



ARNOLD DEFENSE

PROTECTING THE MODERN WARFIGHTER

Attachment A: Terms and Conditions of Purchase

1. **ACCEPTANCE:** The execution and return of the acknowledgment copy of this Purchase Order by the Seller, or the Seller's commencement of delivery pursuant to this Purchase Order, constitutes acceptance of this Purchase Order by the Seller. Acceptance of this Purchase Order is limited to and conditioned upon acceptance of the terms set forth below, which terms cannot be altered or amended without Arnold Defense & Electronics, LLC's ("ADE") express written permission. Acceptance shall be binding upon the Seller and the Seller's successors and assignees.
2. **DELIVERY:** If delivery dates cannot be met, the Seller will promptly notify ADE of the earliest possible date for delivery. Notwithstanding such notice, and unless a substitute delivery date has been expressly agreed to by ADE, the Seller's failure to effect delivery on the date specified shall entitle ADE to cancel this order without liability to the Seller, to purchase substitute items elsewhere, and to hold the Seller accountable for any loss or additional costs incurred.
3. **PRICES:** All prices shall be stated in this Purchase Order. If no price is stated for any item, the price for that item shall be the lowest price currently quoted by the Seller for that item, but in no event higher than the price most recently quoted to ADE by the Seller for that item. Prices are in U.S. dollars and include taxes, shipping and insurance costs.
4. **QUANTITIES:** Unless ADE has otherwise agreed in writing, the Seller must deliver the exact quantities specified. ADE reserves the right to reject incomplete deliveries and to return excess quantities delivered at the Seller's risk and expense.
5. **QUALITY:** The Seller warrants all products and materials delivered to be merchantable, fit for the uses intended, of the grade and quality specified, and free from all defects and to conform to all samples, drawings, descriptions, and specifications furnished. Performance to these acceptance criteria is mandatory by the Seller, and a prerequisite of payment. In no event shall payment constitute a waiver by ADE of any claim. The Seller shall notify ADE of nonconforming products and coordinate a disposition from ADE in reference to the nonconformity. The Seller shall notify ADE of changes to products and processes that affect any item definition as stated under the terms of the Purchase Order. The Seller shall ensure that any sub-tier suppliers adhere to the terms and conditions as well as specifications and requirements stated in this Purchase Order.
6. **RECORDS:** Seller shall retain all financial records and documents pertaining to performance of this Purchase Order for a period of no less than three years after final payment. Such records and documents shall date back to the time this Purchase Order was issued and shall include, without limitation, catalogs, price lists, invoices,

underlying data and basis for cost estimates, and inventory records. The Seller shall grant to ADE, ADE customers, and governmental or regulatory authorities involved in the Purchase Order access to facilities to examine, reproduce and audit all applicable records and documents.

7. **INFORMATION:** All specifications, drawings, sketches, models, designs, technical information, and other proprietary information, written, oral, or otherwise furnished to the Seller by ADE or on ADE's behalf, shall remain ADE's property and shall be returned promptly to ADE at ADE's request. Such information shall be treated as confidential, and shall not be used or disclosed by the Seller except as required in the course of performing this or other Purchase Orders for ADE. If Seller is required to disclose such information in the course of performing this or other Purchase Orders for ADE, Seller must first obtain ADE's written consent and include appropriate legends marking the information as confidential. Seller will be held liable to ADE for unauthorized disclosures by any such third party.
8. **CHANGES:** ADE may, at any time, by written notice to Seller, make changes in specifications, designs, testing, packaging, destinations, and postponements in delivery schedules. If any such change causes a material increase in the cost of or the time required for performance, an equitable adjustment shall be made to the price or delivery schedule or both. Any claim by the Seller for adjustment under this clause shall be made within ten calendar days after receipt of written notice of the change, and any claim not made within the ten-day period shall be deemed waived. No change orders shall be binding upon ADE unless they are made in writing and signed by ADE's duly authorized representative.
9. **PATENTS:** The Seller shall indemnify and hold ADE harmless from any and all claims, liabilities, damages, or expenses, and defend all actions and proceedings at its expense, resulting from infringements by any products, information or materials furnished by the Seller of any United States or foreign patents, trademarks, copyrights, or other proprietary rights.
10. **ASSIGNMENT:** The Seller shall not delegate any duties nor assign any rights or claims under this Purchase Order without ADE's prior written consent, and any such attempted delegation or assignment shall be void.
11. **BANKRUPTCY:** ADE shall be entitled to cancel, without liability, any unfilled portion of this Purchase Order in the event of proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against the Seller, or in the event of the appointment, with or without the Seller's consent, of any trustee or receiver for any substantial portion of the Seller's assets or as assignee for the benefit of its creditors. In such event, all deposits or prepayments shall be deemed to have been held in trust for ADE's benefit and shall be returned to ADE promptly on request.
12. **TERMINATION FOR CAUSE:** If the Seller fails to provide goods or services as required under this Purchase Order within the time specified, or fails to perform any other provisions of this Purchase Order, ADE shall be entitled to terminate, without liability, any unfilled portion of this Purchase Order. Before termination, ADE shall issue a written notice to show cause why termination should not occur and will afford the Seller ten calendar days to demonstrate corrective actions for ADE to consider. ADE, in its sole judgment, will determine whether such actions are satisfactory to withdraw the termination notice and will promptly notify the Seller in writing as to a final decision. In the event of termination hereunder, all deposits or prepayments shall be returned to ADE promptly on request.
13. **TERMINATION FOR CONVENIENCE:** ADE shall be entitled to terminate, without liability, any unfilled portion of this Purchase Order in any of the following circumstances: termination by ADE's customer; reduction in scope by ADE's customer; or lack of funding by ADE's customer. In the event of termination hereunder, all deposits or prepayments shall be returned to ADE promptly on request.
14. **COMPLIANCE WITH LAWS AND REGULATIONS:** The Seller shall comply with all applicable federal, state, and local laws, ordinance, codes, rules, and regulations in the performance of this Purchase Order, including but not limited to, the Occupational Safety and Health Act, the Fair Labor Standards Act of 1938, the Export Administration Act, the Export Administration Regulations, the Export Control Act, and the International Traffic in Arms Regulations.

- 15. PAYMENT:** Unless otherwise indicated in the Purchase Order, payment will be under net 30 terms. Payment shall be deemed to have been made on the date ADE's check is mailed or payment is otherwise tendered. Seller shall promptly repay to ADE any amounts paid in excess of amounts due Seller.
- 16. DISPUTES:** Any dispute shall be determined in the following manner:
- a. For any dispute between the parties that involves the U.S. Government, the provisions of the "Disputes Clause" in ADE's contract(s) with the U.S. Government shall govern (FAR 52.233-1). In accordance with that clause, Subcontractor shall provide ADE with a timely and detailed written notice of any such claims or controversies, including any and all certifications and supporting documentation. Any final decision of the U.S. Government contracting officer relating to this Purchase Order or the Seller's performance shall be conclusive and binding upon the Seller unless appealed and reversed pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 7101-7109. Pursuit of any such appeal shall be in the sole discretion of ADE. The Seller will provide reasonable assistance to ADE and will reimburse ADE for any and all reasonable costs associated with an appeal arising out of or relating to the Purchase Order or taken on behalf of the Seller.
 - b. For any other dispute between ADE and the Seller arising under or relating to this Purchase Order which cannot be resolved by mutual agreement of the parties hereto, the dispute shall be resolved between the parties, first, by negotiating promptly with each other in good faith in face-to-face negotiations involving management personnel not previously and significantly involved in contract performance. If the parties are unable to resolve the dispute within 20 business days, or such period as the parties shall otherwise agree, through these face-to-face negotiations, then any such dispute shall be instituted in a court of competent jurisdiction located in St. Louis, Missouri, U.S.A., and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding and waives any objection based on improper venue or *forum non conveniens*.
 - c. Notwithstanding the pendency of any dispute under the foregoing paragraphs, the Seller shall comply with any direction or decision of ADE with respect to performance of this Purchase Order pending a final resolution of the dispute.
- 17. DEBARMENT AND SUSPENSION:** The Seller certifies, to the best of its knowledge and belief, that --
- a. The Seller and/or any of its Principals --
 - i. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency
 - ii. Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property
 - iii. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(ii) of this provision;
 - iv. Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
 - v. Have not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
 - b. The Seller shall provide immediate written notice to ADE if, at any time, the Seller learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - c. If it is later determined that the Seller rendered an erroneous certification or one that has become erroneous by reason of changed circumstances, in addition to other remedies available to ADE, ADE may, within its sole discretion, terminate this Purchase Order.
- 18. ADDITIONAL OR INCONSISTENT TERMS:** Terms and Conditions set forth in any document provided by the Seller to ADE which differ from, conflict with, or are not included in this Purchase Order shall not become a part of any agreement between ADE and the Seller unless such terms and conditions are specifically agreed to by ADE in writing.

- 19. SURVIVABILITY:** The provisions of the following articles shall survive the performance, completion, termination or cancellation of this Purchase Order: Provision 5, "Quality," Provision 6, "Records," Provision 7, "Information," Provision 9, "Patents," Provision 14, "Compliance with Laws and Regulations," Provision 16, "Disputes," and Provision 20, "Governing Law."
- 20. GOVERNING LAW:** This Purchase Order, and the application and interpretation hereof, shall be subject to and governed exclusively by its terms and by the laws of the State of Missouri, without regard to its conflict of laws provisions.
- 21. GOVERNMENT CONTRACT PROVISIONS:** Unless specified otherwise by ADE in writing in the Purchase Order, the supplies/services provided by Seller are intended for use under government contracts or subcontracts and shall be subject to and deemed to incorporate all government contracting clauses specified in Attachment B to the Purchase Order.