19	Notification of Ownership Changes (applicable if cost and pricing data is provided)
52.219-8	Utilization of Small, Small Disadvantaged and Women –Owned Small Business Concerns.
52.219-9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Applicable to Orders over \$500,000) (This clause does not apply to small business concerns)
52.219-16	Liquidated Damages – Subcontracting Plan (notes 1 and 2 apply) (Applicable to Orders over \$550,000)
52.222-1	Notice to the Government of Labor Disputes
52.222-3	Convict Labor
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (Seller shall include the provisions of this clause in any lower tier Orders) (Applicable to Orders over \$100,000)
52.222-6	Davis-Bacon Act (notes 5 and 6 apply)
52.222-18	Certification Regarding Knowledge of Child Labor for Listed Products (note 1 applies)
52.222-20	Walsh-Healey Public Contracts Act (Applicable to Orders over \$10,000)
52.222-21	Certification of Nonsegregated Facilities
52.222-22	Previous Contracts and Compliance Reports
52.222-23	Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction (notes 2 and 5 apply)
52.222-26	Equal Opportunity (Applicable to Orders over \$10,000) (Excluding paragraphs, (a) and (c))
52.222-27	Affirmative Action Compliance Requirements for Construction (Applicable to Orders over \$10,000)
52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (Applicable to Orders over \$100,000)
52.222-36	Affirmative Action for Handicapped Workers (Applicable to Orders over \$10,000)
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Applicable to Orders over \$100,000)
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (Applicable to Orders over \$100,000)
52.222-41	Service Contract Act of 1965, as Amended (note 5)
52.222-50	Combating Trafficking in Persons.
52.222-51	Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration or Repair of Certain Equipment—Requirements
52.222-53	Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements
52.222-54	Employment Eligibility Verification (E-Verify)
52.223-1	Clean Air and Water Act Certification
52.223-2	Clean Air and Water (Applicable to Orders over \$100,000)
52.223-3	Hazardous Material Identification and Material Safety Data (Seller shall furnish the information required by par. (b) To Buyer)
52.223-4	Recovered Material Certification
52.223-7	Notice of Radioactive Materials (Applicable to Orders meeting the criteria of par. (a) (Insert “60” in the first line of par. (a))
52.223-11	Ozone – Depleting Substances (Applicable to Orders for items containing ozone -depleting substances)
52.223-13	Certification of Toxic Chemical Release Reporting (Applicable if 52.223-14 is applicable)
52.223-14	Toxic Chemical Release Reporting (Not applicable to Orders for Commercial items or Orders not exceeding \$100,000)
52.223-15	Energy Efficiency in Energy-Consuming Products (notes 5 and 7 apply)
52.224-2	Privacy Act
52.225-1	Buy American Act – Supplies (note 2 applies)
52.225-8	Duty-Free Entry (notes 3, 5 and 6)
52.225-10	Duty Free Entry (In par. (e) Terms “Government” and “Contracting Officer” do not change and “contract” in par. (h) Refers to the prime contract.)
52.225-11	Restrictions on Certain Foreign Purchases
52.225-13	Restrictions on Certain Foreign Purchases
52.225-19	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States (note 5 and 6 apply)
52.227-1	Authorization and Consent
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement

52.227-3	Patent Indemnity(Note2)
52.227-9	Refund of Royalties(notes 3, 5 and 6)
52.227-10	Filing of Patent Applications – Classified Subject Matter (Applicable to classified Orders)
52.227-11	Patent Rights—Ownership by the Contractor (Short Form)
52.227-13	Patent Rights—Ownership by the Government
52.227-14	Rights in Data – General
52.227-16	Additional Data Requirements
52.227-17	Rights in Data—Special Works (note 3, 5 and 6 apply)
52.227-18	Rights in Data—Existing Works (note 3 applies)
52.227-19	Commercial Computer Software License (note 3 applies)
52.227-20	Rights in Data—SBIR Program (note 3 applies)
52.227-21	Technical Data Declaration, Revision, and Withholding of Payment—Major Systems (notes 1 an 2 apply)
52.227-22	Major System—Minimum Rights (note 3 applies)
52.227-23	Rights to Proposal Data (Technical) (note 3 applies)
52.228-3	Worker’s Compensation Insurance (Defense Base Act)
52.228-4	Worker’s Compensation and War-Hazard Insurance Overseas
52.228-5	Insurance – Work on Government Installation (kinds and amounts, if applicable, set forth in Order)
52.228-7	Insurance – Liability to Third Persons
52.229-2	North Carolina State and Local Sales and Use Tax (notes 5 and 6 apply)
52.229-3	Federal, State, and Local Taxes
52.229-4	Federal, State, and Local Taxes (State and Local Adjustments) (notes 2 and 5 apply)
52.229-5	Taxes – Contracts Performed in U.S. Possessions or Puerto Rico
52.229-6	Taxes—Foreign Fixed-Price Contracts (note 2 applies)
52.229-7	Taxes—Fixed-Price Contracts with Foreign Governments
52.230-2	Cost Accounting Standards (Excluding par. (b) (See par. (d) For effective date of clause)
52.230-3	Disclosure and Consistency of Cost Accounting Practices (excluding par. (b))
52.230-5	Cost Accounting Standards—Educational Institution (note 1 applies except to paragraph (a)(1) and note 5 applies)
52.230-6	Administration of Cost Accounting Standards (Applicable to Orders over \$500,000)
52.232-1	Payments
52.232-9	Limitation on Withholding Payments
52.232-11	Extras
52.232-16	Progress Payments (applicable if Order meets criteria of FAR and the rate of Progress Payments is set forth in the body of the Order) (The term “Government” does not change in paragraphs (d) and (g))
52.232-17	Interest
52.232-27	Prompt Payment for Construction Contracts
52.233-3	Protest After Award (note 1 and 2 apply)
52.234-1	Industrial Sources Developed Under Defense Production Act Title III
52.236-13	Accident Prevention (note 5 applies)
52.237-3	Continuity of Services (note 2 applies)
52.237-7	Indemnification and Medical Liability Insurance (notes 2 and 3 apply)
52.242-1	Notice of Intent to Disallow Costs (notes 5 and 7 apply)
52.242-2	Production Progress Reports
52.242-15	Stop Work Order
52.242-17	Government Delay of Work (Term “Contracting Officer” in par. (a) Includes Buyer. The Term “Government” does not change.)
52.243-1	Changes – Fixed Price (Delete “30” and substitute “20” there for)
52.243-4	Changes (note 2 applies) (Applicable to Orders over \$100,000)
52.243-5	Changes and Changed Conditions (note 2 applies)
52.243-6	Change Order Accounting
52.243-7	Notification of Changes (Note 3)
52.244-5	Competition in Subcontracting (Applicable to Order that exceed the simplified acquisition threshold) (Note 10)
52.244-6	Subcontracts for Commercial Items and Commercial Components
52.245-1	General
52.245-2	Solicitation and Evaluation Procedures
52.245-3	Authorizing the Use and Rental of Government Property
52.245-4	Title to Government Property
52.245-5	Support Government Property Administration
52.245-6	Reporting, Reutilization, and Disposal
52.245-9	Use and Charges (note 5 applies)
52.245-17	Special Tooling
52.245-18	Special Test Equipment (In par. (b) Delete “30” and substitute “45” therefore)
52.246-2	Inspection of Supplies – Fixed Price (Note 2)
52.246-4	Inspection of Services – Fixed Price (Note2)
52.246-7	Inspection of Research and Development—Fixed Price (notes 2, 3 and 5)
52.246-9	Inspection of Research and Development (Short Form) (notes 3 and 5 apply)

52.246-16	Responsibility for Supplies (applicable to Orders that exceed the simplified acquisition threshold) (Note 6) (Note 10)
52.246-17	Warranty of Supplies of a Noncomplex Nature (notes 2, 3 and 5 apply)
52.246-18	Warranty of Supplies of a Complex Nature (notes 2, 3 and 5 apply)
52.246-20	Warranty of Services (notes 2, 3 and 5 apply)
52.246-21	Warranty of Construction (notes 2, 3 and 5 apply)
52.246-23	Limitation of Liability (Applicable to Order that exceed the simplified acquisition threshold, except those priced at or based on catalog or market prices) (note 10)
52.246-24	Limitation of Liability – High Value Items (Applicable only if the Contracting Officer has given advance written approval to include this clause) (This clause shall apply only to those items identified in the Order as being subject to this clause.)
52.246-25	Limitation of Liability – Services (Applicable only if the Contracting Officer has given advance written approval to include this clause.) (This clause shall apply only to those items identified in the Order as being subject to this clause.)
52.247-63	Preference for U.S. Flag Carriers
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels
52.248-1	Value Engineering and Alternate 1 (Applicable to Orders of \$100,000 or more) Sharing Rate, if applicable, set forth on face of this Order) (Note7)
52.248-3	Value Engineering—Construction (mandatory flowdown) (notes 2 and 5 apply and note 3 only applies to paragraphs (g), (h) and (i)) (Applicable to Orders over \$55,000)
52.249-1	Termination for Convenience of the Government (Fixed Price) (Short Form) (notes 1 and 2 apply)
52.249-2	Termination for Convenience of the Government (Fixed-Price Note 8)
52.249-4	Termination for Convenience of the Government (Services) (Short Form) (notes 1 and 2 apply)
52.249-7	Termination for Convenience of the Government (Fixed Price, Architect-Engineer) (notes 1 and 2 apply)
52.249-8	Default (Fixed-Price Supply and Service) (Note 9)
52.250-1	Indemnification Under Public Law 85-804
252.203-7001	Special Prohibition on Employment (Applicable to Subcontracts over \$25,000)
252.204-7000	Disclosure of Information
252.204-7003	Control of Government Personnel Work Product
252.208-7000	to Furnish Precious Metals as Government Furnished Material
252.209-7000	Acquisition from Subcontractors Subject to the On-site Inspection under the Intermediate – Range Nuclear Forces (INF) Treaty
252.211-7000	Acquisition Streamlining (Applicable to Orders over \$1,000,000)
252.215-7000	Pricing Adjustments
252.219-7003	Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts)
252.222-7006	Restrictions on the use of Mandatory Arbitration Agreements
252.225-7001	Buy American Act and Balance of Payments Program
252.225-7002	Qualifying Country Sources as Subcontractors
252.225-7006	Buy American Act – Trade Agreements – Balance of Payments Program Certificate
252.225-7008	Restriction on Acquisition of Specialty Metals.
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals.
252.225-7010	Commercial Derivative Military Article—Specialty Metals Compliance Certificate.
252.225-7012	Preference for Certain Domestic Commodities
252.225-7014	RESERVED
252.225-7015	Preference for Domestic Hand or Measuring Tools
252.225-7016	Restriction on Acquisition of Ball and Roller Bearings
252.225-7022	Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber
252.225-7025	Restriction on the Acquisition of Forgings
252.225-7026	Reporting of Contract Performance Outside the United States (Applicable to Orders over \$100,000)
252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate
252.227-7013	Rights in Technical Data – Noncommercial Items
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
252.227-7015	Technical Data – Commercial Items
252.227-7016	Rights in Bid and Proposal Information
252.227-7018	Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program
252.227-7019	Validation of Asserted Restrictions – Computer Software (Applicable to Orders under which computer software will be furnished)
252.227-7026	Deferred Delivery of Technical Data or Computer Software
252.227-7027	Deferred Ordering of Technical Data and Computer Software
252.227-7030	Technical Data – Withholding of Payment
252.227-7036	Certification of Technical Data Conformity
252.227-7037	Validation of Restrictive Markings on Technical Data
252.231-7000	Supplemental Cost Principles
252.232-7004	DOD Progress Payment Rates
252.235-7003	Frequency Authorization

252.243-7001	Pricing of Contract Modifications (Applicable if cost or pricing data is provided)
252.246-7001	Warranty of Data
252.247-7023	Transportation of Supplies by Sea (Applicable to Orders that exceed the simplified acquisition threshold in FAR Part 13).
252.247-7024	Notification of Transportation of Supplies by Sea
252.249-7002	Notification of Anticipated Contract Termination or Reduction (Applicable to Orders over \$100,000)

**NOTES****APPLICABLE TO THE ABOVE FAR AND DFAR REGULATIONS**

1. Excluded from such reduction, however, shall be Buyer's burden and profit applied to defective cost and pricing data of Seller and its subcontractors and suppliers. (52.214-27, 52.215-22 and 23)
2. The term "Government" in this clause shall be deemed to include both the Government and Buyer (52.227-3, 52.246-2 and 52.246-4)
3. The Selected Authorized Representative (SAR) shall be designated in writing at the time this Order is issued. Delete the term "Government" in par. (b) And substitute the phrase "Government and Buyer" therefore. Insert "20" in the blank spaces in paragraphs (b) and (d) (52.243-7)
4. The rights and obligations of Seller with respect to Buyer Furnished Property, if any, shall be the same as those which Seller has with respect to Government Property under this FAR not modified by Alternate I (52.245-2)
5. This alternate I shall not be applicable unless Seller has requested in writing to have Alternate I apply and Buyer has notified Seller in writing of the Prime Contract Contracting Officer's approval to grant Seller such limited liability. (52.245-2)
6. The term "Government" in par. (d) Of this clause shall be deemed to include both the Government and Buyer. (52.246-16)
7. The terms "Government" and "Contracting Officer" do not change in this clause. However all proposals under this FAR shall be submitted though Buyer. (52.248-1)
8. If this Order is terminated for convenience as a result of a termination for convenience issued by the Government, the term "Government" does not change in (b) (4), (6), (8) and (m). Delete par. (c). In par. (d) Delete "1 year" and substitute "6 months" therefore. In par. (k) Delete "90" and substitute "45" therefore. If this Order is terminated for convenience solely by Buyer, audits and examinations of records, as required by Buyer, shall be performed by an independent certified public accounting firm, mutually acceptable to Buyer and Seller. The cost of such firm shall be paid by Buyer. Notwithstanding anything to the contrary. Buyer shall not be liable for special or consequential damages. (52.249-2)
9. Term "Government" does not change in par. (c) (2). In par. (c), add "(10) acts of Buyer" before the last sentence. Notwithstanding anything to the contrary set forth in par. (h) of this FAR or any other provision of this Order, Seller shall not be liable for special of consequential damages, (52.249-8)
10. "Simplified Acquisition Threshold" means \$100,000, except for certain contracts to be performed outside the United States, in which case the threshold is \$200,000.

**C. GOVERNMENT AUTHORIZATION TO SELLER.** To the extent authorized by the U.S. Government by a direct contract with Seller for the manufacture of products for sale to the U.S. Government, and to the extent that such use will not interfere with Seller's performance of this or other Orders from Buyer in effect at the time Seller enters into such contract with the Government, and upon prior written notice to Buyer of such Government authorization and the contract number, Seller shall have the right to use items described in Article 33 which the Government owns or has the right to use or the right to authorize others to use.

**D. SELLER'S CERTIFICATION OF CLAIMS.** For any claims to be submitted under this Order in excess of \$50,000, Seller shall certify to Buyer, as to its portion of the claim that: (a) the claim is made in good faith. (b) The supporting data are accurate and complete to the best of Seller's knowledge and belief and (C) the amount requested accurately reflects the adjustment for which Seller believes the Government is liable.

**E. FALSE CLAIMS AND INDEMNITY.** Seller shall indemnify Buyer for any costs incurred, including attorney's fees, and payments made by Buyer resulting from: (1) false claims submitted by Seller under this Order, (2) as a result of a Seller's misrepresentation of fact or fraud under appeals made by Buyer or at the request of Seller under F(2). below, and (3) failure of Seller to comply with FARS with respect to Cost Accounting Standards. Buyer shall notify Seller in writing of any allegations of a false claim, misrepresentation of fact or fraud, or noncompliance to which this indemnity applies.

**F. SELLER'S CERTIFICATION OF COST OR PRICING DATA**

1. If the amount of this Order was expected to exceed \$500,000 when entered into, Seller has submitted, actually or by specific identification in writing, cost or pricing data.
2. Prior to the pricing or any modification to this Order which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$500,000, Seller shall submit, actually or by specific identification in writing, cost or pricing data.
3. The submissions referenced in 1, and 2, above are not required where the price is based on adequate price competition, commercial items as defined in the Federal Acquisition Regulations, or prices set by law or regulations.

**G. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.** If the Contracting Officer under Buyer's prime Contract determines that any price including profit or fee, negotiated in connection with such Prime Contract, or any cost reimbursable

under such Prime Contract was increased because Seller, or any subcontractor of Seller, pursuant to the clauses of this Order furnished incomplete or inaccurate cost or pricing data or data not current as certified in Seller's Certificate of Current Cost or Pricing Data and if such Prime Contract price, including profit or fee, or any cost reimbursable under such Prime Contract, shall be reduced by reason thereof; then, in such event the price negotiated in connection with this Order, including profit or fee or any cost reimbursable hereunder, shall be reduced accordingly and this Order shall be modified in writing to reflect such reduction, and any amount paid Seller by Buyer in excess of the amount due Seller under this Order after said reduction is made shall be promptly paid by Seller to Buyer upon demand.

In the event of price reduction pursuant to paragraph 1 above, Seller shall be bound by the determination of the Contracting Officer, provided that Buyer shall have promptly notified Seller of the decision of the Contracting Officer reducing Buyer's Prime Contract price; and, if timely requested by Seller, Buyer shall appeal such decision on behalf of Seller. All costs and expenses incurred, including attorney's fees, by Seller and Buyer in prosecuting any appeal taken solely at Seller's request shall be paid by Seller.

Excluded from such reduction, however, shall be Buyer's burden and profit applied to defective cost and pricing data of Seller and its subcontractors and suppliers.

**H. NASA FAR SUPPLEMENT (NFS) REGULATIONS INCORPORATED BY REFERENCE.** If this Order indicates it is placed under a NASA prime contract or subcontract, the text in Article 37, B is applicable to the NFS clauses and the DFAR clauses set forth in Paragraph B, of Article 37 and applicable Notes are hereby deleted and the following NASA clauses apply:

1852.208-81(f)	Restrictions on Printing and Duplicating
1852.219-75(b)	Small, Small Disadvantaged and Woman Owned Small Business Subcontracting Reporting Use of Rural Area Small Business
1852.223-71	Frequency Authorization (Applicable to Orders for which a radio frequency Authorization is required)
1852.223-74(g)	Drug- and Alcohol-Free Workplace (Not applicable to Orders for Commercial Items) New Technology (App)
1852.227-70	Designation of New Technology Representative and Patent Representative
1852.227-85	Invention Reporting and Rights – Foreign

**I. RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS, FRANKEN AMENDMENT**

Pursuant to DFARS 252.222-7006, the Seller:

(1) Agrees not to—

(i) Enter into any agreement with any of its employees or independent contractors performing work related to this Order that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration—

(A) Any claim under title VII of the Civil Rights Act of 1964; or

(B) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(ii) Take any action to enforce any provision of an existing agreement with an employee or independent contractor performing work related to this Order that mandates that the employee or independent contractor resolve through arbitration—

(A) Any claim under title VII of the Civil Rights Act of 1964; or

(B) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; and

(2) Certifies, by signature of this Order, that it requires each entity that holds a non-commercial item subcontract, purchase order or other agreement related to this Order that is expected to exceed \$1 million, to agree not to enter into, and not to take any action to enforce, any provision of any agreements, as described in paragraph (1) of this clause, with respect to any employee or independent contractor performing work related to such subcontract, purchase order or other agreement.

**41. PROHIBITION OF PURE TIN:**

The use of Pure Tin Plated Finishes is strictly PROHIBITED! Any Tin Plating or Solder Processes shall contain no less than three (3) percent Lead composition, unless specifically authorized in writing by the Procuring Agency. These restrictions apply for all types and levels of procurements with the Seller Responsible for communicating these restrictions to subcontractors or sub-tier suppliers as required.

**42. EXCLUSION OF HAZARDOUS MATERIALS ON EPA 17 AND DOD TOP 10 LISTS:**

Every effort should be made to exclude chemicals and compounds found on the EPA 17 and DoD top 10 lists of hazardous materials (see Attachment 1) in the equipment of supplies furnished under this Purchase Order. In addition, every effort should be made to exclude hazardous materials found on said lists in the processes used to furnish equipment or supplies under this Purchase Order. Reasonable steps shall be taken to ensure that said equipment or supplies are not contaminated with any chemicals and compounds on EPA 17 and DoD Top10 lists. Should the Technical Data Package require hazardous material contained on EPA and DoD Top ten (10) lists, notify the ITT-EC buyer.

**43. EXCLUSION OF MERCURY:**

The equipment or supplies furnished under this Purchase Order shall contain no metallic mercury or mercury compounds and reasonable steps shall be taken to ensure that said equipment or supplies are not contaminated with mercury or mercury compounds. Should the Technical Data Package require mercury or mercury compounds, notify the ITT buyer.

**44. ELIMINATION OF OZONE DEPLETING CHEMICALS:**

The Clean Air Act (42 U.S.C. Section 7401) Title VI., Section 602A, as amended November 15, 1990, bans the production of Class 1 Ozone Depleting Chemicals (ODC) effective January 1996. Process changes associated with the elimination of these chemicals, as applicable to the manufacture of the items(s) on this purchase order, must be approved by ITT prior to implementation. Notification must

include technical rationale validating the new process. Should a reference for ODC be found within the Technical Data Package, please notify the individual whose name appears in the buyer field of the purchase order.

Every effort should be made to exclude Class 2 ozone Depleting Chemicals in the equipment or supplies furnished under this Purchase Order. In addition, every effort should be made to exclude Class 2 Ozone Depleting Chemicals found on said lists in the processes used to furnish equipment of supplies under this Purchase Order. Reasonable steps shall be taken to ensure that said equipment of supplies is not contaminated with Class 2 Ozone Depleting Chemicals. Should the Technical Data Package require Class 2 Ozone Depleting Chemicals, please notify the individual whose name appears in the buyer field of the Purchase Order.

#### 45. EXPORT

SELLER, at its sole expense, agrees to comply with all laws and regulations of the United States and other countries related to exports and imports including obtaining all required authorizations from the U.S. or other applicable governments. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of an export license, agreement, or other applicable exemption or exception of the U.S. or other applicable governments.

SELLER is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, or prototypes), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by BUYER for purposes of this Order are or may be subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. parts 120 – 130). In addition, SELLER is hereby notified that hardware, technical data, and/or services sold by SELLER that are designed, developed, modified, adapted or configured from hardware, technical data, and/or services provided by BUYER are or may be subject to the ITAR.

SELLER agrees to notify ITT Cannon, LLC if any deliverable under this Contract is restricted by export control laws or regulations.

SELLER shall immediately notify ITT Cannon, LLC Buyer Representative if SELLER is, or becomes listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export / import compliance program in accordance with the ITAR, including all other applicable U.S. regulations.

Where SELLER is a signatory under an ITT Cannon, LLC export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the ITT Cannon, LLC Buyer Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation that could affect the SELLER's performance under this Order.

If any technical data required to perform this Order is exported to the Seller under an approved U.S. Government export authorization, Seller shall comply with the following: (i) The technical data shall be used in accordance with the requirements of the approved export authorization; (ii) The technical data shall not be disclosed to any other person, subcontractor, Seller facility or country without the prior written permission of ITT and the U.S. Government, as required; (iii) Seller acknowledges that it is not acquiring any rights to the technical data; (iv) Seller, including previously approved lower-tier subcontractors, shall return, or at ITT's direction, destroy all of the technical data exported to Seller pursuant to this Order upon fulfillment of its terms; (v) Unless otherwise directed by ITT, Seller shall deliver the items only to ITT or to an agency of the U.S. Government; and (vi) Seller shall include the terms of this subsection in all lower-tier subcontracts issued when technical data is provided to the lower-tier subcontractor. In all cases Seller, prior to the transfer of such technical data, must have written permission of ITT and the U.S. Government, as required.

SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

#### 46. IMPORT

##### Customs

For each shipment of items covered by this order, Seller shall furnish ITT with a commercial invoice containing, at a minimum, the following information: (a) port of entry; (b) name and address of Seller and ITT entity purchasing the items; (c) name of shipper (if different from Seller); (d) country of export; (e) detailed description of items in English; (f) quantities and weights; (g) actual purchase price, including all elements of the amount paid or payable by ITT; (h) the currency in which the sale was made; (i) all charges, costs and expenses associated with the items, including freight, insurance, commission, containerization and packing, unless the cost of packing, containerization and inland freight are already included in the invoice price; (j) all rebates or discounts; and (k) the country of origin (manufacture) of the items. The value of any goods or services furnished for the production of the items (e.g., "assists") not included in the invoice price, must be reported on the invoice for the first shipment of goods unless ITT directs otherwise in writing. All items, unless specifically exempted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, with the country of manufacture of the items. SELLER shall provide BUYER upon its request necessary documentation (e.g., manufacturer affidavit or NAFTA certificate) to enable BUYER to claim preferential duty treatment for Items eligible under applicable trade preference regimes. Seller agrees to comply with all laws and regulations governing the importation of goods into the customs territory of the United States and any other country of importation. Seller agrees to hold harmless and indemnify ITT, its

directors, officers and employees against all losses, claims, penalties, judgments, liabilities and expenses which any of them may pay or incur arising out of representations made by the Seller with respect to documentation or other Customs or Governmental requirements with regard to entry requirements, classification, valuation, preferential treatment, duty drawback or trade terms.

#### **Government Duty Increases**

If government authorities declare or otherwise impose countervailing duties, antidumping duties, or retaliatory duties on items imported by ITT under this order, ITT reserves the right to terminate this order in accordance with the provisions in Section 15.

#### **Duty Drawback Rights**

All drawback of duties and rights thereto related to duties paid by Seller or ITT upon importation of the items into any customs territory if the items are subsequently exported from that country shall accrue to the exclusive benefit of ITT. Seller agrees to provide ITT with all documents, records and other supporting information necessary to obtain any such duty drawback, and agrees to reasonably cooperate with ITT to obtain such payment.

#### **47. C-TPAT**

**Customs – Trade Partnership Against Terrorism.** To the extent any item covered by this Order is to be imported into the United States of America, if requested by the BUYER, SELLER shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, SELLER shall certify in writing its compliance with all applicable recommendations or requirements of the C-TPAT initiative. Further information about the C-TPAT program may be found on Customs website at <http://www.cbp.gov>.

#### **48. HAZARDOUS MATERIALS**

Packaging, identification, shipping and distribution of this material must be in compliance with all applicable State, Federal, and International regulations and requirements. Material Safety Data Sheet (MSDS) and precautionary labeling requirements of 29 CFR 1910.1200, Hazard Communication Program, must be complied with:

##### **A. CHEMICAL SUBSTANCE REPORTING**

Prior to shipment of chemical substances under this Purchase Order/Contract, Seller shall provide a copy of the Material Safety Data Sheet (MSDS) for each such substance to ITT Cannon, LCC, 666 East Dyer, Santa Ana, CA 92705, ATTN: Environmental, Safety and Health Dept.

A "chemical substance" (including mixtures, solids, liquids, cryogenic liquids, gases, etc.) is any chemical or mixture which (a) is defined as a hazardous chemical by OSHA, DOT, EPA, ICAO, or any other federal, state, or local environmental or health agency, or (b) in the course of normal operations or foreseeable emergencies may produce dust, gases, vapors, mists, fumes or smoke.

Each MSDS shall contain or have attached thereto all of the following information:

1. The data described in 29 CFR Part 1910.1200(g).
2. The Chemical Abstract Service (CAS) number (if available) of the chemical substance and/or each component constituent of a mixture.
3. A statement whether or not the chemical substance or constituent thereof is:
  - a. Listed on the TSCA Chemical Inventory.
  - b. Listed on TSCA 12(b) Export Notification List.
  - c. Subject to a Significant New Use Rule (40 CFR 721, sub. B).
4. Volatile Organic Compound (VOC) content and vapor pressure information, as required by applicable EPA, SCAQMD, and other air agency rules and regulations.
5. Identification of any EPA-SARA constituents.

All inside and outside shipping containers shall comply in all respects with 49 CFR Parts 100-199. All such containers shall utilize HM 181 Final Rule, Performance Oriented Packaging Requirements.

##### **B. S.C.A.Q.M.D. RULES AND REGULATIONS**

1. Seller represents and warrants that all work to be performed by Seller under this Purchase Order/Contract (PO/Contract) shall be conducted in full compliance with all Federal, State and local statutes, ordinances and regulations relating to protection of public health and safety of the environment.
2. Seller understands and agrees that if performance of the services under this PO/Contract requires the application of coatings or solvents which do not comply with emission limitations under South Coast Air Quality Management District (SCAQMD) Rules 1107 and 1124, Seller will perform the services hereunder pursuant to an Alternate Emission Control Plan (AECP).
3. Seller further represents and warrants that it will obtain the approval of the AECP by the executive officer of the SCAQMD prior to the time that performance of services under this PO/Contract commences including submitting a copy of the approved AECP to the ITT Cannon, LLC Purchasing Representative. Seller agrees that it shall be solely responsible for developing, obtaining approval of and maintaining compliance with the AECP.
4. Seller agrees to indemnify, save harmless and defend ITT Cannon, LLC, its directors, officers, employees, agents, successors, and assigns, from and against any and all liabilities, claims, suits, losses, damages, fines, penalties, forfeitures, and the costs and expenses incident thereto (including costs of defense, settlement and reasonable attorney's fees), which it or they may hereafter incur, become responsible for or pay out as a result of or arising out of the breach by Seller or Seller's failure to perform any of the representations, warranties and agreements set forth in this contract condition. Seller agrees that it will promptly notify the ITT Cannon, LLC Purchasing Representative of any alleged or anticipated noncompliance with SCAQMD Rules 1107 or 1124 relating to or which may affect the performance under this PO/Contract.