

Terms and Conditions of Purchase

1. ADMINISTRATIVE INFORMATION

This Purchase Order ("PO") entered into as of the effective date shown on the cover of this PO, by and between Standard 6LS5H8LU hereinafter called "S65" or "Buyer" and the vendor shown on the PO, hereinafter called "Seller."

Definitions:

- 1.1. "FAR" refers to the Federal Acquisition Regulations.
- 1.2. "Contract" means the agreement between the parties embodied within the PO and attachments and these General Terms and Conditions, as amended from time-to-time in accordance with the terms hereof.
- 1.3. "Customer" means S65 buyer or contract counterparty as identified in the PO, if the Contract is a subcontract.
- 1.4. "DFAR" refers to the Defense Acquisition Regulations Supplement.
- 1.5. "Prime Contract" means SIS contract, if any, for supply of the goods, services or other value to be supplied in whole or part by Seller under this Contract to S65 Customer, or as appropriate, the contract between the end customer for such goods, services and value and its immediate contracting party, which may be S65 Customer or a higher-tier third-party contractor.
- 1.6. "Prime Contractor" means the supplier party to a Prime Contract.
- 1.7. "Release" or "PO/Release" means a supplement to the initial PO, for the transaction covered by the PO, issued by S65 to Seller upon release of additional funding from the Customer or under other circumstances.
- 1.8. "Statement of Work" means the detailed statement of goods and services to be provided, with other details, Specifications and instructions, attached to the PO, as amended by any additional Releases for such PO, which is attached to the PO.

2. GENERAL PERFORMANCE OBLIGATIONS

The terms and conditions herein will remain in effect for the entire term of the Contract as stated in the PO or Statement of Work. Countersignature and/or commencement of performance in support of this Contract by Seller constitutes acceptance of these terms and conditions. Amendments, modifications or waivers of any provision or condition of this Contract are not binding unless in writing, signed/issued by an authorized representative of the S65 Purchasing Department. The Seller agrees to furnish and deliver the supplies and/or perform the services set forth on the PO and/or the attached Statement of Work, for the period specified therein, subject to the terms and conditions set forth in the PO, Statement of Work and these General Terms and Conditions, which together with any subsequent Releases constitute the Contract between the parties.

The Seller shall keep the SIS Program Manager designated by S65 for the PO, apprised of technical progress and any technical problems that may be encountered during the course of performing this Contract. The services covered by this Contract are those specifically described in the PO and Statement of Work. Said work shall commence and be completed in accordance with the Statement of Work and any subsequent Statement of Work or amendment provided under the issuance of each Release. The Statement of Work serves as a general scope of services and terms only. Specific tasking will be issued in each PO/Releases. Subsequent Releases and revised or additional Statements of Work shall become effective only upon signature by the authorized representatives of each party. Seller agrees that quoted price for products and services offered shall be valid for a period of not less than 90 days of date of submission to Buyer. Acceptance of purchase order by Seller shall constitute legally binding confirmation that these terms take precedence over any other agreements, terms or conditions provided by Seller or any other entity.

3. ASSIGNMENT

Neither this Contract nor any duty or right under it shall be delegated or assigned by this Seller, or subcontracted to any lower tier subcontractor, vendor or consultant without the prior written approval of an authorized representative of the S65 Purchasing Department. S65 may approve or withhold approval of any assignment in its sole discretion. A change of control in by the Seller due to merger or acquisition or the sale of a substantial portion of the Seller's assets shall be considered an assignment under this Contract.

4. GOVERNING LAW

This Contract shall be governed, construed, and interpreted in accordance with the common law of federal Government contracts. Any FAR, DFARS or other federal agency clause or any clause substantially based on a federal agency clause shall be construed and interpreted according to the federal common law of contracts as applied by federal agency judicial tribunals. To the extent that there are issues that cannot be resolved under the common law of federal Government contracts, then the issue shall be resolved in accordance with the laws of the State of California without regard to any Conflict of Laws principles thereof that would result in the laws of any other jurisdiction being applied in lieu of the laws of California.

5. ORDER OF PRECEDENCE

In the event of any conflict: (a) the terms of the PO, including any subsequent Releases, shall take precedence over those of these General Terms and Conditions or any Statement of Work or other attachment to the PO, (b) the terms of any Statement of Work or other attachment will take precedence over those of these General Terms and Conditions, and (c) the terms of the most recent Release will take precedence over any prior release or the initial PO.

6. INVOICING PROCEDURES

Invoices will be submitted at the PO/Releases level. The Seller agrees to perform the services detailed at the prices specified in the PO/Releases. Invoices shall be submitted in accordance with the PO. Invoices must be approved by an authorized S65 manager in order to be considered for payment processing. No invoice can be processed if the amount claimed exceeds the funding in the PO/Releases issued to Seller. The required invoice format is outlined below:

- (a) Time and Material PO/Releases invoices must be consistent with the work performed, and must indicate the PO/Release numbers issued, the subtasks by charge number(s), the period of performance, current and cumulative totals for dollars and the name, title, date and signature from your company. Upon completion of the PO/Release issued hereunder and acceptance of all services described therein by S65 and the Customer, Seller shall receive final payment. The final invoice for all Seller Contract work will list all prior invoices and will be accompanied by a release of claims and any assignment forms.



Terms and Conditions of Purchase

(b) Firm Fixed Price PO/Releases invoicing instructions will be provided in each PO/Release.

All travel expenses shall be governed by FAR 31.205-46 Travel Costs. Expenses shall be incurred on an actual basis and receipts shall accompany all expenses exceeding \$25 (excluding the daily meal per diem rate). All requests to exceed the GSA hotel per diem rates must be approved in writing by the Buyer prior to the booking of hotel accommodations. Additionally, Seller shall use the lowest commercial discount or standard airfare available unless such accommodations are not reasonably available. All requests to deviate from standard airfare must be approved in writing by the Buyer prior to booking.

SIS standard payment terms are NET 30 days after receipt of an accepted invoice which are subject to final acceptance and inspection by SIS of the product or service rendered. Additional payment terms may be specified within the PO/Releases.

7. SELLER FEES AND EXPENSES

The Seller agrees to furnish, at its own cost and expense, all labor necessary to perform and fully complete the work described herein in accordance with the terms and conditions set forth in this Contract. The Seller shall secure and pay for all permits, governmental fees, bonds, deposits, credentials, clearances, registrations and licenses necessary for the proper execution and completion of the work issued under this Contract unless otherwise expressly specified in the PO or Statement of Work. All administrative matters and contractual matters should be handled through the Buyer.

The Seller is an independent contractor, and its employees are not employees of SIS. In connection with this Contract, each party shall be an independent contractor, and as such, will not have any authority to bind or commit the other party. Nothing herein shall be deemed or construed to create a joint venture, partnership, agency or employee/employer relationship between the parties for any purpose, including but not limited to, any obligation for compensation or bonuses to Seller's employees or contractors, withholding for purposes of Social Security or income tax, or entitlement to vacation, insurance, retirement or other employee benefits. With respect to its own personnel, each party is, accordingly, independently responsible for all obligations incumbent upon an employer, and Seller shall therefore be solely responsible for payment of any and all taxes and insurance, including workers' compensation, with respect to services performed or employees utilized by it hereunder.

8. CHANGE

Changes to this PO and the Statement of Work may only be made by written modification signed by an authorized representative of both parties. If the parties agree on any increase or decrease of cost or time required for performance of this Contract due to such change or alterations, an equitable adjustment shall be made by written modification of this Contract. Any proposed notice of change from either party shall be deemed rejected if the other party does not accept or otherwise respond in writing within 14 calendar days of the date of receipt by the other party, provided that the Buyer, if Buyer deems such, may receive and act upon any claim if assessed prior to final payment under the Contract.

Disagreement in any adjustment shall be resolved as a dispute in accordance with Section 14 of these General Terms and Conditions. However, nothing in this clause shall excuse the Seller from proceeding with the Contract as changed.

9. CONFLICT OF INTEREST

The Seller shall notify the Buyer in writing, as soon as practicable, of any actual or potential Conflicts of Interest that might prevent or hinder its performance under this Contract.

10. DEPARTMENT OF DEFENSE (DOD) RATED ORDERS.

If an Order indicates that a DoD rating is in effect, then the Order supports Buyer's work directly with or under a Prime Contract with the U.S. Government and Order is certified for national defense use. Applicable priority rating defaults to "DO," unless otherwise stated on the face of the Order. This is a rated Order certified for national defense use. Seller is required to follow the requirements of the defense priorities and allocation system regulation (15 CFR Part 700) and all other applicable regulations for obtaining controlled Products and other Products and Services needed to fill the Order.

11. FLOW DOWN REQUIREMENTS.

Seller must flow down in writing all contractual requirements of the Order, including these Terms, to all of its Subcontractors and supply chain engaged in performance of this Order. Seller must communicate to its staff the importance of Product conformity, ethical sourcing of materials and services, workplace safety and ethical behavior involved in the design and manufacture of Product.

12. RECORD & EQUIPMENT RETENTION

Seller shall maintain complete and legible records in electronic or written form for a minimum of 10 years after completion of the Order. All tooling, molds, fixtures and any other equipment made for the purpose of the Order must be retained by the Seller for a minimum of 10 years after completion of the Order or can be delivered by Seller to Buyer before this time. Tooling, molds and fixtures made specifically for Buyer cannot be used in the testing or manufacturing for any person or entity other than Buyer.



Terms and Conditions of Purchase

13. WORK PERFORMED

It is understood and agreed by and between the parties hereto that the technical work included in this Contract is to be performed under the technical direction of the SIS Program Manager or their designee. Time is of the essence. If Seller fails or refuses to proceed with the Order, or if Seller fails to deliver the Product on or before the committed due date, Buyer may reject all or any part of the Order. Buyer may also require Seller to expedite performance or ship via the fastest method possible to avoid or minimize delay. Any added cost shall be paid by Seller. Any delay in providing Product on time must be reported to Buyer with a written report providing pertinent details, as well as a plan of action to meet prescribed delivery dates. The Seller will, in accordance with all applicable Federal, state, and local laws, regulations, guidance, and policies, and with all applicable equipment manufacturer's or supplier's product warranty rules and procedures and insurer's procedures of which Seller has been advised, furnish the necessary personnel, services, products, materials, technologies, software, intellectual property, equipment, knowledge, and expertise to successfully complete the tasks required under this Contract. The Seller agrees to give their personal attention to the work issued under this Contract and shall at all times designate in writing to SIS a technical point of contact who will have full authority to act on any and all matters pertaining to the work being performed under this Contract and whose acts shall be binding upon the Seller to the fullest extent. Said technical point of contact may be one of the Seller personnel delivering technical services on the program. Seller will carry on work as required by SIS, promptly and efficiently, and without delaying other branches of work and if necessary, and subject to express provisions of this Contract regarding changes in timing or scope of work, certain parts of the work may be prosecuted in preference to others. The Seller agrees to perform and deliver services, reports, analyses and documentation thereto in accordance with the requirements set forth in the PO and Statement of Work, in accordance with generally accepted industry standards and good practices, and in compliance with other reasonable requests and instructions levied by SIS. The Seller is responsible to ensure that the commensurate skills, capabilities, certifications, clearances, licenses and education, training, insurance and bonding levels specified in the Contract. The SIS Program Manager, or designated alternate, may request the Seller to remove any employee of the Seller whose qualifications or performance is deemed unacceptable, or for reason of unethical conduct, violation of Government or SIS rules or procedures, or violation of Government security regulations. It shall be the responsibility of the Seller to so remove and promptly replace that individual at no cost to SIS with an equally qualified individual. SIS reserves the right to review and approve any replacements prior to authorizing a new employee to commence work under this Contract. All materials and workmanship furnished by the Seller shall meet or exceed the applicable governmental minimum standards as defined in each task requirement and comply fully with all guidance provided by the PO and subsequent PO/Releases and Statement of Work. Seller shall be liable to SIS for all reasonable fees, costs, or other expenses not reimbursed by Customer that SIS incurs as a result of Seller's failure to competently perform its portion of the work in accordance with this Contract including but not limited to any amount that is reduced or withheld by Customer for poor and or inadequate workmanship or failure to meet contract specifications by the Seller. SIS reserves the right, in its own discretion, to order Seller to re-do the rejected work, including any warranty work required pursuant to Section 33, or to perform the work itself and to withhold or offset the costs of the work from sums owed by SIS to Seller. Seller's liability shall also include, but not be limited to, increased costs resulting from delays caused by Seller or increased costs incurred by SIS performing or procuring a third party to perform Seller's portion of the work hereunder. In addition to the rights and remedies under this paragraph, SIS may pursue any and all remedies available under this Contract or at law or in equity pursuant to the disputes procedure in Section 14 and recover any additional costs incurred by reason of Seller's failure to competently perform its portion of the work in accordance with this Contract. All software, hardware, supplies, equipment or materials furnished by the Seller shall be new and free of all liens, security interests, claims or encumbrances, and shall not infringe any intellectual property rights of third parties. In the event any item supplied by Seller is challenged as infringing third-party intellectual property rights, Seller shall, at seller's cost and expense, promptly either (a) obtain and make available to SIS a license allowing use of such intellectual property, (b) supply non-infringing items, (c) modify the item such as to be non-infringing, or (d) defend or otherwise obtain a judicial determination of non-infringement. Seller shall be liable to indemnify SIS pursuant to Section 19 with respect to any damages or settlement SIS is required to pay any infringement claimant with respect to items supplied by Seller.

14. COVENANT AGAINST HIRING

Seller agrees that the employees of the Buyer are an integral part of the other Party's business and that it is extremely important for each Party to use its maximum efforts to prevent the loss of those employees. It is therefore agreed that at any time during the term of this Contract and one (1) year after the Contract is fully performed or is terminated, the Seller will not hire, engage or attempt to hire or engage any individual who shall have been an employee of the Buyer, unless the hiring is through an independent response to an advertisement by the employee after the Contract is fully performed or is terminated.

15. DELIVERY

Delivery shall be made in accordance with the schedule as set forth under this Contract.

Title and risk of loss passes to Buyer upon delivery terms as defined in the Order and if not set forth therein, shall be FOB Buyer's facility.

Unless otherwise agreed to in writing by Seller,

- (i) all shipments will be made using a carrier of Buyer's choice; and
- (ii) any Product which is shipped consigned to Buyer shall be insured at the replacement value of the Product. All Product shall be delivered during Buyer's normal business hours to the address specified in the Order or as otherwise instructed by Buyer. Buyer shall not be liable for failure to take delivery of the Product if such failure is due to causes beyond Buyer's control. Buyer assumes no liabilities for delays resulting from, but not limited to, acts of God, fire, explosion, flood, war, terrorism or threats of terrorism, act of or as authorized by any government, accident, labor trouble or shortage, inability to obtain equipment, material, transportation, acts of Seller or any acts beyond the control of Buyer.

Seller shall package all Product to ensure safe shipment to Buyer in accordance with Buyer and carrier's requirements. Any special packing, crating, shipping or unloading requirements of Buyer will be designated in the Order to Seller.



Terms and Conditions of Purchase

16. COMPLIANCE WITH LAWS

The parties agree to comply with all applicable laws and regulations in the performance of this Contract.

Seller agrees in connection with the performance of work under this Contract not to discriminate against any employee or applicant for employment because of race, creed, age, color, sex or national origin. This shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Seller will comply with all applicable FARs and DFARS, including all FARs or DFARS expressly referenced in this Contract or otherwise applicable, whether or not so referenced. In the event that lower-tier subcontracting is approved, the Seller agrees to include in each lower-tier agreement the appropriate flow-down clauses as required by FAR and DFARS.

The Seller shall comply with all applicable occupational safety and health standards promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 and all other applicable laws, ordinances, rules, regulations, and orders of any federal, state or local public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

The Seller shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The Seller shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (a) All employees on the work site and all other persons who may be affected thereby;
- (b) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Seller.

The Seller shall comply with all applicable Environmental Laws, including all federal, state, local and foreign statutes, regulations, and ordinances concerning public health and safety, worker health and safety, pollution, or protection of the environment, including those relating to

- (a) the treatment, storage, disposal, generation, transportation, handling, distribution, manufacture, processing, use, import, export, labeling, recycling, investigation or remediation of Hazardous Materials;
- (b) air, water and noise pollution;
- (c) groundwater and soil contamination;
- (d) the release or threatened release, of Hazardous Materials into the environment;
- (e) transfer of interests in or control of real property, personal property or vessels which may be contaminated by Hazardous Materials;
- (f) community or worker right-to-know disclosures with respect to Hazardous Materials;
- (g) the protection of wildlife, marine life and wetlands, and endangered and threatened species;
- (h) storage tanks, vessels, containers, abandoned or discarded barrels and other closed receptacles;
- (i) marine pollution in international, federal or state waters, and
- (j) health and safety of employees.

As used in this Contract,

(a) the term "Environmental Laws" means any and all United States federal, state, local, or municipal statute, law, regulation or ordinance, administrative or judicial judgment, order or decree, or requirement relating to health, safety, the environment, or natural resources including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and all similar statutes, laws, regulations, and requirements of any governmental authority or agency having jurisdiction over SIS, Seller or any vessel or site where services are performed or delivered, any international conventions with respect to marine pollution or Hazardous Materials to which the United States is a signatory, and to the extent any services are performed in another nation outside the United States, the applicable laws, regulations and treaties of such nation, as all such laws, regulations, and requirements may be amended or supplemented from time to time, and

(b) the term "Hazardous Substances" shall mean any substance, product, waste, pollutant, material, chemical, contaminant, compound, constituent, mixture, waste other material that is or becomes listed, regulated, classified, addressed, or otherwise characterized under or pursuant to any Environmental Law, as "hazardous," "toxic," "radioactive," "dangerous," or words of similar meaning or effect, including, without limitation polychlorinated biphenyls, and the term "Oil" shall have the meaning assigned in the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.

17. DISPUTES

Except for disputes covered by Section 15 in the event any question, claim, or dispute under this Contract is not resolved by the Parties within thirty (30) days after notice to the other Party, such question, claim or dispute will be settled by arbitration, to be held in San Diego County, California before a single arbitrator appointed in accordance with the Rules of the American Arbitration Association ("AAA"). The decision of the arbitrator will be final and binding upon both Parties as to law and fact and the prevailing party may apply to any court of competent jurisdiction for an order to enforce the award. The expense of the arbitrator and AAA will be shared equally by the Parties; otherwise, the Parties will each bear their own costs and attorney's fees in connection with the arbitration. If a dispute arises in the performance of this Contract the parties will first attempt to negotiate a settlement. If negotiation is unsuccessful, they agree to submit the dispute to mutually agreed upon mediation. If mediation does not resolve the dispute, or if the parties do not agree on mediation, either party may commence arbitration as set forth above by service written notice of arbitration in accordance with the AAA rules. Pending resolution of any dispute in accordance with this Section 14, the parties shall proceed diligently with the performance of the work. However, if any dispute gives the Seller recourse against the U.S. Government through SIS Prime Contract, the parties may agree to pass the Seller's dispute through SIS to the U.S. Government and that any dispute submitted by the Seller will not be unreasonably withheld. The Seller must submit the claim against the U.S. Government within the applicable limitation of actions period provided by law or contract. SIS must cooperate fully with the Seller in prosecuting the claim; the parties agree to be bound by the outcome; the Seller must certify its claim in a form approved by the Prime Contractor; each party will bear its own costs in prosecuting the claim; and any other dispute or portion of the dispute with the U.S. Government not resolved as provided above may be decided by a court of competent jurisdiction. Pending resolution of the dispute, the parties shall proceed with performance of the work.



Terms and Conditions of Purchase

18. DISPUTES WITH THE GOVERNMENT

The Seller acknowledges that the SIS Prime Contract, as referenced in the PO, includes a Disputes clause FAR 52.233-1, pursuant to which SIS may pursue certain procedures in the event of a dispute between the Government's Contracting Officer and SIS with respect to questions of law or fact relating to the Prime Contract. Any final decision of the Government Contracting Officer under the Prime Contract relating to this Contract or Seller's performance of the applicable portion of the Prime Contract flowed down to Seller hereunder shall be conclusive and binding upon the Seller, and SIS shall notify the Seller of any such final decision within ten (10) calendar days of SIS receipt thereof and shall provide Seller the opportunity to present grounds for an appeal of the Government Contracting Officer's decision. In the event that SIS elects to appeal any such decision pursuant to the Disputes clause of the Prime Contract as it relates to the performance of this Contract, the Seller shall provide SIS with reasonable assistance in the prosecution of such appeal including, but not limited to, reasonable access to Seller's non-privileged documents and personnel. The Seller shall share the cost of such appeal to the extent such costs can be attributed to Seller's interests in such appeal. SIS shall notify Seller within thirty (30) days of SIS receipt of any such final decision whether SIS intends to appeal such decision pursuant to the Disputes clause of the Prime Contract. If after SIS notice of a decision not to pursue, Seller notifies SIS that the Seller intends to appeal any such final decision, SIS shall grant Seller an indirect right to appeal such final decision in the name of SIS under the Disputes clause of SIS Prime Contract. Any such appeal brought by the Seller in the name of SIS shall be at the sole expense of the Seller. The Seller shall be solely responsible for the prosecution of such appeal including, but not limited to, the presentation of all pleadings, documents, evidence, facts, data and testimony in connection therewith. Further, the Seller shall be solely responsible for providing any and all certificates required by the Contract Dispute Act of 1978, 41 U.S.C. § 601-613 et seq., and any and all information requested by SIS to verify, support or confirm such certifications. After any such appeal is filed by the Seller, the Seller shall furnish to SIS copies of all pleadings related to this PO and non-privileged correspondence filed, sent or received in connection with the appeal. SIS upon the Seller's request shall render reasonable assistance to the Seller in the nature of providing documents and information reasonably requested by the Seller in connection with such appeal. As used in this clause, the term "appeal" shall include any and all proceedings taken by the Seller under this section before a board of contract appeals and any federal court. The Seller shall be conclusively bound by any decision of any such board of contract appeals or federal court. Except as may be expressly set forth in, and with the Government Contracting Officer's express consent, the subcontractor shall not acquire any direct claim or direct course of action against the US Government.

19. FORCE MAJEURE

Neither party shall be responsible to the other party for any delay in performing its obligations under this Contract due to any events of force majeure, except as otherwise provided for within this clause. Force majeure means any act of God, war, act or failure to act of any government in its sovereign capacity, fire, ice, flood, storm of unusual severity, earthquake, strike, lockout, work stoppage or labor unrest, terrorism, epidemic, quarantine, embargo, nuclear incident, or any other act beyond reasonable control and without the fault of either party or its subcontractors. For purposes hereof, force majeure shall not include (a) any price or cost increase, (b) loss of Seller's supply, (c) non-performance by any supplier or subcontractor to Seller unless caused by a force majeure event, (d) financial or markets disruption or inability to secure financing, (e) any strike or work stoppage not of a general nature or only affecting Seller or Seller's suppliers or their facilities. The party whose performance of obligations hereunder has been affected by any events of force majeure shall notify the other party within (5) five calendar days thereafter by sending a detailed statement and sufficient evidence with respect thereto and shall likewise notify promptly of any subsequent change in the circumstances. The affected party shall exercise its best efforts under the circumstances to remove or remedy the events of force majeure and the effects thereof and resume full performance as soon as possible.

20. GOVERNMENT FURNISHED EQUIPMENT, INFORMATION OR SERVICES

Government Furnished Equipment (GFE) or Government Furnished Information (GFI) relevant to the tasks to be performed under this Contract may be provided to the Seller for use during the performance of this Contract. If provided, the Seller is responsible for Government property in its possession pursuant to FAR 52.245-1 and 52.245-2 as applicable. The Seller shall return such GFE and/or GFI to SIS upon the conclusion of the Contract or as otherwise directed by SIS. In the case that such GFE or GFI is not provided to the Seller where required to be provided, the Seller shall immediately notify SIS.

21. GOVERNMENT RIGHTS IN TECHNICAL DATA (*APPLICABLE IF THIS PO IS ISSUED UNDER A DEPARTMENT OF DEFENSE PRIME CONTRACT)

Nothing in these Terms and Conditions shall be construed or interpreted to limit or in any way restrict the rights of the Government in regard to data, tooling and other information it owns or has a right to use, including the right to authorize the supplier's use of such data, tooling or other information in direct contracts between the Seller and the Government.

22. INDEMNITY

Each party (the "Indemnifying Party") agrees to indemnify, hold harmless, and defend the other party's respective companies their affiliates, agents, employees, officers, directors, representatives, agents, and customers (collectively the Indemnified Party), from any and all actions, claims, demands, judgments, awards, liability, costs and expenses, including attorney's fees, fines, penalties, assessments, citations or other monetary judgments or awards that may be paid or become obligated to be paid, on account of any and all demands or claims, or assertions of liability arising, or alleged to have arisen, out of any negligent act, omission, breach of contract or wrongful act of the Indemnifying Party or its officers, directors, employees, contractors or representatives, including the Indemnifying Party's

- (1) breach of any express warranty within the terms of the Contract;
- (2) failure to comply with applicable laws and regulations, including the "Truth in Negotiations Act," (excluding any markup of PO price by SIS);
- (3) liabilities for any payroll or related employment taxes or other employment benefits required by any relevant laws or regulations, or for unpaid wages and liquidated damages under the clause (FAR 52.222-4 Contract Work Hours and Safety Standards Act- Overtime Compensation) or other applicable wage and labor laws;
- (4) bodily injury to or damage to property of any person arising out of the negligent performance of any work hereunder by the Indemnifying Party, including such party's use of the premises or equipment of the Customer; or
- (5) failure to comply with any requirements, terms or conditions specified in this Contract.

Seller shall also indemnify, defend, and hold SIS harmless against any and all claims, demands, or actions alleging that the material furnished by Seller to SIS has infringed a third party's patent, copyright, trademark, trade secret, or other intellectual property rights, limited by clause 52.2271.



Terms and Conditions of Purchase

The indemnification obligations in this paragraph are contingent upon:

(1) the Indemnified Party promptly notifying the Indemnifying Party in writing of any claim which may give rise to a claim for indemnification hereunder, together with copies of pleadings or demands and sufficient information to describe the nature of the claim, provided delay in notification shall be actionable only to the extent of actual prejudice; the Indemnifying Party being allowed to control the defense and settlement of such claim, including at its option selection of defense counsel; and (3) the Indemnified Party cooperating with all reasonable requests of the Indemnifying Party (at the Indemnifying Party's expense) in defending or settling a claim. The Indemnified Party shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing. The Indemnified Party shall not, without prior written consent of the Indemnifying Party, make any admission or offer or accept any settlement proposal. The Indemnifying Party will not have the right, without the Indemnified Party's prior consent, which is not to be unreasonably withheld, to settle any claim if the settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to or admission or acknowledgment of any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the Indemnified Party. Except for the indemnifications expressly provided within this Contract, including the obligation to indemnify a party against a third-party claim that may include incidental, indirect, consequential, punitive or special damages or for breach of any confidentiality obligations, it is agreed that in no event shall either SIS or the Seller be liable to the other for any incidental, indirect, consequential, punitive, or special damages or lost revenue or profits, whether or not either has been notified of the possibility of such damages.

23. INSPECTION & QUALITY REQUIREMENTS

Seller shall maintain an inspection and quality control system acceptable to Buyer to be performed on Products delivered under the Order. Seller shall prepare records evidencing and recording the outcome of all inspections. Buyer and/or Buyer's customer has the right to perform reviews and evaluations as reasonably necessary to ascertain Seller compliance with an inspection and quality control system. All goods, works, materials, and workmanship shall be subject to inspection and test at the request of representatives of the Government, SIS, or a higher-tier contractor (if SIS is a subcontractor) at all reasonable times and places. For this purpose, Seller shall, without additional charge, allow inspectors and other authorized Government and SIS personnel and higher-tier contractor personnel free access to Seller's plant and operations at all reasonable times, and shall furnish such facilities, supplies, and services as may reasonably be required for this work. In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract, SIS may either reject them (with or without instructions as to their disposition) or require their correction. Unless Seller corrects or replaces such supplies within the delivery schedule, SIS may require their delivery at a reduction in price that is equitable under the circumstances. The withholding of any amount or subsequent payment to Seller shall not be construed as a waiver of any rights accruing to SIS under this Contract. Neither Buyer's in-process inspection nor Buyer's approval of any of Seller's drawings, procedures or other submittals shall:

- (i) constitute acceptance of any work; or
- (ii) relieve Seller of complying fully with all of the requirements of the Order.

24. DEFECTIVE & NONCONFORMING PRODUCT.

Buyer maintains the right to choose replacement, rework or refund as a remedy for Nonconforming Product. If Buyer rejects any portion of the Product, Buyer has the right to:

- (i) rescind the Order in whole or in part;
- (ii) accept the Product at a reduced price; or
- (iii) reject the Product and require replacement of the rejected Product. If Buyer requires replacement of the Product, Seller shall, at its expense, promptly replace the Nonconforming Product and pay for all related damages and expenses, including, transportation charges for the return of the Nonconforming Product and the delivery of replacement Product. If a Nonconformance is discovered by Seller and/or Buyer at any time, Seller must provide written notification of identified Nonconformance, root cause, corrective action and disposition within 14 business days. If Seller fails to correct and/or replace the Product(s) within the delivery schedule, Buyer may require delivery with an equitable price reduction in both Product and shipping costs. Failure to agree to a price reduction shall be considered a breach by Seller. Seller shall assume all risk of loss or damage in transit to Product returned by Buyer to Seller and shipped from Seller to Buyer, including Attorneys' fees incurred by Buyer or its customers in enforcing the Order and its rights.

If Seller fails to deliver replacement Product within the delivery date of the Order, Buyer may purchase replacement Product from any other person or entity and charge Seller the cost of such Product, including shipping, and terminate the Order.

Products that have been reworked or repaired by Seller after having been rejected by Buyer shall be identified as "Resubmitted." Seller must include on the packing slip "Resubmitted Material" and the reason for the previous rejection and include an inspection Report and discrepancy report with the shipment. If the Products were inspected at source and rejected, such information shall also be annotated on the packing slip. If Buyer elects to rework or otherwise correct defective Product, Seller will pay Buyer's actual costs including Buyer's fully burdened hourly rates utilizing the then-current market or Government-approved rate set for change-order activity. Nonconforming Product that is returned to Seller shall be at Seller's cost. Rejected Product may be held by Buyer at Seller's risk and expense. Seller shall be liable to Buyer for all expenses, including

25. INSURANCE

The Seller shall at its own expense provide and maintain during the entire performance of this Contract, at least the kinds and minimum amounts of insurance required in the PO and Statement of Work as identified below.

Seller shall maintain the following insurances:

- (1) Worker's Compensation Insurance within statutory limits and in accordance with the law of the relevant state, including All State and Voluntary Compensation endorsement;
- (2) Employer's Liability Insurance with a limit of \$2,000,000;
- (3) Comprehensive General Liability Insurance, including
- (4) Operations and Premises Liability (with elevator liability),



Terms and Conditions of Purchase

- (5) Contractor's Protective Liability,
- (6) Completed Operations and Product Liability (maintained in effect for a period of five years after the date of final payment),
- (7) Personal Injury Liability,
- (8) Contractual Liability, and
- (9) Broad Form Property Damage Liability (including for completed operations), on an occurrence basis in an amount of a combined single limit of not less than \$2,000,000 per occurrence; and comprehensive Automobile Liability Insurance in the amount of a combined single limit of not less than \$2,000,000 per occurrence. Before commencing work the Seller shall submit to SIS evidence in writing that the required insurance has been obtained. The policies evidencing required insurance shall be provided by underwriters with an A.M. Best rating of "A" or other suitable rating approved by SIS, shall have reasonable deductibles or retention amounts approved in advance in writing by SIS, and contain an endorsement to the effect that any cancellation shall not be effective for such period as the laws of the State in which this Contract is to be performed prescribed; or until 30 days after the insurer or the Seller gives notice to SIS, whichever period is longer. Failure of SIS to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of Seller's obligations to maintain the above insurance coverage.

SIS should be named as an additional insured on all certificates of insurance to the extent of liabilities assumed by Seller under this Contract, with waiver of subrogation as to SIS. The following address should be used on the certificate for SIS: 3645 Dalbergia Street, San Diego, CA 92113. If Seller fails to maintain insurance coverage as outlined in this Section, SIS may terminate this Contract immediately.

26. LIQUIDATED DAMAGES

Time limits stated in this Contract are of the essence. By executing this Contract, the Seller confirms that the stated period of performance is a reasonable period for performing the work. The Seller further acknowledges and understands that the failure by the Seller to achieve completion of the work in accordance with the schedule and the Contract will cause SIS to suffer substantial, direct, incidental and consequential damages, including, without limitation, liquidated damages owed to the Customer pursuant to the Prime Contract. Consistent with the terms of this Contract, such damages shall be the responsibility of the Seller to the extent such damages are caused by the Seller's non-performance. The Seller and SIS also agree that in such an event, SIS actual damage will be difficult to determine with certainty. Therefore, the Seller and SIS hereby agree that in satisfaction of the SIS actual damages, if the Seller has not achieved completion of the work by the applicable dates set forth herein, the Seller shall pay SIS as liquidated damages, \$1,000 (or any greater amount expressly required under any other term of the Contract) for each and every calendar day between the applicable dates for completion set forth, or in the defined dates issued in this PO issued and the dates on which completion of the work is actually achieved.

27. PACKING AND SHIPPING

All packing and crating by the Seller shall be in compliance with Contract requirements, applicable law, good industry practices and carrier's tariffs and be marked, packaged and prepared in accordance with standard commercial practices. The price or prices shall include all charges for Seller's packing and crating, and for transportation to F.O.B point, unless other price/delivery terms (e.g., CIF) are specified in the Contract. Newspaper and shredded material are not acceptable.

28. PROPRIETARY INFORMATION

All proprietary information exchanged between the parties hereto shall be handled in the following manner:

- (1) During the term of this Contract, SIS and the Seller, to the extent of their right to do so, is required for each to perform its obligation hereunder, and may exchange proprietary and confidential information.
- (2) Proprietary and confidential information is defined as, but not limited to, specifications, procedures, processes, formula, composition, performance, sales, financial, contractual, personnel, pricing, cost, timing, sourcing, and special marketing information, ideas, technical data and concepts originated or owned by the disclosing party, not previously published or otherwise disclosed to the general public, not previously available to the receiving party or others without restriction, not normally furnished to others without compensation, and which the disclosing party desires to protect against unrestricted disclosure or competitive use, and which is furnished pursuant to this PO and appropriately identified as being proprietary or confidential when furnished.
- (3) The receiving party of proprietary or confidential information agrees to hold such information in confidence.
- (4) The parties each will designate one or more individuals within their own organization as the only person(s) for receiving proprietary or confidential information exchanged between the parties pursuant to this Contract.
- (5) All proprietary or confidential information disclosed to the other party in writing will be, clearly identified as proprietary or confidential, marked in accordance with FAR 52.215-12 or similar marking and addressed to the individual designated to receive proprietary or confidential information. Where proprietary information is provided orally, a general description of the information should be reduced to writing within 30 days of its disclosure and delivered to the receiving party with appropriate legends affixed.
- (6) Each party is authorized to incorporate such proprietary or confidential information in any proposal contemplated by this Contract for submittal to the Government, provided such proposal bears a restrictive legend similar to that provided for in applicable procurement regulations.
- (7) Proprietary or confidential information that is exchanged may be used only by the receiving party in connection with the purposes of this Contract or in the performance of the Contract between the Prime Contractor and the Seller. Disclosure of Proprietary Information shall be restricted to those persons who are directly participating in the performance of this Contract. Disclosure of Proprietary Information will be made to those persons on a need-to-know basis.
- (8) Neither party shall divulge or use, for any purpose not connected with the program effort contemplated in the PO, any program or system concept or other information disclosed to it by the other party in connection with the performance of this Contract, and marked with a proprietary or confidential legend, to any person or office other than appropriate Government agencies to which proposals or reports must be submitted for program acceptance.



Terms and Conditions of Purchase

- (9) It is further agreed that each party will require that all third parties to this Contract, if any, receiving proprietary or confidential information, protect the same in accordance with the provisions contained herein. However, it is agreed that proprietary information of the other party will not be provided to any third parties, save for submission to the Government Customer as provided for in item (5) above, without prior written consent of the disclosing party.
- (10) The standard of care for protecting such information, imposed on the party receiving such information, will be that degree of care the receiving party uses to prevent disclosure, publication or dissemination of its own proprietary or confidential information but no less than a reasonable standard of care.
- (11) The obligations of nondisclosure of proprietary or confidential information imposed in the preceding paragraphs shall terminate three years after receipt of such information. Notwithstanding, the disclosing party shall retain ownership to its intellectual property and no rights are granted for use of this property except as specifically granted in this Contract.
- (12) The obligation with respect to the protection and handling of proprietary or confidential information, as set forth in this Contract, is not applicable to the following:
 - (13) Information which becomes lawfully known or available to the receiving party from a source other than the disclosing party, including the Government, and without breach of the Contract by the recipient, and without restrictions on disclosure or use.
 - (14) Information developed independently by the receiving party.
 - (15) Information that is within, or later falls within, the public domain without breach of this PO by the recipient.
 - (16) Information publicly disclosed with the written approval of the other party.
 - (17) Information furnished by the disclosing party providing the same information has been furnished or disclosed to others on an unrestricted basis if all terms are the same.
- (18) Nothing herein shall restrict either party from disclosing any portion of such information on a restricted basis pursuant to a judicial or other lawful Government order, but only to the extent of such order and provided however, that receiving party shall first give disclosing party notice of the legal request.
- (19) Information known by the Receiving Party prior to its receipt from the Disclosing Party
- (20) Nothing in this PO shall restrict a party from seeking injunctive relief to protect its confidential or proprietary information from unauthorized disclosure or use.
- (21) Nothing herein shall restrict either party from disclosing any portion of such information on a restricted basis pursuant to a judicial or other lawful Government order, but only to the extent of such order, provided, however, that the receiving party to which such order is directed shall make all reasonable efforts to have such disclosures placed under a protective order or other means securing the confidential character of the other party's information disclosed, to the extent that such means are in existence and available to the party to whom such order is directed.

29. PUBLICITY

Seller shall not authorize or make any advertisement, news release or other disclosure which shall confirm or deny the existence of this Contract, without prior written consent of Buyer.

30. RIGHTS AND RESERVATIONS

All information, equipment, designs, drawings, tools, patterns and other items furnished by the Buyer and proprietary rights incorporated herein are reserved, and shall not be used or reproduced outside of the requirements under this Contract Seller agrees that all reports and written material prepared during the term of this Contract which relates to the subject PO, and which result from and arise out of the services performed by the Seller for the Buyer, shall be the sole property of the Buyer.

31. RISK OF LOSS

Seller shall assume all risk of loss or damage to goods covered under this Contract until acceptance by the Buyer (F.O.B Destination) or until delivery of goods to the carrier (F.O.B Origin or CIF as applicable). If any goods covered by this Contract are defective or not otherwise conforming to the Contract specifications, Buyer may, in its sole discretion, and in addition to any other remedy under this Contract or at law or in equity, by written notice to the Seller: (a) rescind the PO; (b) accept the goods at an equitable reduction in price; or (c) reject the goods and require the delivery of replacements. If the Seller does not deliver the required replacements promptly, Buyer may (1) replace or correct such goods and charge the Seller the cost incurred by the Buyer; or (2) terminate this Contract. No inspections, tests, approvals, or acceptance of goods ordered shall relieve Seller from responsibility of defects or failure to fulfill the Contract requirements for latent defects, fraud, gross mistakes amounting to fraud, and warranty obligations.

32. STOP-WORK ORDER

The Buyer may, at any time, by written notification to the Seller, require the Seller to stop all, or any part, of the work required for this Contract for a period of 90 days after the written order is delivered to the Seller, and for any further period to which the parties may agree. The Contract shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, the Buyer shall either cancel the stop-work order; or terminate the work covered by the stop-work order.

If a stop-work order issued under this clause is canceled or the period of that Contract or any extension thereof expires, the Seller shall resume work. The Buyer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if the stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this PO; and the Seller asserts its rights to the adjustment within 20 calendar days after the end of the period of work stoppage.



Terms and Conditions of Purchase

If a stop-work order is not canceled and the work covered by the stop-work order is terminated for the convenience of the Buyer, the Buyer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

33. TERMINATIONS

In addition to other remedies available under this Contract or at law or in equity, SIS may, by written notice, terminate this Contract in whole or part as to any portion of the Statement of Work, for default if the Seller: (a) commits any breach of this Contract, including any material delay, and fails to cure such breach within ten (10) calendar days following SIS written notice of breach, (b) becomes insolvent, applies for or is placed into bankruptcy proceedings, has a trustee, receiver or liquidator appointed as to its assets and operations, makes a general assignment for benefit of creditors, or becomes incapable of fulfilling future Contract obligations, or (c) repudiates the Contract. SIS may terminate the performance of work under this Contract if the Customer terminates SIS Prime Contract for any reason.

Additionally, SIS may, at any time, terminate all or part of this order for its convenience, by written notice to Seller. Settlement in the event of a termination for convenience will be in accordance with the provisions set forth in FAR 52.249-6 or applicable provision in effect as of the date of execution of the Contract.

SIS may terminate all or part of this Contract at any time if Seller fails to comply with delivery schedule or to perform any service set forth in the order, and does not agree to do so within (10) days after receiving written notice from SIS; Performance of this order is endangered due to Seller's untimely progress; or Bankruptcy or insolvency results in a proceeding filed by or against Seller, or an appointment for the creditor's benefit, and is not vacated within 30 days. In such instances, SIS subsequent POs issued (in addition to any other possible remedy or right in accordance with this order or by law), by written notice to Seller, thereby making Seller liable to SIS for the excess cost incurred by SIS.

If the failure of performing this Contract, or any subsequent Contract is due to causes beyond which Seller has control, and there is no fault or negligence on the part of the Seller, Seller shall not be held liable except with respect to defaults of 2nd and 3rd, etc., tier Sellers. The Seller shall be liable to SIS if the performance failure is caused by default by a 2nd or 3rd etc., tier subcontractor, unless the default is due to an occurrence beyond the control of the Seller or SIS without negligence caused by either party. In the event of notice of termination in part, Seller shall diligently proceed with performance of any Contract work not terminated.

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35. WAIVER AND SEVERABILITY

The lack of instance to perform under any provision of the Contract to practice any privilege or right granted to the Buyer shall not be deemed as waiving such provision with respect to any future events or circumstances, and the same shall govern and continue in full force. At any time should a provision of this Contract be determined to be unenforceable or illegal by any judicial administrative body or any court, the other provisions shall remain in full force and shall not be affected, provided however, that if enforcement of the Contract in the absence of such unenforceable or invalid provision would deprive a party of a material element of the original bargain, the parties will in good faith negotiate a reformation of the Contract to reflect as nearly as possible their original intent in the absence of such unenforceable or invalid provision.



Terms and Conditions of Purchase

36. WARRANTIES

In addition to any implied or expressed warranties, Seller warrants that goods furnished pursuant to this Contract will be

- (1) free from defects in workmanship and materials;
- (2) free from design defects except to the extent they complied with detailed drawings provided by the Buyer; and
- (3) in conformity with the requirements of this Contract.

If goods delivered under this Contract are found not to be as warranted within one (1) year after acceptance, Buyer may return any such goods to the Sellers, at Seller's expense, for correction, credit, or replacement, as Buyer may direct.

37. COMPLETE AGREEMENT

This Contract, along with any attachments or supplements as incorporated herein by Buyer, shall constitute a complete agreement between the two parties and shall govern over any prior written or oral communication or agreement regarding the subject matter.

38. SET OFF RIGHTS

In the event a party simultaneously owes the other party any amount and is owed any amount by the other party, the first party owing such amount may, by written notice, effect a set off of the amount it owes up to the amount it is owed by the other party.

39. LIMITATION ON DAMAGES

Seller's liability for damages or indemnification under this Contract shall not exceed the amount of payments required to be made to Seller under this Contract. Each Party's Liability for damage to property shall be limited to physical damage directly caused by the sole negligence of the responsible Party.

40. REMEDIES CUMULATIVE

Each party shall be entitled to any remedies expressly set forth in this Contract, and in addition may recover, to the extent not duplicative or inconsistent, any other remedies available at law or in equity.

41. FAR/DFARS CLAUSES/PROVISIONS.

The Order may require compliance to FAR/DFAR. If invoked, specific provisions applicable will be provided via addendum to Order. If FAR/DFAR is invoked the terms "Contractor" means "Seller", "Contracting Officer" means "Buyer", "Contract" means the Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract contracting officer or duly authorized representative.

42. EXPORT COMPLIANCE.

Any Technology or Technical Data provided by Buyer to Seller under this contract must be controlled in accordance with U.S. Export Control Laws. It is the sole responsibility of Seller to flow down verbatim to its subcontractors and disseminate to its employees, principals and any other related third party, any legends, markings, destination control statement or contract clause provided by Buyer in any communication, document, specification, structure, material, instruction, software, design or other Technology or Technical Data provided by Buyer to Seller that fall under the jurisdiction of US Export Laws ("Controlled Items"). US Export Laws include, but are not limited to: the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act, the Export Administration Regulations and any other statute(s) or regulation(s) governing the sale, export, disclosure or exchange of any item by a U.S. Person with, or to, another country or a person who is a citizen of another country and all successor and supplemental laws and regulations to the above. The terms Technology and Technical Data shall have the meanings provided for in the US Export Laws. Seller will either

- (i) represent and warrant that it is a U.S. Person as that term is defined in the US Export Laws, or
- (ii) if Seller is a non-U.S. business entity, it must disclose to Buyer in writing the country in which it is incorporated or otherwise organized to do business. Seller must also disclose the citizenships and U.S. immigration status of all persons involved in this sales transaction. If Seller is a natural person, Seller must disclose to Buyer in writing all citizenships and U.S. immigration status. Seller further covenants that it shall comply with any and all US Export Laws, and any license(s) required in regard to the items provided to Buyer pursuant to this sale.