



Terms and Conditions for Commercial Items Off-the-Shelf (COTS) Purchase Order less than \$500

REFERENCE NUMBERS

SELLER shall include Purchase Order number, applicable line item numbers, tag numbers, and stock code numbers on all invoices, correspondence, shipping papers, and packing lists.

DELIVERY INFORMATION

The drivers delivering materials and equipment shall have in their possession the following:

- Valid driver's license with photo ID
- Current Proof of insurance
- Current Vehicle Registration

Arnold Army Depot personnel have the right to search vehicles at any time while on Air Force land.

GC-1 ENTIRE AGREEMENT AND SURVIVAL

This Purchase Order shall constitute the sole and exclusive agreement between the parties regarding the sale by SELLER and purchase by BUYER of the Products covered hereunder. This Purchase Order supersedes all other writings and oral communications and nothing shall be construed to be an acceptance of any alternative terms of SELLER. SELLER'S performance under this Purchase Order shall constitute SELLER'S acceptance of all terms and conditions herein. SELLER agrees that no pre-printed provision in any invoice or other document of SELLER shall apply to this Purchase Order or the transaction covered hereby. The clauses in these General Conditions titled "WARRANTIES", "INFRINGEMENT", "COMPLIANCE WITH LAWS" and "APPLICABLE LAW" shall remain in effect and be fully enforceable following the delivery of and payment for the Products or termination of this Purchase Order.

GC-2 CHANGES

- A. BUYER, through its authorized procurement representative, may at any time direct, in writing, changes, including but not limited to changes in any one or more of the following:
- (1) additions to or deletions from quantities ordered;
 - (2) delivery schedule;
 - (3) method of shipment or packing; and
 - (4) place of delivery.
- B. If any such change causes an increase or decrease in the cost of or timing required to provide the Product(s), an equitable adjustment may be made in the price or delivery schedule, or both, and the Purchase Order shall be modified by written amendments or revisions executed by authorized representatives. Any request by the SELLER for adjustment under this Changes clause must be asserted within thirty (30) days from the date of receipt by the SELLER of the notification of change. However, nothing in this clause shall excuse SELLER from proceeding with the order as changed.

- C. No modifications of these General Conditions shall be valid unless reduced to writing and signed by both parties.

GC-3 PRICE AND PAYMENT

- A. The prices herein specified, unless otherwise expressly stated, shall exclude all taxes and duties of any kind which either party is required to pay with respect to the sale of Products covered by this Purchase Order, but shall include all charges and expenses in connection with the packing of the Products and their carriage to the place of delivery to BUYER unless specifically excluded. SELLER shall be paid, except as otherwise stated in this Purchase Order, upon submission of proper invoices, the prices stipulated herein for Products delivered and accepted; however, payment may be withheld or portions thereof may be deducted if in BUYER'S reasonable opinion SELLER is not performing work in accordance with the provisions of this Purchase Order or if proper set offs in favor of BUYER in other transactions are asserted. BUYER reserves the right to make payments due hereunder directly to suppliers of SELLER whenever BUYER has reason to believe SELLER has not paid or is likely not to pay such suppliers amounts due them on a timely basis.
- B. SELLER shall submit an original invoice and two (2) copies to the address designated on the face of this Purchase Order. The invoice must include at least the following:
- Name, address and DUNS number of SELLER,
 - Name, title and phone number of the person to notify in the event of a defective invoice,
 - Invoice date and number,
 - Purchase Order number,
 - Line item number, description, quantity, unit of measure, unit price and extended price of items delivered, and
 - Terms of any discount for prompt payment offered.
- C. Any cash discount period offered by SELLER shall be computed from the date that all obligations hereunder are met. The foregoing payment and cash discount periods shall be extended by the period of any delay caused by an error in the invoice requiring correction or resolution of issues relating to acceptance of material and/or documentation. BUYER may elect to pay SELLER through BUYER'S Electronic Funds Transfer (EFT) system. SELLER shall advise BUYER in writing, within thirty (30) days prior to due date of first invoice, of the bank and account number to which EFT payments may be made to SELLER.

GC-4 DELIVERY

Timely performance and delivery in accordance with the schedule herein are essential to this Purchase Order. However, SELLER will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition which is beyond SELLER'S reasonable control without SELLER'S fault or negligence. Acts of God, such as floods, as well as government priorities, acts of civil or military authorities, fires, epidemics, war or riot are examples of events that will be excusable for being beyond SELLER'S reasonable control, only upon fulfillment of the following conditions: (a) within seven (7) days of the commencement of any excusable delay, SELLER shall provide BUYER with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof; and (b) within seven (7) days of the cessation of the event causing delay, SELLER shall

provide BUYER with written notice of actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

GC-5 TITLE AND RISK OF LOSS

Except as otherwise provided herein, all Products furnished by SELLER hereunder shall become the property of BUYER or U.S. Government, as applicable, upon payment therefor or upon delivery, whichever occurs earlier. Notwithstanding the foregoing, SELLER shall be responsible for and shall bear any and all risk of loss or damage to the Products until delivery thereof in accordance with the delivery provisions of this Purchase Order. Upon such delivery, SELLER shall cease to bear the risk of loss or damage; provided, however, that any loss or damage, whenever occurring, which results from SELLER'S nonconforming packaging or crating shall be borne by SELLER.

GC-6 EXPEDITING AND INSPECTION

The Products to be provided by SELLER shall be subject to expediting, and may also be subject to inspection by BUYER. BUYER'S representative shall be afforded free access during working hours to SELLER'S plants for such purpose, and SELLER agrees to procure a similar right for BUYER with respect to SELLER'S suppliers and or subcontractors.

GC-7 WARRANTIES

SELLER warrants that the Products shall be new, most suitable grade for intended purpose, free from defects in design, material, and workmanship and in full accordance with the terms and conditions of this order. The warranty period shall be any time prior to one (1) year from the date of shipment. SELLER'S liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties, including incidental damages, such as disassembly, removal, inspection, re-installation, re-testing, costs of transportation or warehousing. SELLER'S liability shall not extend to consequential damages from the breach of any warranty.

GC-8 INFRINGEMENT

SELLER shall indemnify, defend and hold harmless BUYER and the U.S. Government and their officers, employees and agents against liability, including all damages and costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Purchase Order, provided SELLER is reasonably notified of such claims and proceedings.

GC-9 COMPLIANCE WITH LAWS

- A. SELLER warrants that all Products shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Products are subject, including but not limited to all applicable export and import laws, rules and regulations. SELLER shall execute and deliver to BUYER any documents as may be required to effect or to evidence such compliance.
- B. SELLER agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 15 U.S.C. 78dd-1, et seq., The Foreign Corrupt Practices Act of 1977; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

GC-10 ASSIGNMENT

Any assignment of this Purchase Order or of any rights hereunder in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of BUYER shall be void. Upon ten (10) days' written notice to BUYER, SELLER may assign monies due or to become due under this Purchase Order, provided that any assignment of monies shall be subject to proper set offs in favor of BUYER and any deductions provided for in this Purchase Order.

GC-11 TERMINATION FOR CONVENIENCE

- A. BUYER reserves the right to terminate this Purchase Order, or any part hereof, for its sole convenience. In the event of such termination, SELLER shall immediately stop all terminated work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease such work. Subject to the terms of this Purchase Order, SELLER shall be paid a percentage of each applicable Release Order price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges SELLER can demonstrate to the satisfaction of BUYER using its standard record keeping system, have directly resulted from the termination. SELLER shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This subclause does not give the BUYER any right to audit SELLER'S records. SELLER shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- B. BUYER will pay to SELLER as full compensation: (1) all amounts due and not previously paid to SELLER for Products completed and accepted in accordance with this Purchase Order prior to such notice, and (2) a reasonable profit for costs incurred in the performance of the terminated work in progress.
- C. The total sum to be paid to SELLER under this clause shall not exceed the total price of all applicable terminated Release Orders as reduced by the amount of payments otherwise made and as further reduced by the price of work not terminated, and will not include any consideration for loss of anticipated profits on the terminated work, all claims for which SELLER agrees to waive.

GC-12 TERMINATION FOR DEFAULT

- A. BUYER may terminate this Purchase Order, or any part hereof, for default if the SELLER fails to comply with any terms or conditions of this Purchase Order, or fails to provide BUYER, upon request, with adequate assurances of future performance. In the event of termination for default, BUYER shall not be liable to SELLER for any amount for supplies or services not accepted, and SELLER shall be liable to BUYER for any and all rights and remedies provided by law. If, after notice of termination is provided under this clause, it is determined that for any reason that SELLER was not in default, the rights and obligations of BUYER and SELLER shall be the same as if the notice of termination had been issued pursuant to the General Condition titled "TERMINATION FOR CONVENIENCE".
- B. In the event BUYER terminates this Purchase Order in whole or in part as provided in this clause, BUYER may procure, upon such terms and in such manner as BUYER may deem appropriate, Products similar to those so terminated, and SELLER shall be liable to BUYER for any additional costs for such similar Products provided, however, SELLER shall continue the performance of this Purchase Order to the extent not terminated under the provisions of this clause.

GC-13 NON-WAIVER

Failure of BUYER to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies or to properly notify SELLER in the event of breach, or the

acceptance of or payment for any Products hereunder, shall not release SELLER of any of the warranties or obligations of this Purchase Order and shall not be deemed a waiver of any right of BUYER to insist upon strict performance hereof of any of its rights or remedies as to any such Products.

GC-14 APPLICABLE LAW

Irrespective of place of performance, this Purchase Order will 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. To the extent that the federal common law of government contracts is not dispositive, the laws of the state of Tennessee shall apply.

GC-15 BUY AMERICAN ACT

This Purchase Order is subject to the Buy American and Trade Agreement Government clauses included in the General Condition titled "GOVERNMENT CLAUSES INCORPORATED BY REFERENCE". SELLER is solely responsible for compliance with such clauses and agrees to indemnify and hold harmless BUYER from any and all direct, indirect or consequential expenses or other damages relating to or arising out of the failure of SELLER or its Sub-suppliers to comply with such clauses.

GC-16 DISPUTES

- A. All disputes arising under or relating to this Purchase Order which cannot be resolved by negotiation shall be resolved under this clause.
- B. "Claim," as used in this clause, means a written demand or written assertion by either BUYER or SELLER (the "Parties") seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of purchase order terms, or other relief whether in contract or in tort, arising under or relating to this purchase order. A voucher, invoice, other routine request for payment or request for equitable adjustment under a remedy granting clause that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a Claim, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- C. If for any reason SELLER and BUYER are unable to negotiate a resolution of a Claim, SELLER or BUYER shall notify the other Party in writing that a dispute exists and request or provide a final determination by BUYER. Any such request by SELLER shall be clearly identified by reference to this clause and shall summarize the facts in dispute and SELLER'S proposal for resolution. With respect to Claims for equitable adjustment under any remedy granting clause under this Purchase Order, SELLER shall be deemed to have waived such Claim unless SELLER has requested resolution of the Claim under this clause within one year of the date that such Claim first arises or the Final Acceptance of the Work under this purchase order, whichever occurs earlier.
- D. As a condition precedent to further consideration of any Claim by SELLER where the amount requested by SELLER exceeds \$100,000 or the resolution of the Claim could result in payment by BUYER in excess of \$100,000, SELLER shall provide the following certification:

"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 purchase order adjustment for which SELLER believes BUYER or U.S. Government is liable; and that I am duly authorized to certify the claim on behalf of SELLER”.

The foregoing certification may be executed by any person duly authorized by SELLER’S governing documents to bind SELLER with respect to the Claim. At the request of BUYER, SELLER agrees to provide evidence of such authorization.

- E. BUYER will, within forty-five (45) calendar days of any request by SELLER, either (1) provide a written final determination setting forth the contractual basis for its decision and defining what purchase order adjustments it considers equitable; or (2) notify SELLER of the date by which the decision will be made. Upon SELLER’S written acceptance of BUYER’S determination, the purchase order will be modified in accordance with the General Condition titled “CHANGES”, and the determination implemented accordingly or, failing agreement, BUYER may in its sole discretion pay such amounts and/or revise the time for performance of the Work in accordance with BUYER’S final determination.
- F. If a Claim by SELLER is based on alleged actions, inactions or omissions of CUSTOMER and the interests of justice would be served by resolving SELLER’S Claim in a single proceeding, BUYER may, in its sole discretion, elect to sponsor SELLER’S Claim under the Disputes clause of BUYER’S Prime Contract and allow SELLER to proceed in BUYER’S name. In the event that BUYER so sponsors a Claim, SELLER agrees to enter into a sponsorship agreement under which SELLER waives its right to reimbursement from BUYER except to the extent that CUSTOMER is liable to BUYER; and SELLER shall indemnify BUYER for any costs and expenses associated with sponsorship of the Claim.
- G. If BUYER’S final determination is not accepted by SELLER the matter shall, within thirty (30) calendar days, be referred to senior executives of the Parties for resolution in accordance with the following procedures:
 - (1) The Parties’ senior executives shall have designated authority to settle the dispute. Where appropriate for resolution, the Parties may prepare and exchange memoranda stating the issues in dispute and their respective positions, summarizing the negotiations that have taken place and attaching relevant documents. The senior executives may, in their discretion, meet for negotiations at a mutually agreed time and place as soon as is practicable after the exchange of memoranda.
 - (2) All communications, whether oral or written, related to the foregoing meeting shall be deemed to have been made as part of efforts to compromise the Claim and may not be admissible as evidence in any subsequent proceedings.
- H. If the matter has not been resolved within sixty (60) calendar days of the commencement of the referral to senior executives, the Parties shall attempt to resolve the dispute in non-binding mediation to be held in Tullahoma, Tennessee in accordance with the Center for Public Resources Model Procedure for Mediation of Business Disputes. Each Party shall be responsible for its own expenses.

- I. If the matter has not been resolved within sixty (60) calendar days of the commencement of mediation, or if either BUYER or SELLER will not participate in mediation, either Party may pursue any legal remedy provided however that in no event shall an action be brought more than one year after the date of BUYER'S final determination. If no action is filed in a court of law by such date, all rights shall be deemed waived, and the final determination shall be final and binding, without any further right of redress or appeal.

The Parties further agree to waive all rights regarding jurisdiction or venue, including but not limited to forum non convenience, and agree that the only venue for the filing of any court proceeding with respect to any dispute under this Purchase Order shall be exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Southern Division. However, in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in a Tennessee Circuit or Chancery Court as appropriate, in a county with appropriate jurisdiction. Each party hereby waives its right to a jury trial in any judicial proceeding. Further, any court ordered mediation or binding arbitration shall be in Tullahoma, Tennessee.

- J. If a court awards prejudgment interest on a claim, the interest rate shall be the applicable rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563)
- K. SELLER shall proceed diligently with performance of this Purchase Order, pending final resolution of any request for relief, Claim, appeal, or action arising under the Purchase Order, and comply with any decision of BUYER.
- L. Absent agreement of BUYER and other than for a period not to exceed forty-five (45) days for final decision, thirty (30) days for senior management review, and sixty (60) days for mediation, these contractual remedies shall not be deemed to waive, act as a condition precedent to accrual or otherwise extend any statute of limitation applicable to any claim that would have lapsed but for the BUYER'S agreement to negotiate SELLER'S requests for equitable adjustments or Claims.

GC-17 GOVERNMENT CLAUSES INCORPORATED BY REFERENCE

- A. The Federal Acquisition Regulation (FAR) and the Department of Defense Regulation (DFAR) which are incorporated by reference herein shall have the same force and effect as if printed in full text.
- B. Full text of the reference FAR or DFAR clauses may be accessed electronically at website address: <http://farsite.hill.af.mil/VFFARA.htm>
- C. Wherever necessary to make the context of the unmodified FAR, DEAR and CONTRACTOR'S Prime Contract clauses applicable to this Purchase Order:
- (1) The term "Contractor" shall mean "Seller;"
 - (2) The term "Contract" shall mean this Purchase Order; and
 - (3) The term "Government," "Contracting Officer" and equivalent phrases shall mean CONTRACTOR and/or CONTRACTOR'S representative, except the terms "Government" and "Contracting Officer" do not change:

- (i) In the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property;"
 - (ii) In any patent, data rights or other intellectual property clauses incorporated herein, except that the term "Government" shall mean both "Government" and "CONTRACTOR" with respect to any Patent Indemnity clause;
 - (iii) When a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or his duly authorized representative;
 - (iv) When title to property is to be transferred directly to the Government;
 - (v) When access to proprietary financial information or other proprietary data is required except for authorized audit rights; and
 - (vi) Where specifically modified herein.
- (4) For authorized audit rights, the term "Contracting Officer, or an authorized representative of the Contracting Officer" shall also include "CONTRACTOR, or an authorized representative of CONTRACTOR."

D. Seller shall incorporate these requirements in any lower-tier subcontracts or purchase orders.

E. The general comments in the "instructions" section of the table below regarding applicability are provided for convenience only. SELLER is responsible for reviewing the text of each clause to determine its applicability to this Purchase Order.

F. The following clauses are incorporated by reference into this Purchase Order:

APPLICABLE TO ALL PURCHASE ORDERS, Unless Otherwise Exempted			
Clause Number	Title	Date	Additional Conditions of Applicability (Descriptions provided for convenience. SELLER is responsible for complying with all applicable clauses)
52.203-3	Gratuities	Apr 1984	Applies if Purchase Order exceeds \$150,000.
52.208-08	Required Sources for Helium and Helium Usage Data	Apr-14	None.
52.211-15	Defense Priority and Allocation Requirements	Apr-08	The rating is DO-C9.
52.222-19	Child Labor - Cooperation with Authorities and Remedies	Jan 2014	Applies to Purchase Orders that exceed \$3,500.
52.222-21	Prohibition of Segregated Facilities	Feb-99	Paragraphs (b)(1) through (b)(11) only apply to this purchase order.
52.222-35	Equal Opportunity for Veterans	Sep-10	Applies to Purchase Orders that exceed \$150,000.
52.222-36	Affirmative Action for Workers with Disabilities	Oct 2010	Applies to Purchase Orders that exceed \$10,000.

52.222-37	Employment Reports on Veterans	Jul-14	Applies to Purchase Orders that exceed \$150,000.
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	Dec-10	Applies to Purchase Orders that exceed \$150,000.
52.222-50	Combating Trafficking in Persons	Feb 2009	SELLER shall flow down to all sub-suppliers and sub-subcontractors.
52.223-03	Hazardous Material Identification and Material Safety Data	Jan-97	None.
52.223-11	Ozone-depleting Substances	May-2001	None.
252.204-7000	Disclosure of Information	Aug-13	None.
252.223-7001	Hazard Warning Labels	Dec-1991	None.
52.225-13	Restrictions on Certain Foreign Purchases	Jun-2008	None.
252.225-7001	Buy American and Balance of Payments Program	Dec-12	Applies to Purchase Orders that exceed the Micro Purchase Threshold of \$3,500
252.225-7002	Qualifying Country Sources as Subcontractors	Dec-12	None.
252.225-7008	Restriction on Acquisition of Specialty Metals	Mar-13	None.
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	Jun-13	Applies to Purchase Orders that exceed \$150,000. Instruction: 1. Paragraph (c) (6) exception if applicable shall apply 2. Paragraph (d) shall not apply.
252.225-7025	Restriction on Acquisition of Forgings	Dec-09	This clause applies to all Purchase Orders for forging items or for other items that contain forging items.
252.225-7012	Preference for Certain Domestic Commodities	Feb 2013	Applies to all Purchase Orders that exceed \$150,000. This clause applies if any of the commodities identified in the clause will be provided under this Purchase Order.
252.225-7047	Exports by Approved Community Members in Performance of the Contract	Jun-13	This clause applies to all Purchase Orders that require exports or transfers of qualifying defense articles in connection with deliveries under the subcontract or purchase order.
252.225-7988 <i>DEVIATION</i>	Acquisition of the American Flag (DEVIATION)	Feb-14	This clause applies to all Purchase Orders for the supply of US Flags.
52.226-26	Equal Opportunity	Mar 2007	None.

52.232-8	Discounts for Prompt Payment	Feb-2002	None.
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Dec 2013	This clause applies if SELLER is a small business
52.244-6	Subcontracts for Commercial Items	Jul 2014	None.
252.244-7000	Subcontracts for Commercial Items	Jun 2013	None.
52.247-63	Preference for U.S.-Flag Air Carriers	Jun-2003	This clause applies if the Purchase Order involves international air transportation.
252.247-7023	Transportation of Supplies by Sea – Basic	Apr 2014	In paragraph (d) “45 days” is revised to “60 days.” For Purchase Orders under \$100,000, paragraph (f) is deleted. For Purchase Orders \$100,000 and higher, paragraph (f) applies.
252.247-7024	Notification of Transportation of Supplies by Sea	Mar-2000	None.

FEDERAL ACQUISITION REGULATION PRIME CONTRACT CLAUSES IN FULL TEXT

252.225-7988 ACQUISITION OF THE AMERICAN FLAG (DEVIATION) (FEB 2014)

(a) Definition.

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) If the Contractor is required to deliver under this contract one or more American flags (Federal Supply Class 8345), such flag(s), including the materials and components thereof, shall be manufactured in the United States, consistent with the requirements at 10 U.S.C. 2533a (commonly known as the “Berry Amendment”):

(c) This clause does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flagpoles and accessories).