



Terms & Conditions:

GENERAL TERMS AND CONDITIONS

B1-B Program

Form 70-C-33 (1 SEP 98) REV | [MD-1965-02 (1 SEP 98) NEW]

- 1.** This order constitutes Buyer's offer to purchase the materials, services and articles, all of which are herein called "articles," described elsewhere in this order, in accordance with its provisions which include the provisions set forth on the face of this order, the provisions attached hereto, and the provisions incorporated herein by reference.
- 2. SHIPPING INSTRUCTIONS:**
 - (a)** On date of shipment, send original bill of lading, airbill or express receipt reflecting this order number to Buyer's Traffic Department and one copy of Notice of Shipment to Buyer's Purchasing Department.
 - (b)** Do not deliver ahead of schedule unless authorized by Buyer. Describe shipments in accordance with the carrier's tariffs to obtain the lowest freight rate. Do not insure or declare value on shipments beyond F.O.B. point. When a shipment is subject to freight rates dependent upon value, annotate the bill of lading, airbill or express receipt to show that the shipment is released at the maximum value which applies to the lowest rate provided in applicable tariffs. If the value of any one shipment exceeds \$200,000, notify Buyer's Traffic Department by collect wire in advance of shipment. Consolidate all shipments to be forwarded on one day.
 - (c)** Articles furnished in excess of the quantity specified or in excess of any allowable overage will be retained by Buyer at no additional cost unless Seller notifies Buyer within 45 days after shipment that it desires the return thereof. Seller will reimburse Buyer for the full cost of returning such overshipment or a minimum charge of \$50.00 whichever is higher. No notification will be given to Seller of any overshipment unless the value thereof exceeds \$150.00.
 - (d)** Mail original and two duplicate invoices to Buyer's Accounting Department when articles are shipped. **STATE SHIPPING POINT ON ALL INVOICES.** Each case or parcel and accompanying packing list of contents must show Buyer's order number. If no packing list accompanies the shipment, Buyer's count will be conclusive on Seller.
- 3. PACKAGING AND EXTRAS:** No charges will be allowed for transportation, packaging, packing or returnable containers unless stated in this order. All shipments must be packaged and must conform with Buyer's packaging specification referred to elsewhere in this order. If any, so as to permit efficient handling and to provide protection in shipment, and if tendered to a common carrier for delivery, must also conform to the packaging requirements applicable to such carrier. Damage to any articles resulting from improper packaging will be charged to Seller.
- 4. SPECIFICATIONS:** All articles ordered to Government or Buyer's specifications will comply with such specifications current as of the date of this order unless otherwise specified by Buyer.
- 5. WARRANTY:** Unless otherwise agreed to in writing by the parties, Seller warrants that articles ordered to specifications will conform thereto and to any drawings, samples or other description furnished or adopted by Buyer,

or, if not ordered to specifications, will be fit and sufficient for the purpose intended and that all articles will be merchantable, of good material and workmanship, and free from defect. Such warrants, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the articles and shall run to Buyer, its successors, assigns and customers. Except for latent defects, fraud or such gross mistakes of Seller as amount to fraud, notice of any defect or nonconformity must be given by the Buyer to the Seller within one (1) year after delivery, or one (1) year after receipt of satisfactory qualification test reports, if required hereunder, whichever is later. Buyer may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming article and delivery to Buyer of any corrected or replaced articles shall be at Seller's expense. Defective or nonconforming articles shall not be corrected or replaced unless specified on Buyer's written order. Articles required to be corrected or replaced shall be subject to the provisions of this clause and the clause hereof entitled "Inspection" in the same manner and to the same extent as articles originally delivered under this order, but only as to the corrected or replaced part or parts thereof.

6. INSPECTION: All articles shall be subject to inspection and test at all times and places, including the period of manufacture, by Buyer and, if this order is placed under a Government contract, the Government. If any inspection or test is made on Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of Buyer and Government inspectors. Such inspectors and tests shall be performed in such a manner as not unduly to delay the work. All articles are also subject to final inspection and acceptance at Buyer's plant notwithstanding any payments or other prior inspections. Such final inspection shall be made within a reasonable time after delivery.

7. RELEASE OF NEWS INFORMATION AND ADVERTISING: Seller shall not, without the prior written consent of Buyer: **(a)** make any news release, public announcement, denial or confirmation of all or any part of the subject matter of this order, or any phase of any program hereunder, or **(b)** in any manner advertise or publish the fact that Buyer has placed this order.

8. TERMINATION: Buyer shall have the right to terminate this order or any part thereof at any time: **(a)** Without Cause-In case of termination by Buyer of all or any part of this order without cause, any termination claim must be submitted to Buyer within sixty (60) days after the effective date of termination. The provisions of this subparagraph shall not limit or affect the right of Buyer to terminate this order for cause and shall not apply to a termination for cause. **(b)** For Cause-If Seller fails to make any delivery in accordance with the agreed delivery date or schedule or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this order or fails to make progress so as to endanger performance of this order or in the event of any proceedings by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee or an assignment for the benefit of creditors. Buyer may, in addition to any other right or remedy provided by this order or by law, terminate all or any part of this order by telegraphic or other written notice to Seller without any liability by Buyer to Seller on account thereof. Buyer may require a financial statement from Seller at any time during the term of this order for the purpose of determining Seller's financial responsibility. In the event of termination for cause. Buyer may produce or purchase or otherwise acquire articles elsewhere on such terms or in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer.

9. PATENT INDEMNITY: Seller hereby indemnifies Buyer, its successors, assigns, agents, customers and users of the articles against loss, damage, or liability including costs and expenses, including attorneys' fees, which may be incurred on account of any suit, claim, judgement or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any articles supplied hereunder, provided Buyer shall notify Seller of any suit instituted against it and, to the full extent of its ability to do so, shall permit Seller to defend the same or make settlement in respect thereof. Buyer does not grant indemnity to Seller for infringement of any patent, trademark, copyright or data rights.

10. EXCUSABLE DELAYS: Neither party shall be liable for damages for delay in delivery arising out of causes

beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without the fault or negligence of either of them. Seller shall not be liable to Buyer in damages unless the articles or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after the beginning of any such cause.

11. ASSIGNMENT: Neither this order nor any rights or obligations herein may be assigned by Seller nor may Seller subcontract in whole, or substantially in whole, the performance of its duties hereunder without, in either case, Buyer's prior written consent. The terms and conditions of this order shall bind any permitted successors and assigns of Seller. Any consent by Buyer to assignment shall not be deemed to waive Buyer's right to recoupment and or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to permitted successors and assigns.

12. CHANGES: Buyer may at any time, by written notice, make changes in the specifications, designs or drawings, samples or other description to which the articles are to conform, in methods of shipment and packaging, or place of delivery. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, whether changed or not changed by any such order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this order modified in writing accordingly. Any claim by Seller for an adjustment must be made in writing within thirty (30) days of the receipt of any such notice, provided, however, that Buyer may, in its discretion, receive and act upon any such claim so made at any time prior to final payment under this order. Nothing in this clause shall excuse the Seller from proceeding without delay to perform this order as changed.

13. INFORMATION: (a) Drawings, data, design, inventions, computer software and other technical information supplied by Buyer shall remain Buyer's property and shall be held in confidence by Seller. Such information shall not be reproduced, used or disclosed to others by Seller without Buyer's prior written consent, and shall be returned to Buyer upon completion by Seller of its obligations under this order or upon demand. (b) Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the articles covered by this order shall be deemed to have been disclosed as part of the consideration for this order, and Seller shall not assert any claim against Buyer by reason of Buyer's use thereof.

14. BUYER'S PROPERTY: (a) All property used by Seller in connection with this order which is owned, furnished, charged to or paid for by Buyer including but not limited to, materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings and other technical information, specifications, and any replacement thereof, shall be and remain the property of Buyer subject to removal and inspection by Buyer at any time without cost or expense to Buyer and Buyer shall have free access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Buyer's property, used only for this order and adequately insured by Seller at its expense for Buyer's protection. Seller shall assume all liability for and maintain and repair such property and return the same to Buyer in its original condition, reasonable wear and tear excepted, and when such property is no longer required hereunder, Seller shall furnish Buyer with a list thereof and shall comply with any Buyer disposition instructions applicable thereto. Buyer shall not be obligated to pay any invoices for tooling until the first article produced therefrom shall have been received and accepted. Notwithstanding the foregoing, upon written notice to Buyer and to the extent such use will not interfere with Seller's performance of this or other orders from Buyer in effect at the time Seller enters into a direct contract with the U.S. Government. Seller shall have the right to use Buyer's property in the manufacture of end items for direct sale to the U.S. Government to the extent the Government has the right under its prime contracts with Buyer to authorize such use by Seller, provided that, to the extent practicable, Seller prominently identifies each such end item as being manufactured by Seller for direct sale to the U.S. Government (b) Materials, excluding Government Property, furnished by Buyer on other than a charge basis

in connection with this order shall be deemed to be held by Seller as bailee thereof. Seller agrees to pay Buyer's replacement cost for all such material spoiled or otherwise not satisfactorily accounted for over and above 2% thereof allowable for scrap loss.

15. GRATUITIES: Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to Buyer's employees, agents or representatives with a view toward securing this order or securing favorable treatment with respect thereto.

16. UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS, WOMEN-OWNED SMALL BUSINESS AND LABOR SURPLUS AREA CONCERNS: To support Government policy as declared by the Congress, and as consistent with the efficient performance of this order, Seller agrees to accomplish a maximum amount of subcontracting to small business, small disadvantaged business and women-owned small business concerns, and to use its best efforts to place subcontracts hereunder with subcontractors who will perform such subcontracts substantially in areas of persistent or substantial labor surplus when it can be done at prices no higher than are obtainable elsewhere observing exemptions and preferential order established by applicable Government regulations.

17. COMPLIANCE WITH LAWS: To the extent applicable hereto, Seller shall in the performance of this order comply with: the Fair Labor Standards Act of 1938 (29 U.S.C.201-219); the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); laws prohibiting the use of convict labor; all other federal, state, and local laws; all regulations and orders issued under any applicable law. Seller warrants that the equipment to be furnished hereunder complies with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678) and the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263 b-n) and all applicable regulations and standards promulgated thereunder.

18. NOTICE TO BUYER OF LABOR DISPUTES: (a) Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information, with respect thereto, to Buyer. (b) Seller agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which labor dispute may delay the timely performance of this order.

19. EFFECT OF INVALIDITY: The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.

20. RIGHTS, REMEDIES AND WAIVER: The rights and remedies provided Buyer herein shall be cumulative, and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach. The laws of the state shown in Buyer's address, printed on the face of this order, shall apply in the construction hereof.

21. DISPUTES: Any dispute arising under this order which is not settled by agreement of the parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgement in such proceedings or the settlement of any dispute arising under this order, Seller shall proceed diligently with the performance of this order in accordance with the decision of Buyer.

22. BUYER APPROVALS AND REVIEWS: The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of any of its obligations under this order, nor excuse or constitute a waiver of any defects or nonconformities in any articles furnished under this order, nor change, modify or otherwise affect any of the provisions of this order, including, but not limited to, the prices and delivery schedules contained herein.

23. TAXES: Seller is liable for and shall pay all taxes, impositions, charges and exactions imposed on or measured by this order except those Buyer specifically agrees or is required by law to pay and which are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges and exactions for which Buyer has furnished an exemption certificate.

24. TIME: Time is of the essence in the performance of this order by Seller.

25. TITLE: Except if title has heretofore passed to Buyer or Buyer's customers under other provisions of this order, title to the articles shall pass to Buyer upon delivery of the articles to the F.O.B. point named herein.

26. STOP WORK ORDER: The provisions of the clause contained in FAR 52.212-13 in effect on the date hereof are hereby incorporated herein by reference with the following changes: the words "Contracting Officer" and "Government" means Buyer; the word "Contractor" means Seller; the words ninety (90) days" are hereby changed to one hundred (100) days and the words "thirty (30) days" are hereby changed to twenty (20) days wherever they appear; and the reference to the "Termination for Convenience" clause shall be deemed to refer to paragraph (b) of the clause hereof entitled "Termination."

27. HAZARDOUS MATERIALS: Seller shall notify Buyer of every article ordered hereunder which contains material hazardous or injurious to the health or physical safety or persons even though said hazard or injury may only occur due to mishandling or misuse of the article. In addition, Seller shall identify the hazardous or injurious material and notify Buyer of the effects of such material on human beings and the physical manifestations that could result. For each article so identified, Seller shall supply Buyer warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard and its effects.

28. If this order is placed under a Government contract, the following provisions are incorporated herein and replaces Article 8 "Termination":

TERMINATION; (a) Buyer may terminate this order, in whole or in part in accordance with the provisions of the "Default (Fixed Price Supply and Service)" clause set forth in FAR 52.249-8 if Seller fails to comply with any of the provisions hereof, or if Seller becomes the subject of a proceeding under state or federal law for relief of debtors or makes an assignment for the benefit of creditors. (b) Without affecting its right to terminate this order under paragraph (a) hereof, Buyer may, for its convenience, terminate this order in whole or, from time to time, in part, in accordance with the provisions of the "Termination for Convenience of the Government (Fixed-Price)" clause set forth in FAR 52.249-2 except the term "1 year" in paragraph (d) is changed to "6 months". (c) The FAR clauses referred to in paragraphs (a) and (b) are hereby incorporated herein by reference as in effect on the date hereof.

29. RIGHTS IN DATA: If this order is placed under a Government contract having rights in data and computer software clauses, the provisions thereof are incorporated herein and replace subparagraph (b) of Article 13 "Information". Seller assumes the obligations of such clauses as they pertain to this order.

30. GOVERNMENT CLAUSES: Government clauses applicable to this contract are incorporated herein either by attachment to this document or by some other means of reference.