

ITT DEFENSE – If modified for (insert) only
STANDARD FIXED PRICE TERMS AND CONDITIONS AND FAR FLOWDOWN PROVISIONS

For Subcontracts and Purchase Orders of Commercial Items (as defined in Federal Acquisition Regulation 2.101) Under a U.S. Government Prime Contract

ITEM 1 - ARTICLES APPLICABLE TO ALL ORDERS

1. CONTENTS AND ORDER OF PRECEDENCE: This Order, which includes the Purchase Order, Subcontract (if any), these ITT Defense (“Buyer” to include EDO Corporation, NexGen Communications, LLC and Darlington, Inc., wholly owned subsidiaries of ITT Corporation) Standard Fixed Price Terms and Conditions and FAR Provisions of Purchase (“Terms and Conditions”), which are incorporated by reference in the Purchase Order, and the Statement of Work, if any, integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with any referenced certifications, certificates, exhibits, attachments or other documents, constitutes the entire agreement between the parties (“Order”) and shall govern the performance and/or delivery of items and/or services provided pursuant to the Order (“Items” and/or “Services”). These Terms and Conditions consist of one or more of the following items: ITEM 1—Articles 1 through 57, and ITEM 2—a list of clauses from the Federal Acquisition Regulation (FAR), including any referenced certifications, exhibits, attachments or other documents apply to this Order. If this Order is placed under Buyer’s Federal, Defense, NASA or FAA contract or subcontract (“Government Contract”), then the clauses contained in ITEM 2, including any referenced certifications, certificates, exhibits, attachments or other documents also apply, as applicable, to this Order. The provisions of this Order shall be construed and interpreted as consistent whenever possible. Any conflicts in this Order shall be resolved in accordance with the following descending order of precedence (i) the Purchase Order; (ii) these Terms and Conditions (which are incorporated by reference in the Purchase Order); and (iii) the Statement of Work. These Terms and Conditions shall be construed and interpreted as consistent whenever possible. In the event of a conflict in the Articles contained in ITEM 1 and applicable clauses contained in ITEM 2, the applicable clauses in ITEM 2 shall control to the extent necessary for Buyer to comply with Buyer’s Government Contract.

2. ACCEPTANCE OF THIS ORDER: The Purchase Order Acceptance Copy must be signed and returned by Seller within five (5) days of receipt by Seller if this Order is DX rated, otherwise within ten (10) days after receipt. Any of the following acts by Seller shall constitute acceptance of this Order, regardless of whether Buyer has received a signed agreement from Seller:

- (a) execution of the Acceptance Copy of this Order and receipt by Buyer;
- (b) initiation of any aspect of performance, or notification to Buyer that Seller is commencing performance, under this Order;
- (c) shipping of any Items in performance of this Order; or
- (d) acceptance of any form of payment, partial or complete, under this Order.

Any additional or different terms proposed by Seller, including any contained in Seller’s acknowledgment form, are rejected unless expressly agreed to in writing by the Buyer Procurement Representative or Subcontract Administrator (collectively, “Buyer Representative”).

3-4. RESERVED.

5. APPLICABLE LAW AND DISPUTES: All disputes under this Order that are not disposed of by mutual agreement of the parties may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of this Order as directed by Buyer. Any dispute over any question of fact or law arising under this Order shall be governed by the laws of the State of Indiana, except that any clause in ITEM 2 of this Order (i.e., FAR or other U.S. Government contract clauses and certifications) shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Federal government.

Seller consents to personal jurisdiction in Indiana and any litigation under this Order, if commenced by Seller, must be brought exclusively in a Court of competent jurisdiction in the State of Indiana, except as otherwise provided by any applicable conflicts of laws provisions. The parties hereby mutually agree to waive their respective rights to trial by jury.

Any dispute arising under or related to this Order, which Buyer could include in a claim or other demand under the “Disputes” clause of its Government (or other customer) contract, shall be resolved at Buyer’s discretion. In the event Buyer prosecutes a claim under its Government (or other customer) contract that includes Seller’s claim, Seller shall fully

cooperate with Buyer, pay proportional costs in prosecuting the claim and hereby agrees to be bound by the resulting decision. Buyer’s entire liability to Seller with respect to any matter prosecuted under the “Disputes” clause of its Government (or other customer) contract shall be limited to the recovery obtained against the Government (or other customer) for Seller’s claims, less markups specifically allowed Buyer.

Subject to any specific provisions in this Order, Seller shall be liable for any damages incurred by Buyer as a result of Seller’s failure to perform its obligations in the manner required by this Order. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity without consideration of Indiana’s conflict of laws rules.

The parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.

6. ARTICLE HEADINGS: The headings and subheadings of Articles contained herein are used for convenience and ease of reference and do not limit the scope or intent of the Article.

7. ASSIGNMENT AND SUBCONTRACTING: Neither this Order itself, nor any interest or obligation hereunder, shall 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 or Services required by this Order, without the prior written approval of Buyer; however, this Article shall not be construed to require the approval of contract of employment between the Seller and personnel assigned for Services hereunder. Seller further agrees to select subcontractors (including vendors or suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Purchase Order. Seller shall remain primarily responsible for the performance of obligations which it subcontracts hereunder and shall reasonably supervise such work. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and adjustments in price with Seller without notice to the assignee. Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against Seller by any subcontractor or vendor that, in the opinion of Seller, may result in litigation related in any way to this Order, with respect to which Seller may be entitled to reimbursement from Buyer. Buyer may assign this Order to any affiliated company, any successor interest, or Buyer’s customer.

8-9. RESERVED.

10. AUDIT, INSPECTION OF RECORDS: Buyer, and Buyer’s customer, including the Federal government, if Buyer agrees with the customer’s request to audit Seller’s records or Buyer is otherwise obligated to grant the customer access to records, shall have the right to audit Seller’s records: (a) in the event of cancellation, termination, or default; (b) in connection with any equitable adjustment request; (c) with respect to any Order for which the price is based on time and cost of material or where the terms of this Order or law and regulation otherwise entitle Buyer and/or its customer to audit Seller’s records; (d) in connection with internal investigations of alleged violations of law including, but not limited to, the U.S. Foreign Corrupt Practices Act; or (e) any type of litigation. Seller shall keep reasonably detailed records of direct labor costs, material costs, and all other costs of the performance of this Order for a period of no less than three (3) years from the date of final payment or termination of any warranty or Item support under this Order, whichever is later.

11. BANKRUPTCY: If Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Seller shall furnish by certified mail written notification of the bankruptcy to Buyer. This notification shall include the date on which the bankruptcy petition was filed and the identity of the court where the bankruptcy petition was filed.

12. BUYER’S RIGHT TO USE INFORMATION DISCLOSED BY SELLER: Unless otherwise expressly set forth in this Order or a separate written Order, Buyer shall have the right to use, for any purpose, information

concerning Seller's items, manufacturing methods or processes which Seller has disclosed to Buyer, without restrictions, prior to or during the performance of this Order. In the event of a conflict between the terms of this Article and the terms and conditions of any separately executed and applicable Mutual Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Mutual Non-Disclosure Agreement shall control.

13. CALENDAR DAYS: All periods of days referred to in this Order shall be measured in calendar days. Where a date referenced in this Order falls on a weekend or federal holiday, the date shall be deemed to fall on the next business day.

14. CHANGES: Buyer may at any time, by written instructions from Buyer's Procurement Department to Seller, make changes to these Terms and Conditions and/or in the Services 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 of delivery, inspection or acceptance; and
- (d) the quantity of Items ordered or Services to be performed.

During performance of this Order, Seller shall not make any changes in the Services to be performed or in the design of Items or manufacturing of Items to be furnished by Seller under this Order without advance notification to and written approval of the Buyer. Items or Services that have changed without prior notification and consent shall be nonconforming Items or Services under this Order.

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 to the Order price and delivery schedule shall be made and the Order modified in writing accordingly, provided however, that any equitable adjustment in price to which Seller may be entitled as a result of an increase in the quantity of Items or Services ordered shall not exceed the unit price established for such Items or Services herein. Any claim hereunder must be asserted by Seller in writing within fifteen (15) days from the date the change is ordered.

Consistent with Article 5, if this is a Government Order issued under Buyer's Government Contract, for any claims seeking an equitable adjustment or other relief in excess of \$100,000 submitted by Seller under this Order, Seller shall submit to Buyer a signed certificate that states as follows, substituting Seller's legal name where indicated:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Order adjustment for which [the Seller] believes Buyer is liable; and that I am duly authorized to certify the claim on behalf of [the Seller]."

If requested by Buyer, Seller shall identify that portion of its claim for which it believes the Government is liable and shall execute the certification above, substituting "the Government" for "Buyer" as to such amount.

If a final decision is issued by a Contracting Officer for Buyer's Government Contract and the decision relates in any way to this Order or to the Items or Services ordered hereunder, said decision, if binding upon the Buyer, shall also be binding upon Buyer and Seller with respect to this Order.

If Buyer appeals or commences an action regarding such decision, any decision upon such appeal or action, if binding upon the Buyer under Buyer's Government Contract, shall be binding upon the Buyer and Seller as it relates to this Order. Consistent with Article 5, if any appeal is taken or an action commenced by Buyer, Seller shall assist Buyer in its prosecution thereof in every reasonable manner.

If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the disputes provisions of Article 5. Nothing contained herein, including failure of the parties to agree upon any equitable adjustment to be made under this Article, shall excuse Seller from proceeding without delay with the Order as changed by Buyer's written direction.

Whether made pursuant to this Article, or by mutual Order, 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 the Buyer Representative and which expressly states that it constitutes an amendment to this Order.

If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Representative, Seller shall take no action to implement any such change.

15. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:

Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state and/or federal government authority.

- (a) Buyer may proceed as provided for in subparagraph (c) below if, as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier:
 - (1) Buyer's contract price or fee is reduced;
 - (2) Buyer's costs are determined to be unallowable;
 - (3) any fines, penalties, withholdings, or interest are assessed on Buyer; or
 - (4) Buyer incurs any other costs or damages.
- (b) Buyer may also proceed as provided for in subparagraph (c) below where submission of cost or pricing data is required or requested at any time prior to or during performance of this Order, if Seller or its lower-tier subcontractors:
 - (1) submit and/or certify cost or pricing data that are defective;
 - (2) with notice of applicable cutoff dates and upon Buyer's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on Buyer's Certificate of Current Cost or Pricing Data;
 - (3) claim an exception to a requirement to submit cost or pricing data and such exception is invalid;
 - (4) furnish data of any description that is inaccurate; or
 - (5) if the U.S. Government alleges any of the foregoing, and, as a result:
 - (i) Buyer's contract price or fee is reduced;
 - (ii) Buyer's costs are determined to be unallowable;
 - (iii) any fines, penalties, withholdings, or interest are assessed on Buyer; or
 - (iv) Buyer incurs any other costs or damage.
- (c) Upon the occurrence of any of the circumstances in subparagraphs (a) and (b) above, other than withholdings identified in paragraphs (b)(5)(ii) and (iii), Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of this Order or any other contract with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded. In the case of withholding(s), Buyer may withhold the same amount from Seller under this Order.

16. COMPLIANCE WITH THE U.S. FOREIGN CORRUPT PRACTICES ACT:

The Seller warrants and represents that it is familiar with and will strictly comply with the requirements of the U.S. Foreign Corrupt Practices Act of 1977, as amended. The Seller will not offer, pay or promise, give, or authorize payment of any money or anything of value to any government or public official (including political parties, officials or candidates for political office) for the purpose of influencing any act or decision of such official in his official capacity, including failure to perform his official function. Seller agrees that no expenditures for other than lawful purposes will be made with respect to the performance of this Order.

17. GRATUITIES/KICKBACKS: No gratuities (in the form of entertainment, gifts, travel, or anything of value) or kickbacks shall be offered or given by Seller or by any agent or representative of Seller to any officer or employee of Buyer's customer or Buyer. Buyer may, by written notice to Seller, immediately terminate the right of Seller to proceed under this Order if it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer's customer or Buyer.

18. CONFIDENTIAL RELATIONSHIP: Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer, except for any such information owned by the Government or to which the Government has unlimited rights, in which case the Seller shall use and disclose the information in accordance with applicable provisions and/or restrictive markings concerning the Seller's use and disclosure of such information. 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. In the event of a conflict between the terms of this Article and the terms and conditions of any separately executed and applicable Mutual Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Mutual Non-Disclosure Agreement shall control.

19. DEFAULT:

- (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 within ten (10) days after it is filed; or
 - (3) Seller fails to make delivery of the Items or to perform the Services within the time specified in this Order;
 - (4) 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;
 - (5) 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); or
 - (6) it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer's customer or Buyer; or
 - (7) control of the Seller changes. A change of control includes: (a) the sale, lease or exchange of a substantial portion of the Seller's assets used for the production of the Items; (b) the sale or exchange of a controlling interest in the shares of the Seller; or (c) the execution of a voting or other change of control. The Seller will provide the Buyer with written notice of change of control within 10 days after the change of control has become effective. The Buyer will have 60 days from the date the written notice from the Seller is received by Buyer within which to notify the Seller of its decision to terminate this Order and the effective date of the termination, which will be no sooner than 30 days after the date the written notice of termination is effective according to the terms of notice.
- (b) In the event Buyer terminates this Order for default 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 provisions of this Article.
- (c) After receipt of notice of such termination for default, 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. Payment for completed Items delivered to and accepted by Buyer shall be at the price set out in the Order. Buyer may withhold from Seller moneys otherwise due Seller for completed Items and/or materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said Items or materials.
- (d) If, after notice of termination for default 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 termination for default had been issued pursuant to Article 37 hereof, "Termination for Convenience".
- (e) If this Order is issued under Buyer's Government Contract, and Buyer notifies Seller in writing that the termination was directed by the U.S. Government, termination will be in accordance with Section 52.249-2 of the Federal Acquisition Regulation, which is incorporated by reference in ITEM 2 of these Terms and Conditions.

20. DELAYS AND NOTICE OF LABOR DISPUTES:

- (a) Seller shall not be liable for any delays in delivery caused by circumstances beyond its reasonable 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 Government (or other customer) 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 and accepted.

21. DELIVERY: Except for shipments covered by Article 21(d), shipments made pursuant to this Order must be shipped as specified in the Purchase Order. If Seller does not use Buyer's specified carrier(s) and Buyer incurs additional freight cost as a result, such additional freight cost shall be Seller's responsibility. Moreover, unless otherwise specified, Seller hereby agrees to the following:

- (a) 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. Seller bears the risk of loss of all Items delivered in advance of the delivery date specified in Buyer's delivery schedules.
- (b) Overshipment allowances require prior Buyer authorization, and will be applied to the entire order. Unauthorized overshipments shall be returned to the Seller at Seller's sole expense. Seller has the right to deem overshipments uneconomical to return relieving Buyer of responsibility to return and pay for overshipment.
- (c)
 - (1) Late deliveries may be refused by Buyer.
 - (2) If Buyer agrees to accept deliveries after the contracted delivery date the parties agree that delays which are not excusable or mutually agreed upon shall be subject to liquidated damages of one percent (1%) of the total order value per day, up to a maximum amount of twenty-five percent (25%) of the Purchase Order value, for each day delivery or performance is delayed beyond the date set forth in the Schedule of this Purchase Order, to be paid within 30 days of Buyer's acceptance of such deliveries. Buyer's right hereunder to recover liquidated damages for Seller's delayed performance is not an exclusive remedy for delay and shall be in addition to all other rights and remedies that Buyer has under this Order and at law and equity. The liquidated penalty amount shall be subtracted from the line item value. If the delivery delay was as a result of any action taken on the part of the Buyer, the Seller shall notify the Buyer in writing at the time the delay occurs for Buyer Order to waive penalty assessment. Failure to notify Buyer will result in penalty. Seller may not refuse shipment of said line item to avoid late delivery penalty.
 - (3) 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.
 - (4) 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.
 - (5) Seller at the request of the Buyer, shall provide a written explanation for the root cause of the delay, Seller's corrective action plan to address the late deliveries and assurances that Seller will make deliveries in accordance with the Order requirements and schedule.
- (d) The Seller may be required or have the option to provide self-managed and Seller-owned inventory to be used at Buyer locations. The Buyer may provide Seller with periodic inventory demands by location or grant Seller's approved employees weekly on-site access to manage inventory level at Buyer locations to allow Seller the ability to restock inventory levels to the previously-negotiated inventory levels.

22. ITEM CONTENT: Seller agrees to provide to Buyer all Item content information required to satisfy both Buyer's content reporting obligations and Buyer's customers' reporting obligations.

23. 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. Seller shall be responsible for and hold harmless Buyer and its customers from and against all losses, costs,

claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses 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 Order. Buyer shall be solely responsible for all liaison and coordination with the Buyer customer, including the United States Government, as it affects the applicable Government Contract, this Order, and any related contract. Unless otherwise directed in writing by the Buyer Representative, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, the Buyer Representative, or as otherwise permitted by this Order.

24. QUALITY CONTROL/INSPECTION/REJECTION/ACCEPTANCE:

- (a) Seller shall establish and maintain a quality management system acceptable to Buyer for the Items or Services purchased under this Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Items or Services provided to Buyer during the period of any such violation or deviation. Seller will maintain the accepted quality management system throughout the duration of the Order. If Seller is cited for compliance violations, Seller shall within 48 hours so notify the Buyer and within 60 days must rectify the non-compliance issues. If the violation is not corrected and certification has not taken place within this time frame, then the Buyer at its discretion may terminate this Order. Seller will notify Buyer of any significant changes that affect quality within 24 hours of that change. These changes include – but are not limited to – change in key management or personnel, change in source of supply of key materials, change in address or site configuration.
- (b) Buyer and/or its customer, to the extent practicable at all times and places including the period of manufacture or performance, may inspect and test material, work in process, services, and supplies. This Order grants Buyer and its customer the right to so inspect and test, but not the obligation. Seller retains the obligation to ensure proper inspection and testing.
- (c) Buyer shall have the right to reject any Services or Items or lots of Items which it determines are defective in material or workmanship or otherwise not in conformity with the requirements of this Order and to require their correction or replacement. Rejected Services or 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 Services or Items or lots of Items which are required to be removed, Buyer may:
 - (1) replace or correct such Services or Items and charge to Seller the cost occasioned Buyer thereby;
 - (2) pay for such Services or Items at a reduced price which is equitable under the circumstances; or
 - (3) cancel this Order for default as provided in Article 19 entitled "Default"; or
 - (4) exercise any other applicable rights or remedies.
- (d) If Buyer rejects any Services or Items as non-conforming, Buyer may, at its option, (a) reduce the quantities of Services or Items ordered under this Order by the quantity of non-conforming Services or Items – in this case, however, the original quantities will be maintained for Seller performance and scoring, (b) require Seller to replace the non-conforming Services or Items, and/or (c) exercise any other applicable rights or remedies. If Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of non-conforming Services or Items within forty-eight (48) hours of notice of Buyer's rejection of non-conforming Services or Items (or such shorter period as is reasonable under the circumstances), Buyer will be entitled to dispose of the non-conforming Services or Items without liability to Seller, provided, however, that in any event Buyer may elect to arrange for the shipment of any non-conforming Services or Items back to Seller at Seller's expense. Seller will bear all risk of loss with respect to all non-conforming Services or Items and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any non-conforming Services or Items. Buyer's payment for any non-conforming Items or Services will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming Items or Services. In the

event Buyer decides for any reason to accept non-conforming Items or Services, any costs incurred by Buyer testing, evaluating and manufacturing, relating to the design changes to any of the Items or Services, shall be responsibility of the Seller, and Seller may not pass along any costs in relation to the design change(s).

- (e) 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 or Services 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 or rejection of Items or Services shall be made as promptly as practicable after delivery to Buyer's facility. Buyer's failure to inspect or accept or reject Items or Services in a timely manner shall neither relieve Seller from full compliance with all requirements of this Order, nor impose responsibility on Buyer therefor.
- (f) Seller shall provide and maintain an inspection system acceptable to Buyer covering the Items or Services hereunder. Records of all test and inspection work by Seller shall be kept complete and available to Buyer and/or its customer for one (1) year following completion of this Order, or for six (6) years following completion of an order pursuant to a U.S. Government contract or subcontract.
- (g) Inspection and test by Buyer or its customer of any Services or 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 42.
- (h) 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 or Services 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 or Services purchased under this Order, notwithstanding the failure of Buyer to timely inform Seller of such nonconformance.
- (i) Final acceptance by Buyer of the Items or Services provided hereunder shall take place only after complete delivery of all Items or Services in accordance with the delivery schedule specified herein or later agreed upon by the parties in writing and after final inspection of those Items or Services by Buyer and Buyer's customer. Final acceptance shall be contingent upon agreement by Buyer and the Buyer's customer that the Items or Services conform to the requirements of this Order. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured or did not exist, acceptance induced by false or negligent assurances of Seller, or as otherwise provided in this Order or applicable law. Final acceptance by Buyer of the Items or Services delivered hereunder shall not limit or affect the warranty or indemnity granted by Seller hereunder.

25. RISK OF DAMAGE/INDEMNIFICATION/INSURANCE: All personal property belonging to Buyer in Seller's custody or possession, shall be at Seller's risk from loss or damage from all hazards. Seller agrees, to the fullest extent permitted by applicable law, to indemnify and hold harmless Buyer, its officers and employees, from and against any and all claims, liabilities, losses, costs, damages and expenses by reason of property damage or personal injury, including death, of whatsoever nature or kind, including special, incidental or consequential damages, for any reason, arising out of or as a result of Seller activity or omissions under this Order, whether arising out of the actions or inactions of Seller or of its employees, subcontractors, and lower tier subcontractors. Seller and its subcontractors and lower tier subcontractors shall maintain, at their own expense:

- (a) Comprehensive General Liability policies for an amount of at least \$2,000,000 combined single limit for bodily injury and property damage; \$2,000,000 annual aggregate
- (b) Comprehensive Automobile Liability policies shall be for an amount of at least \$2,000,000 combined single limit for bodily injury and property damage; \$2,000,000 annual aggregate
- (c) Worker's Compensation in accordance with such laws as may be applicable to the work to be performed.

(d) Employer's Liability: \$2,000,000/\$2,000,000

Proof of compliance with applicable legal requirements shall be obtained for all subcontractors working on Buyer's premises, and may be provided by the subcontractor's insurer. Satisfactory evidence by copy of certificate of insurance thereof shall be submitted annually to Buyer upon Buyer's request. Such insurance shall be carried during the term of this Order, including extension, and for at least three (3) years thereafter.

26. INVOICING AND PAYMENT: A separate invoice shall be issued for each shipment and properly identify the ITT Corporation Purchase Order Number and Line number; ITT Corporation Line Description (as referenced on PO) and Unit Price and Total Price. 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. Discount periods will be computed from the date of receipt of correct invoice to the date ITT Corporation check is issued. Unless otherwise provided, terms of payment shall be specified on the face of the Purchase Order. Each payment made shall be subject to reduction to the extent of amounts which are found by Buyer or Seller not to have been properly payable, and shall also be subject to reduction for overpayments. Seller shall promptly notify Buyer of any such overpayments found by Seller. Buyer, and any affiliate of Buyer, may withhold, deduct and/or setoff all money due, or which may become due, from Buyer or any affiliate of Buyer, arising out of Seller's performance under this Order or any other transaction Buyer and its affiliates may have with Seller.

27. MODIFICATION OF ORDER: This Order contains all the agreements of the parties with respect thereto and no course of 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 the Buyer Representative and delivered by Buyer to Seller. Modifications of this Order shall be handled pursuant to Article 14 "Changes". Each shipment received from Seller shall be deemed to be 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.

28. NO WAIVER OF 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, waiver or default under this Order.

29. OFFSET/COUNTERTRADE CREDIT: In connection with the sale of Buyer's items to certain foreign government customers, Buyer may incur direct and/or indirect offset/countertrade obligations. Seller hereby exclusively grants to Buyer all offset or countertrade 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/countertrade program of Buyer's choice. Buyer retains the right to assign any such offset or countertrade credits to third parties. Seller shall include this clause, for the benefit of Buyer, in all lower-tier purchase orders and subcontracts awarded in the performance of this Order. Seller shall maintain a record of its purchases under this Order or subcontract and Buyer reserves the right to review such record not more often than every six (6) months to determine offset availability. This Article 29 shall survive two (2) years beyond the completion of this Order.

30. PACKING: Unless otherwise specified in this Order, Seller shall be responsible for safe and adequate packing conforming to the requirements of carriers' tariffs or, in the absence of such requirements, conforming to the best commercial practices. All expendable packaging materials must be legally and economically disposable or recyclable. 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 therefor is set forth in this Order.

31. PATENT/INTELLECTUAL PROPERTY INDEMNITY BY SELLER: Seller warrants that the Items and Services performed and delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. 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 or damage of any kind (including all costs and expenses including attorneys' fees) arising out of any and all allegations, actions, proceedings or awards for infringement, misappropriation or wrongful use of any Items or Services (including but not limited to software), the results of such Services, or any other items or processes, patent, copyright, trademark, trade secret or other proprietary or intellectual property rights in connection with any Items,

software or data furnished hereunder, whether such are provided alone or in combination with other Items, software or processes. Seller hereby agrees to defend any and all such actions, at Seller's expense, if requested to do so by Buyer.

Seller and Buyer agree to notify each other as soon as they become aware of a challenge of infringement or wrongful use in connection with any such Items, software or data furnished hereunder. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right to participate with Seller in determining the strategy to defend any such suit or action.

Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event Seller shall be released from its obligation to pay for attorneys fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.

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.

Seller's obligation to defend, indemnify, and hold harmless Buyer and its customers under this Article shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Buyer's Government Contract for infringement of a U.S. patent and Buyer and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys fees by a third party.

32. RIGHTS IN DATA AND INVENTIONS:

- (a) All specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless:
 - (1) otherwise required by the U.S. Government Regulations referred to below, or
 - (2) the Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.
- (b) Unless otherwise expressly agreed in writing to the contrary and subject to this Article 32 (d) below, all specifications, information, data, drawings, software and other items which are:
 - (1) supplied to Seller by Buyer or
 - (2) obtained or developed by Seller in the performance of this Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing items or services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of this Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Order.
- (c) Subject to this Article 32 (d) below, any invention or intellectual property first made or conceived by Seller in the performance of this Order or which is derived from or based on information supplied by Buyer shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto. Subject to this Article 32 (d) below, any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire."
- (d) Applicable Government Procurement Regulations incorporated into this Order shall, when applicable, take precedence over any conflicting provision of this Article 32 to the extent that such Regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with subcontractors rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the parties.

33. ITEM 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 therefor, and does not provide for another qualified source, Seller shall give Buyer not less than six 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 said Items, subassemblies and spare parts under a royalty free license which is hereby granted.

34. SHIPPING INSTRUCTIONS: Seller shall comply with Buyer's Routing and Shipping Instructions. If Buyer's Routing and Shipping Instructions are not attached to the Purchase Order or have not been previously received by Seller, Seller shall immediately request the Instructions from Buyer. Seller shall remain liable for any and all additional charges which accrue as a result of Seller's failure to comply with Buyer's Routing and Shipping Instructions.

35. 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 unless extended by Buyer's customer.
- (b) If work is suspended, an adjustment shall be made for any increase in the time and 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.

36. TAXES: Unless otherwise notified by Buyer in writing, the price of this Order includes and Seller shall be responsible for the payment of any Federal, State, and Local taxes, duties, tariffs, transportation taxes, or other similar taxes or fees which are required to be imposed upon the Items ordered hereunder by any government, unless Seller obtains any applicable exemptions. Seller represents that its price does not include any taxes, impositions, charges or exactions for which it has obtained a valid exemption certificate or other evidence of exemption. Any taxes included in this Order shall be itemized separately in Seller's invoice.

37. 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. This amount will not include costs which reasonably could have been avoided. 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. Seller shall provide to Buyer any assistance necessary to pursue Buyer's recovery of Seller's termination settlement amount with Buyer's customer, including certification of settlement proposals and claims if necessary and support in negotiation, litigation and settlement. Termination in accordance with this Article shall not affect Buyer's obligation to pay for Items accepted by Buyer prior to such termination, which payment shall be made according to the unit or other prices included in the Order.
- (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, the termination settlement will be in accordance with Section 52.249-2 of the Federal

Acquisition Regulations which is incorporated by reference as set forth in ITEM 2 of these Terms and Conditions.

38. TITLE AND RISK OF LOSS: Unless otherwise specified in the Order, 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.

39. TOOLS, MATERIALS AND INFORMATION: Refer also to Articles 12 (Right to Use Information) and 32 (Rights in Data and Inventions). 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. Except for tools, material and information owned by the Government or to which the Government has unlimited rights, any such item or any materials or any engineering data or other technical or proprietary information related thereto 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.

40. FURNISHED PROPERTY: (A) Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Order. (B) Title to Furnished Property shall be retained by Buyer or its customer. Seller shall clearly mark (if not already marked) all Furnished Property to show ownership. (C) Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage of Furnished Property while in the Seller's possession, custody, or control. Upon request, Seller shall promptly provide Buyer with adequate proof of insurance against such risk of loss. Seller shall promptly notify Buyer of any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. (D) At Buyer's request or at completion of this Order, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer. (E) With respect to government-furnished property, or property to which the government may take title under this Order: [1] the clause at FAR 52.245-1 shall apply and is incorporated by reference. [2] Seller shall provide to Buyer immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the government of its property control system.

41. FACILITIES: The Seller represents that it now has or can readily procure without the assistance of Buyer or the Government all facilities necessary for the performance of this Order, except as set forth herein.

42. WARRANTY:

- (a) Seller warrants that all the Items and Services 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;
 - (4) be free from defects in material, workmanship, design and fabrication; and
 - (5) be performed with that degree of skill and judgment normally exercised by recognized professionals delivering or performing the same or similar Items or Services.
- (b) Except for latent defects, Seller guarantees all Services and Items, parts, components, and assemblies furnished hereunder against any defects in design, material, or workmanship for eighteen (18) months from the date of acceptance at Buyer's location. 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, within the warranty period, any defect or failure appears, Buyer shall have the right to take the following actions:
 - (1) retain such defective Services or Item(s) and an equitable adjustment will be made in the Order price, or
 - (2) reject such defective Services or Item(s) and require Seller to promptly remove and repair or replace such defective Services or Item(s) at Seller's sole expense (including shipping costs), with risk of loss and damage for the rejected, corrected or replacement Services and Item(s) while in transit borne by Seller; or

- (3) correct or replace such defective Services and Item(s) with similar Services or Item(s) and recover the total cost (including shipping costs) thereof from Seller. Services or Item(s) rejected shall be removed promptly by Seller at its expense and its risk. Even if the parties disagree whether or not Seller has breached this warranty, Seller shall promptly comply with Buyer's directions to provide warranty work pending resolution of the disagreement.
- (d) Upon discovery of any defect or failure within the warranty period provided hereby, the following conditions shall apply:
 - (1) Buyer shall furnish written notice to Seller of the Services or Item(s) involved and set forth the nature of the defect(s) or failure(s) discovered;
 - (2) within fifteen (15) days 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 Services and 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) Neither approval by Buyer of Seller's design or material used nor Buyer's inspection of same shall relieve Seller from any obligations under the warranties set forth in this Article.
 - (f) The word "Item(s)" as used herein includes parts, components, assemblies, materials, equipment, services and data required under this Order.
 - (g) Any Services or Item(s) corrected or replaced pursuant to this Article shall be subject to all provisions of this Article to the same extent as Services and 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 Services and 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.
 - (i) Seller shall furnish Buyer a certificate of Seller's compliance with these Article 42 warranty conditions upon Buyer's request.

43. FOREIGN TRANSACTIONS AND EXPORT CONTROL: 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. Seller shall immediately notify the Buyer Representative if Seller's export privileges are denied, suspended or revoked in whole or in part by any U.S. or other government entity or agency. Buyer may deem Seller's failure to comply with the requirements of this Article a material failure to perform under this Order that shall subject Seller to termination in accordance with Article 19, Default.

- (a) **ITAR CONTROLLED HARDWARE, TECHNICAL DATA OR SERVICES.** Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), 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. §§ 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 also be subject to the ITAR. The ITAR is accessible at the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) website at <http://www.pmdtc.state.gov>.
 - (1) If the Seller is a manufacturer and/or exports Defense articles or Defense services, Seller represents that it is registered with the U.S. Department of State and will maintain said registration in order to be eligible to engage in the manufacture and/or export of defense articles and defense services as required by the ITAR (22 C.F.R. § 122.1(a)).
 - (2) The ITAR restricts access to Buyer's and Seller's controlled hardware, technical data, or services to U.S. citizens and permanent residents (i.e., U.S. person) only. Seller is advised and acknowledges that controlled

hardware, technical data, and/or services shall not be exported out of the U.S. or transferred to a non-U.S. person inside the U.S. without prior authorization of the U.S. Government. Seller will be informed by Buyer of the export control status of all hardware, technical data, and/or services provided to Seller by Buyer. Hardware and technical data will be clearly marked as export controlled or not. Seller agrees that it will not transfer or provide access to any ITAR-controlled hardware, technical data, or services provided by Buyer to non-U.S. persons employed by or associated with Seller, whether located in the U.S. or not, without U.S. Government authorization and permission from Buyer.

- (3) 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, 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 or agreed to pay, in respect of the sale for which the items will be used, political contributions or 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 within the specified time-frame, or any extension thereof, shall constitute a certification by Seller that it has not paid, offered, or agreed to pay such political contributions, fees or commissions.
- (4) Seller shall indemnify Buyer and be solely responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' 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.
- (b) **GOODS, TECHNOLOGY, SOFTWARE SUBJECT TO U.S. EXPORT ADMINISTRATION REGULATIONS.** Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technology (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or software provided by Buyer for purposes of this Order are or may be subject to the Export Administration Regulations (EAR). In addition, Seller is hereby notified that the hardware, technology, and/or software sold by Seller that is derived from hardware, technology, and/or software provided by Buyer are or may also be subject to the EAR. The EAR is accessible at the U.S. Department of Commerce, Bureau of Industry and Security website at <http://www.bis.doc.gov>.
 - (1) The EAR restricts access to Buyer's and Seller's controlled hardware, technology, or software to U.S. citizens and permanent residents only. Seller is advised and acknowledges that controlled hardware, technology, and/or software may not be exported out of the U.S. or to a non-U.S. person inside the U.S. without prior authorization of the U.S. Government. Seller will be informed by Buyer of the export control status of all hardware, technology, and/or software provided to Seller by Buyer. Hardware and technology will be clearly marked as export controlled or not. Seller agrees that it will not transfer or provide access to any EAR-controlled hardware, technology or software provided by Buyer to non-U.S. persons employed by or associated with Seller, whether located in the U.S. or not, without U.S. Government authorization and permission from Buyer.
 - (2) Seller agrees that it will inform Buyer of the export control status of all hardware, technical data, technology, software, and/or services sold to Buyer under this Order to include clearly marking all hardware and/or technical data.
 - (3) Where Seller is a signatory under a Buyer export authorization, Seller shall provide prompt notification to the Buyer Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of applicable export regulations that could affect the Seller's performance under this Contract.
 - (4) Seller shall indemnify Buyer and be solely responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' 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.

- (c) **HARDWARE, TECHNOLOGY, OR TECHNICAL DATA RECEIVED WITHOUT MARKING.** Seller is hereby notified that, to the extent it should receive any hardware, technology, or technical data from Buyer that is not marked as export controlled (i.e., under the ITAR or EAR), Seller must treat such hardware, technology, or technical data in conformance with the most restrictive standard potentially applicable unless it requests and receives specific written instructions from Buyer that releases Seller from this requirement.
- (d) **IMPORTS APPEARING ON THE U.S. MUNITIONS IMPORT LIST.** If performance under this Purchase Order requires the Seller to permanently import into the U.S. articles appearing on the U.S. Treasury Department, Bureau of Alcohol, Tobacco & Firearms (BATF) U.S. Munitions Import List at 27 CFR Part 47, Subpart C, Seller is advised and hereby acknowledges that such items may not be permanently imported into the U.S. without an approved import permit issued by BATF pursuant to 27 CFR Part 47, Subpart E, unless an exemption applies. Additionally, if Seller is engaged in the business, in the U.S., of importing articles appearing on the U.S. Munitions Import List, Seller must register with BATF pursuant to 27 CFR Part 47, Subpart D. Downloadable copies of the BATF regulations and forms are accessible at the BATF website at <http://www.atf.treas.gov/regulations/index.htm>.
- (e) **ITEMS REQUIRING APPROVED BATF PERMITS.** If performance under this Purchase Order requires the Seller to export out of the U.S. machine guns, destructive devices, explosives, and certain other firearms, as defined in 27 CFR Part 179, Subpart B, Seller is advised and hereby acknowledges that such items may not be exported out of the U.S. without an approved export permit issued by BATF pursuant to 27 CFR Part 178, Subpart K and 27 CFR Part 179, Subpart H. Seller is also advised that an approved export license issued by ODTIC may also be required pursuant to the relevant requirements of the ITAR.
- (f) **RECORD KEEPING.** Seller agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exceptions/exemptions. 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 applicable exemption or exception. Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations. Seller shall immediately notify the 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.

44. CLASSIFIED REQUIREMENTS: In the event this Order requires access to classified information, Seller, at its sole expense, agrees to comply with all laws and regulations of the United States related to such classified requirements, including obtaining all required authorizations from the U.S. pursuant to, among other requirements, those set forth in the National Industrial Security Program Operating Manual (NISPOM) and any specific agency supplements to the NISPOM or other classified requirements as directed by Buyer. A copy of the NISPOM is available for download at https://www.dss.mil/GW/ShowBinary/DSS/isp/fac_clear/download_nispom.html.

45. CUSTOMS:

- (a) **Credits and Refunds.** Transferable credits or benefits associated with or arising from Items purchased under this Order, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these benefits, credits, or rights. Seller will furthermore, at its expense, provide Buyer with all information, documentation, and electronic transaction records relating to the items necessary for Buyer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for Items eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the Items to be covered by any duty deferral or

free trade zone programs(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the Items to be exported, and obtain all export licenses or authorizations necessary for the export of the Items unless otherwise indicated in this Order, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s).

- (b) **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 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.

46. NEW MATERIAL:

- (a) "Material," as used in this clause, includes, but is not limited to raw material, parts, items, components and end Items. "New," as used in this clause, means previously unused or composed of previously unused materials allowing for typical in-factory or site use including, but not limited to integration, installation, assembly, test, burn-in, training, troubleshooting, and rework as required.
- (b) Unless Buyer specifies in writing otherwise, the Seller shall deliver New Material under this contract that are fully warranted and do not contain any counterfeit material. Material verification includes documentation that the Seller is purchasing product directly from the original equipment manufacturer or authorized franchised distributor. In addition, the New Material is not of such age or so deteriorated, due to storage factors, as to impair its usefulness or safety.

47. PROHIBITED SOFTWARE:

- (a) This clause only applies to Services/Items that includes the delivery of software.
- (b) As used herein, "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL-Compatible, Free Software License."
- (c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or integrates software in connection with, as part of, bundled with, or alongside any
 - (1) open source, publicly available, or "free" software, library or documentation, or
 - (2) software that is licensed under a Prohibited License, or
 - (3) software provided under a license that
 - (i) subjects the delivered software to any Prohibited License, or
 - (ii) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or
 - (iii) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party
 - i. the delivered software, or any portion thereof, in object code and/or source code formats, or
 - ii. any Items incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- (d) Unless Seller has obtained Buyer's prior written consent, which Buyer may withhold in its sole discretion, Seller shall not use in connection with this Order, or deliver to Buyer, any Prohibited Software.
- (e) Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, to the extent Seller caused Buyer's use or the delivery of Prohibited Software in connection with this Order.

48. COMPLIANCE WITH HAZARDOUS SUBSTANCES AND WASTE RECYCLING LAWS:

- (a) Seller warrants that the sale, resale, supply, export or delivery of any Item (whether used as a component or otherwise) by Buyer in any market will not violate any law or regulation in any jurisdiction world-wide on the use of hazardous substances, or the recycling or treatment of waste equipment including, but

not limited to the laws implementing the European Directive (2002/95/EC) on the Restriction on the Use of Certain Hazardous Substances in Electronic and Electrical Equipment "RoHS Directive" and European Directive (2002/96/EC) on Waste Electrical and Electronic Equipment ("WEEE Directive"), the U.S. Environmental Protection Act ("EPA") including Resource Conservation Act ("RCRA") 400 CRF Part 260 through 265 and the European regulation EC 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) (together, "Environmental Laws").

- (b) Seller hereby represents and warrants that the Items contain no asbestos containing materials or mercury.
- (c) Buyer may sell products containing Seller's Items in California, and Seller shall disclose in writing to Buyer all materials and components in the Items, and the amounts therein, that require labeling under California Proposition 65 or the laws of other states.
- (d) As soon as Seller is aware of any non-compliance but in no event any later than prior to the shipment of any Item, Seller shall identify in writing to Buyer (e.g., in a Material Safety Data Sheet):
 - (1) any and all components and materials contained in the Items that may require recycling or other treatment during the product lifecycle under the laws and regulations implementing the Environmental Laws, and
 - (2) the location of any component or material that is hazardous within the meaning of the WEEE Directive or other Environmental Laws, and any Item that is required by the Environmental Laws to be marked shall be so marked by Seller.
- (e) Seller shall, upon request, provide Buyer with written confirmation of its compliance with the Environmental Laws, in the form, manner and within the timeframe reasonably directed by Buyer, including but not limited to, evidence that Supplier has registered, notified and communicated supplied materials for Buyer's intended use as required by REACH.
- (f) Buyer shall have the right to audit the Seller's compliance with the Environmental Laws. Seller shall provide Buyer with all such information and documentation that it may reasonably require (including access to its staff and facilities) to enable Buyer to satisfy itself of the Seller's compliance with all Environmental Laws and that the warranty contained in subsection (a) above remains true and accurate.
- (g) Seller shall bear all costs and expenses, including those related to recycling or taking back the Items, arising out of or related to either Buyer or Seller complying with the Environmental Laws and placing the Items on, or their importation into, any jurisdiction worldwide.
- (h) Seller shall indemnify and hold Buyer harmless from any cost, expense, liability or damage suffered by Buyer by reason of any breach or alleged breach of any of the Environmental Laws arising out of or related to the Items.

49. TOXIC, HAZARDOUS OR CARCINOGENIC SUBSTANCES AND SUBSTANCES OF VERY HIGH CONCERN (SVHC):

- (a) Seller represents and warrants that the following are not prohibited by any laws or regulations of any country or other jurisdiction in the world:
 - (1) the Items, and substances contained therein including parts, subparts, components, and chemical constituents;
 - (2) substances used in the manufacture of the Items, including parts, subparts, components and chemical constituents;
 - (3) use of the Items in the manner intended, and
 - (4) substances required for the maintenance of the Items provided under this Order.
- (b) Laws and regulations referenced in subparagraph (a) above include, without limitation, those of:
 - (1) The United States through a Department or Agency such as the Environmental Protection Agency acting under the Toxic Substances Control Act (15 U.S.C., § 2601 et seq.) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 121 et seq.) or any other statute or regulation;
 - (2) Individual states in the U.S.;
 - (3) The European Community through European Community Council Directive of 27 July 1976 "on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and uses of certain dangerous substances and preparations" (76/769/EEC) and other Directives and Regulations;

- (4) The European Community through EC 1907/2006 Registration, Evaluation, Authorization and Restriction of Chemicals (REACH);
- (5) Nations in the European Community that have implemented legislation concerning 76/769/EEC and other Directives; and
- (6) Nations that are not in the European Community but which implement legislation similar to 76/769/EEC and other Directives.

- (c) Seller represents and warrants that:
 - (1) each chemical substance, including chemical substances contained in the Items delivered under this Order, is on the Inventory List (see 40 C.F.R. § 710) published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) at the time of such delivery;
 - (2) delivery of any Items, including their chemical constituents, under this Order shall be made in accordance with transportation, labeling and other requirements enacted by any government or regulatory body anywhere in the world, and
 - (3) the Items, including their chemical constituents, shall meet the environmental, health and safety requirements of all jurisdictions, including under any applicable exclusions, exceptions or waivers, such that Buyer may freely transport, export, import, use, maintain, market and sell the Item or article throughout the world.
 - (d) Where there are regulations or restrictions pertaining to the Item, Seller shall:
 - (1) inform Buyer of such regulations or restrictions in writing, specifying the jurisdictions in which the Item is regulated,
 - (2) provide Buyer with a written copy of the appropriate compliance recommendations on handling or use, and
 - (3) obtain Buyer's written approval for the delivery of any Items that are regulated or restricted.
 - (e) Seller certifies, based on its qualitative determination, that the Items or parts it manufactures for this Order do not contain asbestos or polychlorinated biphenyls (PCBs), nor were they manufactured with chlorofluorocarbons (CFCs), and Seller will not introduce into the Items or any replacements any materials that contain asbestos or PCBs, nor manufacture the Items with CFCs.
 - (f) Seller shall establish a process to assure that current governmental and safety constraints on restricted, toxic and hazardous substances/materials are in compliance, relative to the purchased Items as stated on purchase orders.
 - (g) If Seller provides Items under this Order which:
 - (1) contain a toxic or hazardous substance identified under Occupational Safety and Health Standards, 29 C.F.R. § 1919.20 or 29 C.F.R. § 1910.1000 et seq. (Subpart Z), or
 - (2) contain a carcinogenic substance, or
 - (3) the use of which is regulated or restricted under 76/769/EC or other European Community Directive, or
 - (4) contain SVHCs or materials requiring registration, notification or communication under REACH,Seller shall provide Buyer with a Material Safety Data Sheet (meeting the requirements of 29 C.F.R. § 1910.1200(g) and the latest revision of Federal Standard No 313 and REACH), that shall include information on the presence of all chemical substances in the Item, including concentrations of chemicals equal to or greater than 0.1% and any other information required by any applicable law. The Seller shall provide this information to the Buyer prior to the initial shipment of the Item. When a change in formulations occurs Seller shall provide Buyer with a copy of any new restriction on handling, use, or disposal and receive approval from Buyer prior to shipment. Seller shall label each container of such Items in a clearly legible and conspicuous form, stating that a toxic or hazardous substance is contained therein, and providing Buyer with a copy of any existing or new restrictions on handling or use. Material Safety Data Sheets for all other materials shall be retained by Seller and made available to Buyer upon request.
 - (5) contain substances or materials that are regulated as waste by RCRA.
- (h) Notwithstanding anything in this Order to the contrary, for Items supplied to Buyer's Defense unit as a defense contractor, nothing herein shall require or permit Seller to change in any manner the lead composition of any Item without the prior written approval of Buyer.

50. OZONE DEPLETING SUBSTANCES: Seller agrees that the Items delivered hereunder shall be accurately labeled in accordance with the requirements of Section 611 of the 1990 Clean Air Act Amendments and the regulations promulgated thereunder, including but not limited to requirements contained in 40 C.F.R. §§ 82.114 and 82.116. At Buyer's request, Seller shall certify in a form satisfactory to Buyer whether the Items were manufactured with a controlled substance, as defined in 40 C.F.R. § 82.104.

51. HAZARDOUS CONDITIONS/INDEMNIFICATION:

- (a) Seller shall comply with applicable occupational, health and safety laws and regulations, including any specifications included by Buyer as part of this Order. Seller shall comply with the appropriate revision and section of MIL-STD-882 or ITT equivalent, which Buyer will make available upon Seller's request. In the event that Seller or Buyer learns of any issue relating to a potential safety hazard or unsafe condition in any of the Items, materials or Services produced hereunder, or is advised of such by competent authorities of any government having jurisdiction over such Items, materials or Services, it will immediately advise the other party by the most expeditious means of communication. When any change occurs that affect requirements or recommendations for safe handling, use or disposal the Seller shall provide Buyer with a copy of the new restriction prior to shipment.
- (b) Expenses associated with the correction of a safety hazard or unsafe condition, caused by or associated with Items or Services produced by Seller, including reasonable attorneys' fees, court costs, expenses, and the like, if they become necessary, shall be solely Seller's responsibility, subject only to any other arrangement negotiated by the parties in light of the particular facts and circumstances then existing.
- (c) Seller agrees to protect, defend, hold harmless, indemnify, and reimburse Buyer, its officers, directors, agents, employees, distributors, dealers, affiliates, insurers, and customers during the term of this Order and any time thereafter for any and all costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses, overhead, settlements, judgments, and court costs) arising out of or related to any liability, demand, lawsuit, or claim alleging or asserting in whole or in part:
 - (1) any Failure of Items or Services to comply with applicable specifications, warranties, and certifications under this Order;
 - (2) the negligence or fault of Seller in design, testing, development, manufacture, or otherwise with respect to Items or parts therefore;
 - (3) claims, demands, or lawsuits that, with respect to the Items or any parts thereof allege product liability, strict product liability, or any variation thereof;
 - (4) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs;
 - (5) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; or
 - (6) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, subcontractors, employees or anyone acting on behalf of Seller.
- (d) Buyer agrees to protect, defend, hold harmless, and indemnify in a similar fashion from and against any liability, claim, demands, or cost or expense that is the result of design or other special requirements specified by Buyer and actually incorporated in the Items or Services over the written objection of Seller. Buyer also agrees to protect, defend, hold harmless, and indemnify Seller in a similar fashion from and against any liability, claim, demands, or cost or expense arising out of death of or injury to any person or damage to tangible property which is the result of the negligence or other fault of Buyer.
- (e) Should Buyer's use, or use by its distributors, subcontractors or customers, of any Items or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either:
 - (1) substitute fully equivalent non-infringing Items or Services;
 - (2) modify the Items or Services so that they no longer infringe but remain fully equivalent in functionality;
 - (3) obtain for Buyer, its distributors, subcontractors or customers the right to continue using the Items or Services; or,

- (4) if none of the foregoing is possible, refund all amounts paid for the infringing Items or Services.
- (f) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

52. INDEMNITY AGAINST CLAIMS/LIMITATION OF LIABILITY:

Seller shall keep its work and all items supplied by it hereunder and Buyer premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Order by Seller or by any of its vendors or subcontractors. Seller may be required by Buyer to provide a satisfactory release of liens as a condition of final payment. Seller shall, without limitation, indemnify and save Buyer and its customer(s) and their respective officers, directors, employees and agents harmless from and against (i) all claims (including claims under Workers' Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death, or property loss or damage attributed to, or caused by, the goods, services or other items supplied by Seller pursuant to this Order, including, without limitation, latent defects in such goods, services or other items, except to the extent that such injury, death, loss or damage is caused solely and directly by the negligence of Buyer, and (ii) all claims (including resulting costs, expenses and liability) by the employees of Seller or any of its subcontractors. Except for any indemnifications provided in this Order, in no event shall either party, their employees, agents or representatives be liable to the other party relating to this Order or for any acts or omissions of either party in connection with this Order for any indirect, special, punitive, incidental or consequential damages of any kind, however caused, or any claims or demands against either party by any other entity, whether such remedy is sought in contract, tort (including without limitation negligence), strict liability or otherwise.

53. ETHICAL STANDARDS OF CONDUCT:

- (a) Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this contract, Seller shall report such behavior to appropriate ITT Corporation Points of Contact (POCs). ITT Corporation's Code of Conduct contains listings of its POCs and is available on <http://www.itt.com/codeofconduct>. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. Seller shall not participate in any personal business, or investment activity that may be defined as a conflict of interest, whether real or perceived.
- (b) SELLER COMPLIANCE: In performing its obligations under this Order, Seller will not use child labor as defined by local law, will not use forced or compulsory labor, will not physically abuse labor and will respect employees' rights to choose whether to be represented by third parties and to bargain collectively in accordance with local law. In addition, in all wage and benefit, working hours and overtime and health, safety and environmental matters, Seller will comply with all applicable laws and regulations. Seller further agrees that, if requested by Buyer, it shall demonstrate, to the satisfaction of Buyer, compliance with all requirements in this paragraph. Buyer shall have the right to inspect any site of Seller involved in work for Buyer, and failure to comply with the obligations in this paragraph shall be cause for immediate termination without penalty or further liability to Buyer.

54. NON-SOLICITATION: During the term of this Order, and for a period of twenty-four (24) months following termination of this Order, Seller shall not, directly or indirectly, solicit for employment, employ or otherwise engage the services of employees or individual consultants of the Buyer.

55. SEVERABILITY: If any part, term, or provision of this Order shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Order, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term or provision of this Order is held void, illegal, unenforceable, or in conflict with any law of the federal, state, or local

government having jurisdiction over this Order, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

56. SURVIVABILITY: If this Order expires, is completed, or is terminated for default or convenience, Seller shall not be relieved of those obligations contained in this Order for the following provisions: (A) Applicable Law and Disputes, Article 5; Compliance with Federal, State and Local Laws, Article 15; Confidential Relationship, Article 18; General Relationship, Article 23; Risk of Damage/Indemnification/Insurance, Article 25; Offset/Countertrade Credit, Article 29; Patent/Intellectual Property Indemnity By Seller, Article 31; Warranty, Article 42; Foreign Transactions and Export Control, Article 43; Compliance With Hazardous Substances and Waste Recycling Laws, Article 48; and Indemnity Against Claims/Limitation of Liability, Article 52. (B) Those United States Government flowdown provisions that, by their nature, should survive.

57. CERTIFICATIONS: By accepting this Order, Seller certifies that (a) there is no litigation or proceeding pending, and that none are anticipated

(e.g. claims of fraud, waste or abuse, debarment proceedings, or criminal allegations, against it or any of its officers or employees that may restrict, invalidate or void the Items or Services contemplated by this Order or render the continuation of such Order inadvisable); (b) Seller has reviewed the Order and that no person that it provides to perform any services included therein has any legal restrictions as a result of government service that would be pertinent to the Order that would prevent such person from reasonably performing the work contemplated (e.g., post-employment restrictions related to representing a company to the government, accepting compensation for these services or improperly using or disclosing non-public information in these duties); (c) if this effort includes support for a competitive proposal, that no person Seller provides for performance of this Order will have worked on the same or a directly related effort for any company in competition with Buyer for this work; and (d) Seller has taken reasonable steps to identify and prevent the conflicts referenced above related to the personnel it provides for performance of this Order.

ITEM 2 – PROVISIONS OF THE FEDERAL ACQUISITION REGULATION SYSTEM INCORPORATED BY REFERENCE

When the items and/or services furnished are for use in connection with a U.S. Government prime contract or subcontract, in addition to the provisions of Item-1, the following provisions shall apply as required by the terms of the prime contract or by operation of law or regulation. Buyer is flowing down to Seller certain provisions and clauses from the Federal Acquisition Regulation (FAR), all herein "USG Clauses". These USG Clauses are hereby incorporated by reference, as applicable, and in the manner set forth below (including any parenthetical information and Numbered Notes). USG Clauses inapplicable to the performance of this Order under Buyer's Government Contract are self-deleting. If the date and/or substance of a USG Clause is different than the date or substance of the clause incorporated in Buyer's Government Contract, then the date and/or substance of the clause incorporated in Buyer's Government Contract shall apply instead. The parties hereby agree to amend this ITEM 2 to include any additional or revised USG Clauses incorporated in Buyer's Government Contract that are applicable to the performance of this Order. The parties shall handle any such amendments of this ITEM 2 under Article 14 "Changes" of this Order. Seller shall flow down to its lower-tier subcontractors all applicable USG Clauses and any other requirements of this Order and applicable law so as to enable and ensure that Buyer and Seller comply with all applicable requirements of Buyer's Government Contract.

It is intended by the parties that these USG Clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer, and to insure Seller's obligations to Buyer and to the Government, and to enable Buyer to meet its contract obligations to the Federal Government. Consequently, in interpreting and applying USG Clauses flowed down to Seller, and as context requires, the terms "Contractor" and "Offeror" shall mean Seller, the term "Contract" shall mean this Order, and the term "Government", "Contracting Officer" and equivalent phrases shall mean Buyer and/or the Buyer Representative. However, as an exception to the foregoing, the terms "Government" and "Contracting Officer" do not change in the following circumstances:

- (a) in the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property;"
- (b) in the Patent Rights clauses incorporated therein, if any;
- (c) when a right, act, authorization or obligation can be granted or performed only by the Government or a Contracting Officer or his/her duly-authorized representative;
- (d) when title to property is to be transferred directly to the Government;
- (e) when access to proprietary financial information or other proprietary data is required, except as otherwise provided in this Order; and
- (f) where specifically modified in this Order.

USG Clauses flowed down by Buyer to Seller pursuant to this provision may require submission of certificates. All such required representations and certifications made by Seller in connection with flow down of USG Clauses, including all such certifications submitted by Seller with its offer, are hereby incorporated in this Order by reference. Seller shall, with respect to applicable USG Clauses flowed down pursuant to this provision, furnish to Buyer (or directly to the Government upon request of Buyer) any certificate required to be furnished by any USG Clause and any certificate required by any further U.S. law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of U.S. laws, ordinances, or regulations. As used in this paragraph, the word "certificate" shall include any plan or course of action or record keeping function, as, for example, a small business subcontracting plan for which flow down is required.

Seller shall indemnify and hold Buyer harmless from and against any price reduction in Buyer's Government Contract, as well as Buyer's reasonable attorney fees and other direct costs to defend Government Contract claims when said reduction is attributable to the failure of Seller or Seller's subcontractors to properly discharge applicable duties under the Truth in Negotiation Act and Cost Accounting Standards clauses incorporated by reference in accordance with this provision.

1. The following FAR clauses apply to this Order:

- (a) FAR 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies.)
- (b) FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Note 2 applies.)
- (c) FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
- (d) FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (e) FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

(f) FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Note 2 applies. In paragraph (e) Note 3 applies.)

(g) FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

(h) FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2009)

(i) FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)

2. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$2,500 and the Order is not otherwise exempt under 29 CFR Part 4:

(a) FAR 52.222-41 Service Contract Act of 1965 (NOV 2007)

3. The following clauses apply to this Order if the value of this Order equals or exceeds \$10,000:

(a) FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(b) The Employee Notice Clause at 29 CFR Part 471, Appendix A to Subpart A. Seller is required to flow down this Employee Notice Clause in all subcontracts expected to exceed \$10,000 that are not otherwise exempt.

4. The following clauses apply to this Order if the value of this Order equals or exceeds \$25,000:

(a) FAR 52.204-10 Reporting Executive Compensation and First -Tier Subcontracts Awards (JUL 2010). Buyer is required to report all applicable information on subcontract awards.

(b) The Seller's failure to provide the required information in a timely manner to permit the Buyer to report the information as required by FAR 52.204-10 shall be considered a material breach of this Order. Additionally, Seller shall indemnify and hold Buyer harmless from and against any price reduction in Buyer's Government Contract (or other contractual remedy exercised by the Government), as well as Buyer's reasonable attorney fees and other direct costs to defend Government Contract claims when said reduction or other liability is attributable to the failure of Seller to timely provide the information required by FAR 52.204-10.

5. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$100,000:

(a) FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

(b) FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

6. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$5,000,000:

(a) FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008) (Applicable if the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)

7. The following FAR clauses apply to this Order as indicated:

(a) FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Applies if the Order is funded in whole or in part with Recovery Act funds)

(b) FAR 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applies if the Work requires access to classified information.)

(c) FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007) (Applicable where the Contractor will have physical access to a federally-controlled facility or access to a Federal information system.)

(d) FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)

(e) FAR 52.225-1 BUY AMERICAN ACT -- SUPPLIES (FEB 2009) (Applicable; if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)

(f) FAR 52.225-5 TRADE AGREEMENTS (AUG 2009) (Applicable if the Work contains other than U.S. made or designated country end products as specified in the clause.)

(g) FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) (Applies if this Order is for services, has a value of more than \$3,000 and includes work performed in the United States)

(h) FAR 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (DEC 2007) (Applicable only if existing computer software is to be delivered under this Contract.)

(i) FAR 52.245-1 GOVERNMENT PROPERTY (JUN 2007) (ALT I) (JUN 2007)
("Contracting Officer" means "ITT" except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes ITT. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means ITT" and except in paragraphs (d)(2) and (g) where the term includes ITT." The following is added as paragraph (n) "Seller shall provide to ITT immediate notice if the Government or other contractor (i) " revokes its assumption of loss under any direct contracts with Seller, or (ii) makes a determination that Seller's property management practices are inadequate, and/or present an undue risk, or that Seller has failed to take corrective action when required.") ys from the award of this Contract.

8. The following Department of Defense FAR Supplement (DFARS) clauses apply to this Order as indicated if it is an Order under a Department of Defense prime contract:

- (a) 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (JUL 2009)
- (b) 252.227-7015 Technical Data—Commercial Items (NOV 1995) (applies only when commercial item (as defined in the FAR) technical data from the subcontractor is delivered to the Government by the prime contractor; no substitutions for "Contracting Officer" or "Government" are made)
- (c) 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (JAN 2009) (Applies if this Order involves the acquisition of steel as a construction material)
- (d) 252.246-7003 Notification of Potential Safety Issues (JAN 2007) (Applies if this Order is for parts identified as critical safety items, systems or subsystems or repair, maintenance, logistics support or overhaul services for systems, subsystems, assemblies and subassemblies)
- (e) 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (Applies if this Order equals or exceeds \$150,000)
- (f) 252.247-7024 Notification of Transportation of Supplies by (MAR 2000) (Applies if this is an Order under a construction contract or if the Buyer is reselling or distributing items under this Order to the Government without adding value, the items are shipped in direct support of US military operations, exercises, humanitarian or peacekeeping operations, or the items are commissary or exchange cargoes transported outside of the Defense Transportation System)

10. The following clauses from the Federal Aviation Administration's Acquisition Management System apply to this Order if it is an Order under a Federal Aviation Administration prime contract:

- (a) 3.10.2-6 Subcontracts for Commercial Items and Commercial Components (April 1996)
- (b) 3.6.2-9 Equal Opportunity (August 1998)
- (c) 3.6.2-12 Affirmative Action for Special Disabled and Vietnam Era Veterans (April 2007)
- (c) 3.6.2-13 Affirmative Action for Workers With Disabilities (April 2000)
- (e) 3.11-62 Preference for Privately Owned U.S.-Flagged Commercial Vessels (April 1999) (flow down not required for subcontracts awarded beginning May 1, 1996)