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# WARD LEONARD CT LLC TERMS AND CONDITIONS OF PURCHASE

These Ward Leonard CT LLC. Terms and Conditions of Purchase (“Terms and Conditions of Purchase”) shall apply and form a part of this order, except as expressly otherwise agreed to in writing by an Officer of Ward Leonard CT LLC.

## 1. Definitions

- 1.1. **“PO”** or **“Purchase Order”** or **“Order”** or **“Contract”** shall mean the Purchase Order along with these Terms and Conditions of Purchase, and any referenced special or supplemental provisions, drawings, technical data, specifications, any statement of work, quality provisions (in all cases including any changes), and all other documents otherwise incorporated.
- 1.2. **“Buyer”** or **“Ward Leonard”** shall mean Ward Leonard CT LLC, and its parent company, Fairbanks Morse, LLC d/b/a Fairbanks Morse Defense, including its divisions, subsidiaries and affiliates.
- 1.3. **“Procurement Representative”** shall mean the individual authorized to issue this PO as the Buyer’s authorized representative.
- 1.4. **“Seller”** or **“Contract”** or **“Offeror”** shall mean the legal entity contracting with the Buyer as named on the PO.
- 1.5. **“Work”** means all required labor, articles, materials, products, supplies, assemblies, data, drawings, goods, items, and services constituting the subject matter of this PO.
- 1.6. **“Supplier Promise Date”** or **“Promise Date”** or **“Scheduled Delivery Date”** shall mean the scheduled date of receipt at destination (not the ship date) irrespective of FOB point.
- 1.7. **“Subcontractor”** shall mean any legal entity contracting with the Seller or its lower tier subcontractors under this PO.
- 1.8. **“Seller Engaged Personnel”** shall mean any of Seller’s employees, Seller’s contingent, contract, or temporary workers, or Seller’s agents or subcontractors (and their employees) engaged, directed, or allowed by Seller to provide Work, directly or indirectly, to Buyer under this PO.

## 2. Entirety of Agreement

Seller agrees to provide and sell to Buyer the Work, and Buyer agrees to purchase and pay for the Work, per these Terms and Conditions of Purchase as well as the requirements and the Scheduled Delivery Dates described in the PO. This PO constitutes the complete and entire agreement between the parties and unless agreed otherwise, supersedes all previous negotiations, discussions, communications, representations, course of dealing, usage of trade, or agreements, whether oral or written, between the parties with respect to the Work. No agreement or understanding varying, contradicting or extending the terms or conditions of this PO, including but not limited to Seller provided terms and conditions included within a quote, proposal, order acknowledgement or like document, will be binding unless in writing, expressly incorporated in the PO, and signed by duly authorized representatives of both parties.

## 3. Acceptance

- 3.1. Seller shall be deemed to have accepted this PO upon the occurrence of any one of the following: (1) acknowledgment in writing, (2) commencement of performance by the Seller; or (3) delivery in whole or in part of the Work. Any inconsistencies in the PO shall be resolved in accordance with the following descending order of precedence: (1) these Terms and Conditions

of Purchase; (2) the face of the Purchase Order and/or task order, release document, or schedule (including any continuation sheets), as applicable; (3) any supplementary terms, conditions or provisions referenced in the PO; and (4) the statement of work and other documents included with or incorporated into the PO by reference.

**3.2.** Buyer should accept Work or give Seller notice of rejection within a reasonable time, notwithstanding any payment or prior test or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this PO or impair any rights or remedies of Buyer or its customer. In case any Work is defective or otherwise not in strict conformance with the requirements of this PO, Buyer shall have the right either to reject it, require its correction, or accept it with an equitable adjustment in price or other consideration. Buyer acceptance of nonconforming Work does not release Seller from its warranty or latent defect obligations. Any Work that has been rejected or requires correction shall promptly be replaced or corrected at Seller's expense, including transportation charges. In addition, Buyer reserves the right to charge Seller a rejection processing fee of four hundred dollars (\$400.00) for each time Work is rejected. If Seller fails to promptly replace or correct any Work within the PO delivery schedule, Buyer may: (a) return, re-perform, repair, replace, or re-procure the non-conforming Work at Seller's expense; and (b) terminate this PO in accordance with the Termination for Default Clause established herein. Should Buyer's customer or other circumstances require acceptance of non-conforming Work, payment will be made at an equitable reduction in price.

#### **4. Changes**

Buyer may at any time by a written order issued by its Procurement Representative, suspend performance of this PO in whole or in part, and make changes to this PO, including changes to the following: drawings, designs, specifications, provisions and instructions of this PO, method of shipment and/or packing, delivery schedule, place of delivery, quantity of Work, scope of Work, Buyer furnished material and property, and inspection and acceptance requirements. Seller shall proceed immediately to perform this PO as changed. If any such change causes an increase or decrease in the cost of or the time required for performance of this PO, or otherwise affects any other provisions of this PO, an equitable adjustment shall be made in the purchase price and/or delivery schedule as agreed to in writing by Buyer, and the PO modified in writing accordingly. Any claim by the Seller for adjustment under this Clause must be asserted in writing within twenty (20) days from the date of receipt by the Seller of the notification of change; provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this PO. Nothing in this Clause shall excuse the Seller from proceeding with the PO as changed.

#### **5. Product Changes/Part Obsolescence**

Seller shall provide written notification to Buyer prior to making any changes to Seller's tolling, facilities, materials, or processes, and/or provide written notification to Buyer upon becoming aware of any such changes by Seller's Subcontractors at any tier, that could affect the Work in this PO. This includes but is not limited to changes to fabrication, assembly, handling, inspection, acceptance, testing, manufacturing location, parts, materials, or suppliers. Seller shall notify Buyer of any pending or contemplated future action to discontinue Work purchased pursuant to this PO and shall allow Buyer to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the Work. Seller shall provide Buyer with a "Last Time Buy

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Notice” at least twelve (12) months prior to the actual discontinuance. Seller shall extend opportunities to Buyer to place last time buys of such Work with deliveries not to exceed one hundred eighty (180) days after the last time buy date.

## 6. Part Preservation

All Work has an expected shelf life of six months or longer, unless otherwise indicated. Corrosion, the result of oxidation or interaction with air or its environment that causes metals to deteriorate, must be prevented. It is Seller’s responsibility to take the necessary steps required to prevent the Work from deteriorating. Seller agrees to accept responsibility for any Work that does not maintain a minimum six-month shelf life. All Work with a ground surface finish should have some form of preservation treatment and be packaged properly to extend shelf life. Buyer must approve any exceptions in writing. Seller shall provide Buyer with detailed instructions on the storage of the Work and warrants that if such instructions are observed, the goods will, for a period of five years after delivery, be capable of operation as intended.

## 7. Superseding Specifications

The Specifications incorporated herein may include references to other Buyer, Buyer’s customer, or United States Government specifications. Such referenced specifications shall include all revisions and supplements thereto which have been released prior to the issuance of Seller’s last quotation.

## 8. Delivery

**8.1.** Time is of the essence and Seller shall furnish the Work covered by this PO, the associated product(s) shall be delivered DDP (Incoterms 2010) Buyer’s facility in Thomaston, Connecticut, unless otherwise specified on the face of this PO. Unless otherwise agreed to in writing by Buyer, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time reasonably required to meet Buyer’s delivery schedule. Seller shall not make deliveries in advance of the Scheduled Delivery Date unless authorized in writing by Buyer. Work delivered to Buyer in advance of the Scheduled Delivery Date without Buyer’s authorization may be returned or stored by Buyer at Seller’s expense and without any obligation to Buyer. Deliveries will be made even in the event of a strike at Seller’s location, unless otherwise authorized by Buyer. If the Seller fails to deliver in accordance with the schedule, Buyer will be entitled, at its election and its sole discretion, to either a price reduction for late deliveries, or the right to terminate this PO for default for late deliveries. Any expenses, costs or damages incurred by Buyer as a result of this default or any other non-compliance with the terms of this PO may, at the discretion of Buyer, be offset against any sum owing under this or any other PO between Buyer and Seller or charged back to Seller.

**8.2.** In the event of any anticipated or actual delay in the performance of this PO, Seller will immediately notify the Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay along with a written recovery schedule. If Buyer requests, Seller shall, at Seller’s expense, ship via air or other expedited routing to avoid or minimize any delay. Seller shall also immediately notify Buyer in writing of any events that could affect contract performance, such as bankruptcy proceedings, strikes, accidents, etc. Seller agrees to flow this Clause down to its Subcontractors, and promptly notify Buyer in writing when there exist such events and/or there are anticipated or actual delays at its Subcontractors that could affect

performance under this PO. Notification shall not relieve Seller of its obligation to comply with PO delivery requirements.

**8.3.** In the event of a termination for convenience or change by Buyer, no claim will be allowed for any manufacture or procurement in advance of Seller's normal lead time(s) or in excess of what is reasonably required to meet Buyer's delivery date(s) in the absence of Buyer's prior written consent.

## **9. Technical Direction and Seller Responsibilities**

**9.1.** All communication between Seller and Buyer affecting the Work to be furnished shall be through the Procurement Representative. Buyer technical personnel may provide written technical direction. However, technical direction and management surveillance shall not impose tasks and requirements upon the Seller that are additional to or different from the general tasks and requirements established in the PO. The technical direction, to be valid: (1) must be issued in writing consistent with the general scope of the Work as set forth in this PO; and (2) shall not commit Buyer to any adjustment of the price, schedule or other PO provisions.

**9.2.** If any technical direction is interpreted by the Seller to fall within the Clause entitled "Changes", the Seller shall not implement such direction, but shall notify Buyer Procurement Representative in writing of such interpretation within ten (10) working days after Seller's receipt of such direction. Such notice shall: (1) include the reason upon which the Seller bases its belief that the technical direction falls within the purview of the "Changes" Clause; and (2) include the Seller's best estimate as to revision in estimated price, performance time, delivery schedules and any other issues that would result from implementing the technical direction.

**9.3.** If, after reviewing the information, the Buyer is of the opinion that such direction is within the purview of the "Changes" Clause and considers such changes desirable, Buyer will issue unilateral direction to proceed pursuant to the authority granted under this Clause. In the event the Buyer determines that it is necessary to avoid a delay in performance of the PO, Buyer may, in writing, direct the Seller to proceed with the implementation of the technical direction pending receipt of the information to be submitted under subsection (9.2) above. Should Buyer later determine that change direction is appropriate; the written direction issued hereunder shall constitute the required change direction.

**9.4.** Failure of the Seller and the Buyer to agree on whether direction is technical direction or a change within the purview of the "Changes" Clause shall be a dispute under the "Disputes" Clause. Any action taken by the Seller in response to any direction which falls within the purview of the "Changes" Clause given by any person other than the Procurement Representative shall be at the Seller's own risk.

## **10. Counterfeit Parts**

**10.1.** For purposes of this Clause, the term "Parts" consist of those products delivered under this PO that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). The term "Counterfeit Part" means a Part that fulfills any or all of the following: 1) is or contains items misrepresented as having been designed, produced and/or tested under an approved system or other acceptable method; 2) is an item altered to resemble a product without authority or right to do so, or is an imitation of another product, with the intent to mislead or defraud by presenting the imitation as original or genuine; 3) is an approved Part that has

reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; or 4) is a used, refurbished, sample, or reclaimed item passed off as a new one.

**10.2.** Seller agrees and shall ensure that Seller and Seller Engaged Personnel shall deliver no Counterfeit Parts to Buyer. Seller shall only purchase items to be delivered or incorporated as Parts directly from the original component manufacturer /original equipment manufacturer, or through an authorized distributor. Parts shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. Seller shall, at its expense, promptly replace any delivered Counterfeit Part with a genuine Part conforming to the requirements of this PO. Notwithstanding any other provision herein, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Parts, including without limitation costs borne by Buyer, its customer or subcontractor associated with removing Counterfeit Parts, of reinserting replacement Parts and of any testing necessitated by the need to identify the Counterfeit Parts and the reinstallation of Parts after Counterfeit Parts have been exchanged. The remedies contained in this Clause are in addition to any remedies Buyer may have at law, equity or under other provisions of this PO.

## **11. Intellectual Property**

**11.1.** This Clause is subject to any US Government rights. All technical work product, including, but not limited to, ideas, information, data, documents, drawings, software, software documentation, designs, specifications, and processes produced by or for Seller, either alone or with others, in the course of or as a result of any Work performed by or for Seller under this PO shall be the exclusive property of Buyer and be delivered to Buyer promptly upon request.

**11.2.** All inventions conceived, developed, or first reduced to practice by or for Seller, either alone or with others, in the course of or as a result of any Work performed by or for Seller under this PO, and any patent application and patents based on or relating to any such inventions (both domestic and foreign), shall be the exclusive property of Buyer. Seller shall promptly disclose all such inventions to Buyer in written detail, and execute all papers, cooperate with Buyer, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications to Buyer.

**11.3.** All works of authorship, including, but not limited to, documents, drawings, software, software documentation, photographs, video tapes or files, sound recordings, and images, created by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller under this PO, together with all copyrights subsisting therein, shall be the sole property of Buyer. To the extent permitted under United States copyright law, all such works shall be works made for hire, with the copyrights therein vesting in Buyer. The copyrights of all other such works, including all of the exclusive rights therein, shall be promptly transferred and formally assigned free of charge to Buyer. Buyer shall have the right, at no additional charge, to use and/or reproduce Seller's and/or Seller's Subcontractors applicable literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature.

**11.4.** Buyer shall have an unlimited, irrevocable, paid-up, perpetual royalty-free right and license to make, have made, sell, offer for sale, import, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivatives of, and authorize others to



do any, some or all of the foregoing, any and all technical work product, and works of authorship, conceived, developed, generated, or delivered in performance of or in connection with this PO. In the event of any inconsistency between this Clause and any US Government clause incorporated by reference into this PO, the incorporated US Government clause shall govern.

## **12. Title to Drawings, Specifications and Work Product**

**12.1.** This Clause is subject to any US Government rights. Buyer and/or its customers shall at all times have title to: (1) all drawings and specifications furnished by Buyer to Seller, and (2) all documents (including, without limitation, all drawings and specifications) and work product, in any form, generated by, for or on behalf of Seller in connection with this PO. The price indicated on this order for any of the foregoing shall constitute the entire cost to the Buyer of any such item. All of said items shall be recorded on Seller's books and records and identified both in said books and physically where such items are located as property of Buyer and retained by Seller on consignment, subject to examination by Buyer. They shall be at Seller's risk and shall be maintained and stored by the Seller and if lost, damaged, or destroyed shall be replaced by the Seller without charge to the Buyer. Such items shall be used exclusively in the production for Buyer of articles ordered hereunder and the use thereof for any other purpose is prohibited unless approved by Buyer in writing. All items covered by the order are subject to removal by Buyer immediately on demand without charges.

**12.2.** The Seller hereby assigns and agrees to assign to Buyer the Seller's entire right, title and interest in and to (1) any and all documents and work product referred to above, (2) any and all applications for patent, domestic and foreign, that may be filed on said documents and work product, (3) any and all patents that may issue or be granted on such applications, and (4) any and all trademarks and copyrights in material related to said documents and work product. Seller shall, upon request by Buyer, immediately sign or have signed and deliver to Buyer, without further consideration, any and all documents necessary to perfect the assignments granted in this Clause.

## **13. Rights in Computer Software**

This Clause is subject to any US Government rights. Seller hereby assigns to Buyer all rights, title and interest in computer software, including computer programs, databases and documentation thereof (individually and collectively, "Software"), developed in the performance of this PO, including the right to apply for and register copyrights and patents in the U.S. and any other country, the right to all extensions and renewals thereof, unrestricted and complete rights of publication or reproduction, the right to use and license others to use said Software, and right to exclude others from reproducing the Software. Seller shall obtain from its Subcontractors all rights necessary to fulfill the Seller's obligation to Buyer under this PO. Seller agrees to execute any and all documents Buyer may be required to perfect the above assignment. Buyer shall have an unlimited, irrevocable, paid-up, perpetual royalty-free right and license to make, have made, sell, offer for sale, import, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivatives of, and authorize others to do any, some or all of the foregoing, any and all Software conceived, developed, generated, or delivered in performance of or in connection with this PO.

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## 14. Confidential or Proprietary Information/Property

Seller shall keep confidential and protect from disclosure all information and property obtained from Buyer in connection with this PO and identified verbally or in writing as confidential or proprietary, or which reasonably would be considered to be confidential or proprietary, as well as all documents and work product generated by Seller under this PO. Unless otherwise expressly authorized herein by Buyer, Seller shall use such information and property, and the features thereof, only in the performance of and for the purpose of this PO. Seller shall not, at any time during or after performance of this PO, disclose to others (except those Seller Engaged Personnel with a need to know) the terms of this PO or any other information, knowledge, or data (including business, technical, financial, or information of a proprietary or trade secret nature) that Seller: (a) receives from Buyer; or (b) conceives, develops or acquires in the performance of this PO. Nothing in the foregoing shall affect compliance with US Government requirements. Upon Buyer's request, and in any event upon the completion, termination or cancellation of this PO, Seller shall return all such information and property to Buyer or make such other disposition thereof as directed by Buyer. Seller shall not sell or dispose of any scrap or any completed, partially completed, or defective proprietary property before receiving written authorization and disposition instructions from Buyer. Seller shall flow down to its Subcontractors receiving such information or property these requirements to provide to Buyer the same rights and protection as contained in this Clause.

## 15. Release of Information and Use of Name

The Seller shall not, without the prior written consent of Buyer, publicly release any information regarding the subject matter of this PO. This includes but is not limited to advertisements, brochures, news releases (including photographs, films, public announcements, or denial/confirmation of the same, or interviews with news media) and the like. Seller shall not use or allow to be used, Buyer's name, logo or trademarks without the prior written approval of Buyer. The Seller shall include the substance of this Clause, including this sentence, in all of its subcontracts.

## 16. Seller's Compliance with Applicable Laws

Seller warrants and certifies it has complied and will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, programs, plans, and orders (collectively referred to as "Laws") in its performance of this PO and that all Work delivered hereunder complies with all applicable Laws. Seller warrants that it is in compliance with all Laws pertaining to firearms, ammunition, and explosive materials, which include but are not limited to the Federal Gun Control Act (18 USC § 921 et. seq.; 27 CFR Part 478), the National Firearms Act (26 USC § 5801 et. seq.; 27 CFR Part 479) and Federal explosives law, as amended by the Safe Explosives Act (18 USC § 841 et. seq.; 27 CFR Part 555). Seller also warrants that it will accurately label all deliverables consistent with the requirements of 40 CFR Part 82 "Protection of Stratospheric Ozone; Labeling". Work under this PO may be in a hazardous environment. Access to Work on this PO by persons under the age of 18 will be in compliance with the laws of the State where the Work is being performed. Seller agrees to defend, indemnify, and hold harmless Buyer from and against any Damages relating to any actual or alleged non-compliance by Seller or Seller's Subcontractors of any Laws. Buyer's approval of Seller's facilities, processes, or Work does not nullify or modify Seller's obligation for compliance to all applicable Laws.

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## 17. Hazardous Materials

**17.1.** Buyer will not accept, store or dispose of any toxic substances or hazardous material except as and to the extent, if at all, expressly provided for in this Order. In particular, paints, primers, or coatings on products required by this Order that contain the following constituents shall not be shipped without prior written approval by Buyer: arsenic, mercury, methylene chloride, methyl ethyl ketone (MEK), lead, and chromium, their compounds, or organo-metallic material. Materials known or suspected of containing or coming in contact with asbestos, polychlorinated biphenyls (PCBs), or mercury or mercury containing compounds shall not be provided without Buyer's prior written permission. Seller shall not use brass or copper black oxide coated thread fasteners when installing or replacing threaded fasteners in the performance of any work under this PO. If invoked specifications and standards permit other materials in lieu of these materials, they shall be used.

**17.2.** Prior to shipment of any hazardous material or chemical (as determined by OSHA regulation at 29 CFR § 1910.1200[d] or Federal Standard No. 313) onto Buyer property or work sites, Seller shall provide to Buyer one copy of OSHA Form 20 or 174, Material Safety Data Sheet or equivalent, for each such material or chemical. The form shall include the Buyer stock number or the material specification number as defined in this PO and all of the information required by 29 CFR §1910.1200(g). The packaging, labeling, handling, and shipping of all hazardous items must conform to all Laws, including carrier regulations. In addition to application of proper shipping labels on the outside container, each container of hazardous items shall be marked with the appropriate precautionary label according to the Code of Federal Regulations. Any failure to comply with the above submission requirement shall be grounds for withholding payments due the Seller hereunder.

## 18. Title, and Risk of Loss

Title to Work delivered under this PO shall pass to Buyer upon formal acceptance, regardless of when or where Buyer takes physical possession, unless the PO specifically provides for earlier passage of title. Risk of loss or damage to the Work shall remain with the Seller until, and shall pass to Buyer, upon the latter of acceptance or delivery to the Buyer. The risk of loss of nonconforming Work remains with the Seller until cure and acceptance of conforming Work.

## 19. Invoice and Payment

**19.1.** Seller shall prepare at time of shipment full and complete invoices for the Work performed and shall deliver one (1) legible copy of invoices by mail or email as directed in the PO. Seller shall verify email address accuracy to avoid payment delays. Seller shall be paid the prices stipulated herein for supplies delivered and accepted, less applicable deductions, if any. Buyer has no obligation to pay for items not included in the PO. Invoices shall (a) be rendered separately for each delivery with bill of lading attached (b) cover not more than one order (c) be rendered with order number noted thereon. If invoice is subject to cash discount the discount period shall date from receipt of material or receipt of proper and correct invoice whichever is later. For purposes of earning the discount, payment is deemed made on the date of mailing Buyer's check or completion of wire transferred funds. Buyer may, at its option, make payment to the Seller prior to the delivery and/or acceptance of Work. All invoices shall contain substantially the following assurance: "Seller hereby certifies that these goods were produced in compliance with all applicable requirements of the Fair Labor Standards Act as amended, and of regulations and orders thereunder, and of all federal, state and local statutes, rules and regulations relating to employment and conditions of employment." When machinery requires installation to verify



satisfactory operation, invoices will not be honored prior to Buyer approval of satisfactory installation and operation.

**19.2.** Each Seller invoice shall be for delivery/completion of Work on only one PO. Seller shall limit the number of submitted invoices on this PO to one (1) per month, with multiple items on a given invoice. Each Seller invoice shall contain as a minimum the PO number and total invoice amount, and for each Work item include: PO line item, Work description (including serial numbers, if required), quantity delivered and invoiced, and invoiced amount. Invoiced unit costs for each Work item must exactly match what is in the PO. Tax and freight charges, when applicable, shall be separately stated on the invoice. Unless the PO specifies otherwise, prices shall not include any sales or use taxes for which Buyer provided an exemption. Buyer shall be entitled at all times to off-set any amounts owed by Seller to Buyer against any amount payable by Buyer to Seller. Unless the PO specifies otherwise, no payment for extras shall be made unless such extras and the price therefore are authorized in writing by Buyer. Unless specified otherwise on the face of the PO, terms of payment shall be net sixty (60) days from Buyer's receipt of Seller's invoice.

## **20. Packing, Marking, Shipping**

All Work shall be packed, marked, and shipped strictly in accordance with the requirements specified in the PO. If no specific instructions are provided, utilize the least expensive good commercial practices to ensure protection in shipment and storage and compliance with applicable Laws. Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking, or method of shipment shall be reimbursed by Seller. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage, or storage unless specifically stated in the PO. Seller will strictly adhere to Buyer's routing instructions on the PO. Seller shall forward to Buyer, with invoice, the express receipt of bill of lading; signed by the carrier evidencing the fact that shipment was made. On containers, Seller shall mark handling and loading instructions, shipping information, PO number, item and account number, shipment date, and names and addresses of Buyer and Seller. Each shipment of Work shall also include a separate packing list in a waterproof envelope or wrapper. Crating, packaging, and packing on purchases from outside the United States of America must conform to ISPM 15, International Standard for Phytosanitary Measures Publication Number 15. Any extra expense in effecting delivery of material and equipment not so shipped will be charged to Seller.

## **21. Representations, Warranties, and Guarantees**

By acceptance of this PO, Seller warrants for at least twelve (12) months from the date of acceptance or re-sale by Buyer, whichever is later ("Warranty Period"), that all Work: (a) shall be new, suitable for the uses intended, of the grade and quality specified and free from all defects in design, material and workmanship; (b) shall strictly conform to all applicable specifications, drawings, descriptions, samples furnished and other requirements of the PO; (c) shall be adequately packaged and labeled; (d) shall not infringe any patent, trademark, trade secret or copyright, or any other intellectual property, contract or other third party right; (e) shall be of good and merchantable title, free of liens and encumbrances; and (f) are not in violation of any Laws. The foregoing warranties are in addition to all other warranties, expressed or implied, and shall survive delivery, inspection, acceptance and payment by Buyer. If the Work is found not to meet the warranties and guarantees specified herein, Buyer may, within its sole discretion, return such Work to Seller at Seller's expense, for correction, replacement, re-performance or credit, plus transportation charges. If repair, or replacement, or re-performance of the Work is not timely, Buyer may elect to return, repair, replace, or re-procure the non-conforming Work at Seller's

expense. Any Work corrected, replaced, or re-performed shall be subject to the provisions of this Clause to the same extent as the Work initially furnished hereunder for the remaining Warranty Period or for six (6) months from acceptance of the corrected, replaced or re-performed Work, whichever is longer. Should Buyer's customer require acceptance of the Work not conforming to this warranty, payment will be made at an equitable reduction in price. This warranty shall run to Buyer, its successors, assigns, customers, and users of its products. These rights granted to Buyer under this Clause are in addition to any rights or remedies provided elsewhere in this PO or in law and equity and shall not be deemed to be exclusive.

## **22. Inspection**

**22.1.** All Work purchased hereunder (and work-in-process relating thereto) shall be subject to inspection and testing by Buyer (or Buyer's customer) at any reasonable time and from time to time before, during or after manufacture and delivery. If any inspection or test is to be made on the premises of the Seller, the Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties.

**22.2.** Notwithstanding prior inspections, all Work is subject to final inspection and approval at Buyer's plant or other place designated by Buyer and, notwithstanding any payment that may be made, no Work is deemed accepted until such final inspection and approval. Buyer's inspection before, during or after manufacture and delivery shall not constitute a waiver of the right of subsequent rejection by reason of any undiscovered or latent defect. Buyer has the right to inspect the Work on or after delivery. Buyer, at its sole option, may inspect all or a sample of the Work, and may reject all or any portion of the Work.

**22.3.** If the Work is non-conforming or damaged, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the order in its entirety; (b) accept the Work at a reasonably reduced price; or (c) reject the Work and require replacement of the rejected goods. If Buyer requires replacement of the Work, Seller shall, at its expense, promptly replace the non-conforming Work and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Work and the delivery of replacement Work. If Seller fails to timely deliver replacement Work, Buyer may replace the Work using a third party and charge Seller the cost thereof and terminate this order for cause. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

## **23. Performance Testing**

Seller acknowledges that Buyer will be required to demonstrate that the Work meets the requested specifications at Buyer's or its customer's facility. In the event of any failure to successfully complete a performance test due to problems with the Work, Seller shall promptly provide one or more technicians without charge at such facility to make such modifications or adjustments as necessary. If the Work cannot promptly thereafter successfully complete the performance test, Buyer may reject, and/or rescind any earlier acceptance of the Work as non-conforming.

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## 24. Price Warranty

The prices indicated on this order are firm and no change or adjustment will be allowed unless authorized in writing by Buyer. Seller represents that the prices set forth in this order do not exceed current selling price of similar materials having the same or similar quality in like quantity, whether sold to the U.S. Government or to any other purchaser. In the event of such excess price or in the event prices charged hereunder shall exceed prices permitted by any applicable law or regulation. Seller agrees to forthwith refund any such excess price to the Buyer.

## 25. Seller Compliance with Labor and Employment Laws

Seller and Seller Engaged Personnel are not employees of Buyer and are not entitled to any Buyer employee benefits or privileges. Seller shall comply with all applicable federal, state, and local labor and employment laws, regulations, and executive orders, including Form I-9 requirements and use of E-Verify. Seller shall pay all wages due to its employees and all related employment taxes and workers' compensation and unemployment insurance amounts. Seller shall indemnify and hold harmless Buyer against all Damages arising out of any alleged failure to comply with labor and employment laws applicable to any Seller Engaged Personnel. 26. EEO and Affirmative Action Obligations: Buyer is an equal opportunity and affirmative action employer. Seller and its Subcontractors must employ, assign, and advance Seller Engaged Personnel without regard to race, color, creed, religion, sex, national origin, disability, age, status as a covered veteran, or any other legally protected characteristic. Seller and its Subcontractors must comply with all provisions of EO 11246 as amended, along with any applicable provisions of 41 CFR §§ 60-1.40, 60-250.4, 60-300.5(a) and 60-741.5(a) with respect to affirmative action program requirements.

## 26. Financial Responsibility

Seller shall, prior to commencing work under this PO, furnish such financial data and related information as may be required by Buyer to permit a determination of financial capability/responsibility under this PO. Seller shall, at no increase in PO price, promptly submit interim financial data as may be requested by Buyer to determine continuing financial capability/responsibility during the progress of work under this PO. If Seller's financial capability/responsibility are determined by Buyer to be such as may jeopardize performance hereunder, Buyer shall have the right to request, and Seller shall promptly deliver at no increase in PO price, a complete and current manufacturing data package sufficient to enable Buyer to complete or have completed the Work hereunder. Upon such request by Buyer, Seller thereby grants to Buyer a non-exclusive royalty-free license and rights under such data and patents, if furnished hereunder. Buyer agrees that, so long as Seller is not in default, Buyer will not use the drawings for such manufacture. Upon completion and acceptance by Buyer of the Work required to be performed hereunder, Buyer shall return to Seller such manufacturing data package.

## 27. Liens

Seller agrees that no liens, security interests, encumbrances or property rights of any kind ("Liens") shall lie or attach upon or against the Work or any Buyer Property, or any part thereof, for or on account of any work performed, provided, or service furnished by Seller pursuant to this PO. If any Lien is asserted against the Work or Buyer Property, or any part thereof, Buyer shall have the right to discharge the same by filing a bond or security, or in its discretion, by paying the amount of such claim, and in such event, Buyer shall have the right to deduct from the PO price the amount thus paid. If the PO price has been paid, Seller shall repay to Buyer, upon demand,

the amount thus paid by Buyer for the purpose of discharging such claim, plus all administrative and legal expenses incurred by Buyer.

## 28. Records

Unless a different period is set forth elsewhere in this PO, Seller shall retain all pertinent books, documents, papers, and records involving transactions related to this PO for a period of six (6) years after final payment on this PO. At the conclusion of this time period, Seller shall make written request to the Procurement Representative, for permission to (1) destroy such records; (2) package and ship same to Buyer; (3) maintain said records at Seller's facilities; or (4) any combination of the above.

## 29. Termination for Convenience

**29.1.** Buyer may terminate performance of Work under this PO in whole or, from time to time, in part when Buyer determines that it is in its best interest. Buyer shall terminate by issuing to the Seller a "Notice of Termination" specifying the extent of termination and effective date.

**29.2.** After receipt of a Notice of Termination, and except as directed by Buyer, the Seller shall immediately proceed with the following obligations in addition to any specifically included in the Notice of Termination: (1) Stop work as specified in the Notice of Termination; (2) Place no further subcontracts or orders except as necessary to complete the continued portion of this PO; (3) Terminate all subcontracts to the extent they relate to the Work terminated; (4) Complete performance of the Work not terminated; (5) As directed by Buyer, transfer title and deliver to Buyer: (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and (ii) the completed or partially completed plans, drawings, information, and property that, if the PO had been completed, would be required to be furnished to Buyer; and (6) Comply with the instructions by Buyer in the Notice of Termination and any subsequent written instructions.

**29.3.** Seller shall submit a final termination settlement proposal to Buyer in the form and with the certifications prescribed by Buyer. Seller shall submit the proposal promptly, but no later than ninety (90) calendar days from the Notice of Termination. If the Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay that amount. Such determination shall be conclusive.

**29.4.** Subject to subsection (29.3) of this Clause, the Seller and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid due to the termination. The Seller shall be reimbursed for actual, reasonable, and allowable cost incurred up to the date of termination plus a reasonable profit on work performed (a loss rate would apply if the Seller would have sustained a loss on the entire PO had it been completed) not to exceed the total price to be paid for the remaining Work on the PO. In no event shall Buyer be obligated to pay for Seller's anticipatory profit or unabsorbed overhead on the Work terminated. Unless a later date is determined by Buyer, if within ninety (90) days of the Notice of Termination or the Seller's Settlement Proposal, whichever is later, the Seller and Buyer have not agreed on the entire amount to be paid, Buyer shall pay the Seller the amount determined by Buyer to be due the Seller. Failure of the parties to reach agreement shall be a dispute under the "Disputes"

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Clause. A dispute shall not excuse Seller's obligation to continue performance on any non-terminated portion of this PO.

### **30. Termination for Default**

**30.1.** Buyer may, subject to subsection (30.4) of this Clause and Clause (44), by written notice of default to the Seller, terminate this PO in whole or in part if the Seller: (1) Fails to deliver the Work within the time specified in this PO or any extension; (2) Fails to make progress, so as to endanger performance of any Work and/or this PO; (3) Fails to perform or breaches any of the provisions of this PO; or (4) Files a petition of any type as to its bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or goes into liquidation or receivership.

**30.2.** Buyer's may terminate this PO under subsections (30.1) (2) and (30.1) (3) of this Clause if the Seller does not cure such failure within ten (10) days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.

**30.3.** If Buyer terminates this PO in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Work similar to those terminated, and the Seller will be liable to Buyer for any excess costs of such Work. However, the Seller shall continue the Work not terminated.

**30.4.** If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and Subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted Work were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.

**30.5.** If this PO is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed Work and partially completed Work that the Seller has specifically produced or acquired for the terminated portion of this PO. Upon direction of Buyer, the Seller shall also protect and preserve property in its possession in which Buyer has an interest.

**30.6.** Buyer shall pay the PO price for completed Work delivered and accepted. Seller and Buyer shall agree on the payment for other Work delivered and accepted and for the protection and preservation of all Work not yet delivered to Buyer. Failure to agree will be a dispute under the "Disputes" Clause. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss due to outstanding liens or related claims.

**30.7.** If, after termination, it is determined that the Seller was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Buyer. Seller agrees that any assistance given them by Buyer on this PO or any acceptance of delinquent or nonconforming Work will be solely for the purpose of mitigating damages. It is not the intention of Buyer to condone any delinquency, waive any defect, or waive any rights Buyer has under this PO. The rights and remedies of Buyer in this Clause are in addition to those provided by law or under this PO.



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## 31. Buyer Property

**31.1.** Buyer may provide or make available to Seller certain real or personal property or material owned by either Buyer or its customer, including without limitation, tooling and raw material inventories (“Buyer Property”). Buyer Property also includes items Buyer or its customer may take title to in accordance with the terms of this PO. Buyer Property shall be used only for the performance of this PO. Buyer shall at all times retain title to Buyer Property, which title shall not be affected by the incorporation or attachment thereof to any other property; nor shall such Buyer Property or any other part thereof be or become a fixture or lose its identity as Buyer Property by reason or affixation to any realty. Seller shall manage, maintain, and preserve Buyer Property in accordance with good commercial practice. Seller shall dispose of Buyer Property (including scrap) only in accordance with Buyer’s direction. Seller’s property records for equipment shall include a complete, current, auditable record of all Buyer Property transactions and shall include: ownership, description (including identification and serial numbers), quantity, unit cost, accountable contract number/code, location, disposition, inventory date, and traceability to shipping, receiving, storage, and utilization documents. Such records shall be available for Buyer review. Seller shall provide to Buyer an equipment inventory listing on an annual basis by 15 September. Seller shall clearly mark (if not so marked) all Buyer Property (wherever practical each individual item thereof) to show its ownership as “Property of Ward Leonard CT LLC. or Ward Leonard.” or as otherwise directed for property of Buyer’s customer. Seller shall not substitute any property for Buyer Property.

**31.2.** Unless otherwise provided on the face of this PO, all Buyer Property shall be provided “AS IS” and without warranty. Buyer shall have access at all reasonable times to the premises on which Buyer Property is located for the purpose of inspecting or retrieving the Buyer Property when deemed necessary by Buyer. Buyer Property, while in Seller’s custody or control, shall be held at Seller’s risk and Seller shall be responsible for any loss, damage, or destruction thereof except for reasonable wear and tear, and except to the extent that such property is reasonably consumed in the performance of this PO. Seller shall immediately notify the Buyer if Buyer Property is lost, damaged, or destroyed.

**31.3.** In the event that Buyer provides to Seller property or material owned by the US Government, or if Buyer otherwise acquires property to which title is held by the US Government (collectively “Government Property”), Seller shall establish and maintain a property system in accordance with FAR Part 45. If Seller acquires Government Property from a source other than the Buyer, Seller promptly shall furnish to Buyer copies of purchase orders, work orders, receiving reports or other pertinent data reasonably needed to facilitate Buyer’s addition of these items to its own Government Property records. If the Seller has a US Government-approved Property Control System (“System”), Seller shall keep Buyer informed of the Government approval status of that System. In the event that the US Government determines Seller’s System to be “unsatisfactory”, or that three or more separate categories of the System are “unsatisfactory”, Seller shall notify Buyer immediately and provide a copy of the US Government’s findings and the Seller’s corrective action plan.

**31.4.** In addition to this Clause, the Government Property clause incorporated by reference into this PO shall apply to Government Property.

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## 32. Samples

Samples required on this order shall be invoiced to the Buyer at no higher cost than the production price indicated thereon. Samples shall be distinctly identified and bear reference to this purchase order. Samples must be approved in writing before production shipments are made.

## 33. Export Compliance

**33.1.** Seller understands its obligations to comply with the International Traffic in Arms Regulations (“ITAR”) and the Export Administration Regulations (“EAR”). If Seller is a US company that engages in the business of either manufacturing or exporting Defense Articles or furnishing Defense Services, the Seller certifies by acceptance of this PO that it shall maintain an active registration with the US Department of State Directorate of Defense Trade Controls throughout the performance of Work under this PO.

**33.2.** Seller shall control the disclosure of and access to Defense Articles, Commodities, Technology, and Software (collectively, “Export Controlled Items”) received under this PO in accordance with US export control laws and regulations, including but not limited to the ITAR and EAR. Seller agrees that no Export Controlled Items provided by the Buyer in connection with this PO shall be provided to any non-US Persons, including without limitation, a foreign subsidiary of Seller, without the express written authorization of the Buyer and the Seller’s obtaining of the appropriate export authorizations.

**33.3.** It shall be the responsibility of Buyer to notify and properly mark all Export Controlled Items provided under this PO to Seller in accordance with the ITAR and EAR. If any Export Controlled Item is received by the Seller from the Buyer and is not so marked, the Seller shall request from the Buyer, and the Buyer shall provide the Seller with the proper jurisdiction and classification prior to the Seller releasing the Export Controlled Item to a non-US Person in accordance with the terms herein.

**33.4.** Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List of an agency of the US Government or its export privileges are denied, suspended, or revoked. Should the Seller’s Work originate from a foreign location, such Work may also be subject to the export control laws/regulations of the country in which the Work originates. Seller agrees to comply with all applicable export control laws/regulations of that originating country.

**33.5.** The Buyer may be required to obtain information concerning nationality or export status of Seller Engaged Personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct. Seller shall defend, indemnify and hold harmless Buyer for all Damages that may be imposed on or incurred by the Buyer in connection with Seller’s violations of export and import laws and regulations.

**33.6.** In the event Seller is shipping any Work to Buyer from a location outside the US, Seller or Seller Engaged Personnel must be listed as the importer of record and fulfill all applicable customs entry requirements. Seller must notify the Procurement Representative in writing no less than five (5) days prior to such shipment.

**33.7.** As used in this Clause, the following terms are defined in the referenced regulations: “Defense Article” (ITAR: 22 CFR §120.6), “Commodity” (EAR 15 CFR Part 772), “Technology”

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(EAR Part 772), “Software” (ITAR § 121.8(f) and EAR Part 772), “Defense Services” (ITAR §120.9), and “US Person” (ITAR §120.15).

### **34. Foreign Personnel**

If the Work includes software maintenance support, Seller agrees that all “On Call” Technical Service numbers will be in the US and that only US Persons will monitor Buyer technical calls due restrictions on receiving export controlled technical data.

### **35. Prohibited Software**

**35.1.** Seller shall not use Prohibited Software in connection with this PO or deliver Prohibited Software or any Work containing Prohibited Software to Buyer unless Seller has the prior written consent of Buyer. “Prohibited Software” means any software that: (1) Seller does not have full rights to either sell to Buyer or license to Buyer as may be specifically provided for in this PO; (2) may cause harm to the Buyer – such as a virus, worm, malicious logic, trap door, software lock, trojan horse, etc.; (3) may interfere or disable the delivered software/Work from accomplishing its intended purpose and; (4) incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (a) open source, publicly available, or “free” software, library or documentation, or (b) software that is licensed under a Prohibited License, or (c) software provided under a license that (i) subjects the delivered software to any Prohibited License, or (ii) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (iii) obligates Buyer to license, sell, loan, distribute, disclose or otherwise make available or accessible to any third party the delivered software, or any portion thereof, in object code and/or source code formats, or any products or Work incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

**35.2.** Seller agrees to defend, indemnify, and hold harmless Buyer, its divisions, subsidiaries, affiliates, customers and suppliers from and against any Damages relating to the use of Prohibited Software in connection with this PO or delivery of Prohibited Software or Work containing Prohibited Software. As used herein, “Prohibited License” means the General Public License (“GPL”) or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as “GPL-Compatible, Free Software License.”

### **36. Insurance**

**36.1.** (a) During the period of performance of this Order, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Workers’ Compensation insurance coverage as required by the most current laws of the state or foreign jurisdiction in which the work is performed.

**36.2.** Seller shall also maintain, at its sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.

**36.3.** Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order and Seller shall provide evidence that the required insurance is in place in the form of a certificate of insurance (COI). COIs are only

required to be submitted for the following: (i) Whenever performance requires work on a Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance; (ii) Whenever performance requires driving onto a U.S. Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the automobile insurance coverage with a Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non- owned vehicles; (iii) Seller shall maintain appropriate coverage under the Longshore and Harbor Workers' Compensation Act if any Seller employee will be within the production environment on the premises of Buyer; (iv) Seller shall maintain Defense Base Act Workers' Compensation if work is being performed on a U.S. military base on foreign soil; (v) Whenever Seller provides design and/or engineering services, Seller shall, in addition to the other applicable insurance noted herein and at its sole cost and expense, procure and maintain professional liability (errors and omissions) insurance coverage in the minimum limits of \$1,000,000; (vi) When the Order invokes milestone payments Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance; (vii) When the Order includes ship-in-place terms, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance; (viii) When, as part of the Order, Buyer provides Seller material, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance; (ix) When the Order is for transportation, handling and/or disposal of asbestos, radiological or any other hazardous waste, material or substances, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance; (x) When the Order is for tugs and ship towing services, ship pilots or crews, Seller shall, at its sole cost and expense, procure and maintain Marine Liability Insurance, Workers' Compensation insurance, and appropriate coverage under the Longshore and Harbor Workers' Compensation Act; (xi) When the Order is for facility construction/renovation projects or excavation services, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance. Builders Risk Insurance is also required.

**36.4.** When Comprehensive General Liability is required it shall have at a minimum Combined Single Limit of \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.

**36.5.** For Orders stated in subsection (36.3) where a COI is required for Comprehensive General Liability and/or Automotive Liability, insurance coverage shall name Buyer as an additional insured

**36.6.** Coverage shall not exclude claims brought in the United States and all insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.

**36.7.** All coverage required hereunder shall be primary and not contributory to any other insurance available to Buyer, and Seller's insurers shall provide a waiver of subrogation in favor of Buyer for each required coverage hereunder. Seller waives statutory immunity from workers'

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compensation as respects the additional insured requirements for Comprehensive General Liability only.

### **37. Bankruptcy**

In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, Seller agrees to furnish to Buyer, by certified mail, written notification of the bankruptcy or insolvency proceeding. This notification shall be furnished within five days of the initiation of such proceedings, and shall include the date of filing, the identity of the court in which the petition was filed, and a listing of all of Buyer's Orders against which final payment has not been made. This obligation remains in effect until final payment under this Order. In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, ceases operations, or fails to respond to notices under this Order, Buyer may, at Buyer's sole discretion, pay to Seller's subcontractors at any tier those amounts Seller owes to such subcontractors under this Order to obtain such subcontractor's performance owed to Seller in connection with this Order and Buyer shall be entitled to set-off such amounts Buyer pays to such subcontractors from any amount owed to Seller under this Order.

### **38. Supplier Code of Conduct**

Buyer's Supplier Code of Conduct Policy (found in the terms and conditions section of Fairbanks Morse Defense's website, [fairbanksmorsedefense.com](http://fairbanksmorsedefense.com)) shall apply to all aspects of work performed by Buyer and its "sub-tier" Suppliers, including manufacturing, inspection, and services. All parties associated with product and services destined for ultimate delivery to the Purchaser will be made aware that compliance with the Supplier Code of Conduct is a grave and serious matters and shall report known or suspected occurrences to the proper authorities in adherence to this policy.

### **39. Prohibition of Hexavalent Chromium**

**39.1.** Prohibition. Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material.

**39.2.** Subcontracts. The Contractor shall include the substance of this Clause, including this subsection (39.2), in all subcontracts for supplies, maintenance and repair services, or construction materials.

### **40. Additional Flowdown Clauses**

In the event that any clause which is not already incorporated herein is required to be included in this PO by applicable law, a prime contract, or higher-tier subcontract, or in the event that Buyer's prime contract or higher-tier subcontract is modified subsequent to the effective date of this PO so as to modify or add any additional such clause or requirement, Seller agrees to enter into a modification of this PO to insert any such clause or requirements. If any such additional clause or requirement causes an increase or decrease in the cost of, or the time required, for the performance of any part of the Work under this PO, an equitable adjustment shall be made in the PO price or delivery schedule, or both, pursuant to Clause 4, Changes.



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## 41. Waivers and Approvals

**41.1.** Failure of Buyer to enforce at any time any provision of this PO, or any rights in respect thereto, or to exercise any election therein provided, shall in no way be considered to be a waiver or relinquishment of the right to thereafter enforce such provisions or rights or exercise any subsequent elections. Any and all of the rights and remedies conferred upon Buyer under this PO shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law. If any provision of this PO becomes void or unenforceable by law, the remaining shall be valid and enforceable.

**41.2.** No waiver, alteration, or modification of any of the provisions of this PO shall be binding on Buyer unless evidenced by a written change or modification to this PO signed by the Procurement Representative. Buyer's approval of Seller's design or Work shall not relieve Seller of the warranties or any other requirements of this PO. Waivers by Buyer of any drawings or specification requirements for one or more Work items shall not constitute a waiver of such requirements for the remaining Work, unless so stated in writing by Buyer.

**41.3.** No payment by Buyer made shall be deemed acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Buyer's right to later reject the same.

## 42. Taxes

Unless otherwise indicated, the prices set forth herein shall include all Federal, State and Local Taxes of any kind or nature applicable to the manufacture, use or sale to Buyer of the Work incorporated therein.

## 43. Assignments and Subcontracts

This PO shall not be assigned or transferred without written consent of Buyer, and any such purported assignment without consent shall be null and void. Seller agrees that it will not subcontract the furnishings of any of the completed or substantially completed Work required by this order without written approval of Buyer. No assignment of monies due or to become due hereunder shall be binding upon Buyer without Buyer's prior written consent.

## 44. Force Majeure

This PO is subject to modification or cancellation by Buyer in the event of fire, act of God, public enemy, earthquake, floods, pandemics, epidemics, cyberattacks, strikes, labor troubles or any other cause beyond Buyer's reasonable control. Upon termination of this PO for any reason, Clauses 11 through 16, 21, 28, 33 and 47 shall survive.

## 45. Audit

Seller agrees to make available to Buyer or Buyer's representative, without expense to Buyer, such facilities and records as may be necessary to audit, substantiate, and justify Seller's costs, or this PO shall have been terminated prior to completion and delivery.

## 46. Choice of Law

It is expressly agreed and understood that this agreement shall be governed by and interpreted under the laws of the state of Wisconsin.

## **47. Disputes**

Any dispute arising out of or related to this Agreement shall be subject to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by such arbitrators may be entered in any court having jurisdiction. The arbitration will be conducted in English language in Beloit, Wisconsin. The award of the arbitrators will be accompanied by a statement of the reasons upon which the award is based. The parties expressly agree to waive any and all rights to a jury trial.

## **48. Indemnification**

Seller shall indemnify, defend, and hold harmless Buyer against any and all claims, losses, damages and expenses (including without limitation reasonable attorney's fees and other costs of defending any action) which it may sustain or incur as a result of any (i) claim of infringement of any patent, trademark or other intellectual property right or proprietary right arising out of or related to the Work, (ii) personal injury or death, property damage or claims of pollution of the environment caused by defect in goods or negligence of Seller, any of its employees or subcontractors, (iii) nonfulfillment or breach by Seller of any provision of this PO, or (iv) gross negligence or misconduct of Seller, any of its employees or subcontractors.

## **49. Plant and Site Construction or Installation**

In the event Seller performs the Work on Buyer's premises or on Buyer's customer's premises, Seller shall indemnify and hold Buyer and Buyer's customers harmless from and against any and all damages for injuries to persons or property by reason of Seller's operations hereunder. Seller shall at all times remain an independent contractor, all employees and agents performing such work shall be employees or agents of the Seller.

## **50. Nuclear**

The Provisions of 10 CFR Part 21 entitled "Reporting of Defects and Non-compliance", when applicable, apply to this PO. The Regulation requires that Buyer shall give notice to the Nuclear Regulatory Commission when information is obtained that a component supplied to a nuclear facility within the United States contains a defect which could create a substantial safety hazard. If Seller obtains any information reasonably indicating such a defect, arising out of or related to the Work, Seller is required to notify Buyer immediately to the attention of the "Quality Assurance Manager."

## **51. Set-Off**

Buyer shall have the right to set-off against any amounts due hereunder owed by Seller to Buyer.

## **52. Certificate of Conformance**

Certificate(s) of Conformance are required for Seller compliance with all specifications of this PO. Seller invoices received against this PO will not be considered valid until all necessary certifications have been received by Buyer.

## **53. Survivorship**

In the event that any provision or part of this order is deemed invalid or unenforceable, the remaining provisions or parts shall remain in full force and effect.