

**GENERAL DYNAMICS
ORDNANCE AND TACTICAL SYSTEMS
TERMS AND CONDITIONS
October 7, 2002
(PTC-TX-02)**

1. DEFINITION:

Unless otherwise specified, as used herein:

"Materials" means all articles, goods, equipment, and services to be delivered or provided under this Purchase Order.

2. ACCEPTANCE OF PURCHASE ORDER: Acceptance of this Purchase Order by Seller is expressly limited to the terms and conditions contained in this Purchase Order. Any term or condition stated by the Seller in any prior proposal, on Seller's acknowledgment form, or in otherwise acknowledging or accepting this Purchase Order is deemed by Buyer to be a material alteration of this Purchase Order and is hereby rejected unless Buyer specifically agrees otherwise in writing. Acceptance of the Materials covered by this Purchase Order will not constitute acceptance by Buyer of Seller's terms and conditions. Any of the following acts by Seller will constitute acceptance of this Purchase Order and all of its terms and conditions: signing and returning a copy of this Purchase Order, delivering any of the Materials ordered, commencing performance or informing the Buyer in any manner of commencement of performance, or returning Seller's own form of acknowledgment.

3. PRICE: Seller shall furnish the Materials in accordance with the prices and delivery schedule stated on the face of this Purchase Order. Buyer shall not be billed at prices other than stated on this Purchase Order unless authorized by a Purchase Order Change Notice issued and signed by Buyer. Seller warrants that the prices charged for the Materials covered by this Purchase Order are the lowest prices charged by the Seller to any customers purchasing similar Materials in the same or similar quantities and under like circumstances.

4. DELIVERY:

a. Time is of the essence in the performance of this Purchase Order. If Seller fails to make shipment or delivery when due, or if any shipment or delivery is made which is not in all respects in accordance with this Purchase Order (including time of shipment or delivery), Buyer reserves the right to reject such delivery, and, if Buyer so elects, Buyer may treat this Purchase Order as repudiated by Seller and cancel it or any outstanding deliveries hereunder, without prejudice to Buyer's rights to claim damages or to enforce any other remedy provided by law. All expenses of transportation and storage, if any, resulting therefrom shall be for Seller's account.

b. Any provisions herein for shipment or delivery of Materials or the rendering of services by installments shall not be construed as making the obligation of Seller severable and Seller acknowledges that a default with respect to any one installment shall impair the value of the whole contract. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's sole risk and expense.

c. Invoices shall not be issued nor payments made prior to delivery. Individual invoices must be issued for each shipment under this Purchase Order. Discount invoices will be payable based on applicable discount period computed from the date of scheduled or actual delivery of the items ordered or the date of receipt of the correct invoice, whichever is later. Unless freight and other charges are itemized, any discount will be taken on full amount of invoice. All payments are subject to adjustment for shortage or rejection.

5. INSPECTION:

a. All items covered by this Purchase Order may be subjected to inspection and test by Buyer and its customer at all times and places including the place and period of manufacture. The Buyer or his representative may inspect the plant or plants of the Seller or of any Seller's subcontractors engaged in the performance of this Purchase Order. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests. Any such inspection or test by Buyer or its customer shall be performed in such a manner as not to unduly delay the work. No inspection, test, approval (including design approval), or acceptance of items ordered shall relieve Seller from responsibility for defects or other failures to meet the requirements of this Purchase Order. All items are subject to final inspection and acceptance by Buyer at destination not withstanding any prior payment or inspection at source and such inspection will be made within a reasonable time after delivery.

b. Buyer shall have the right to reject, require correction or accept with an equitable adjustment in price any goods delivered or services performed hereunder which are defective or otherwise not in strict conformance with the requirements of this Purchase Order. Buyer shall notify Seller of such rejections or other actions and at Buyer's election and Seller's risk and expense such items shall be held by Buyer or returned to Seller for credit, refund, repair, rework, or placement as directed by written instructions from Buyer. No replacements or correction of defective items shall be made by Seller unless agreed to in writing by Buyer.

6. WARRANTY:

a. In addition to all other express or implied warranties, Seller represents and warrants that any Materials (including packaging) provided under this Purchase Order shall: (1) conform to the description in the Purchase Order; (2) be free from defects in Materials and/or workmanship; (3) conform to Buyer's instructions, specifications, drawings and data; (4) be merchantable; (5) be free from defects in design and be fit for the purpose intended; and (6) conform to all warranties, express or implied by law. Seller warrants all Materials furnished and/or installed hereunder to be new and not used or reconditioned (unless otherwise specified in this Purchase Order). Seller warrants that it will perform this Purchase Order with the degree of skill and judgment which is normally exercised by recognized firms with respect to Materials of a similar nature, and this will be provided in a good, competent and workmanlike manner. These warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance, and payment.

b. In addition to the warranties above, if Seller supplies, or incorporates into Materials supplied under this Purchase Order, Materials that are manufactured by a third-party, Buyer shall have the benefit of warranties extended to Seller by the third-party to the extent they exceed Seller's warranties in scope or duration.

c. Seller's warranties shall run to Buyer and its customers.

d. At Buyer's option, Seller shall repair, replace, or return for credit all defective or nonconforming items and the payment of all packing and transportation costs attributable to accomplishment of the above, all at Seller's expense. Upon failure to do so within a

reasonable time, after three (3) days prior written notice, Buyer may do so at Seller's sole expense.

7. NO WAIVER; SEVERABILITY: The failure of Buyer to insist upon the performance of any provision of this Purchase Order, or to exercise any right or privilege granted to the Buyer under this Purchase Order or by law, shall not be construed as waiving such provision or any other provision of this Purchase Order, and the same shall continue in full force and effect. Where this Purchase Order provides rights and remedies to Buyer, such rights and remedies shall be in addition to any other rights and remedies provided at law or elsewhere in this Purchase Order and shall not be construed as Buyer's exclusive rights or remedies.

8. COMPLIANCE WITH LAWS: In the performance of this Purchase Order, Seller shall comply with all applicable laws, ordinances, rules and regulations, Federal, State and Local, including without limitation the Arms Export Control Act, the International Traffic in Arms regulations, and the Foreign Corrupt Practices Act, and such compliance shall be a material requirement of this Purchase Order. Seller certifies to Buyer that the Materials ordered were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938 (FLSA), as amended, including the requirements as to records. The Seller will comply with the Equal Employment Opportunity clause prescribed by Executive Order No. 11246 as of September 24, 1965, as amended from time to time, the Affirmative Action for Handicapped Workers clause prescribed by the Rehabilitation Act of 1973, as amended, and the Affirmative Action for Disabled Veterans of the Vietnam Era clause, and Seller agrees to submit reports, certificates, and other documents required of subcontractors by such Executive Order, the aforementioned Acts, and the rules, regulations, and relevant orders issued under the authority of any of the foregoing. Seller agrees that all Materials supplied hereunder shall comply with all applicable requirements and specifications of the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations adopted thereunder. Seller covenants to hold Buyer harmless from, and to reimburse Buyer for, all costs, damages and expenses (including attorney's fees) incurred by Buyer as a result of any failure of Seller to comply with any applicable law, regulation or order.

9. EXCUSABLE DELAYS:

a. Neither party shall be liable for any delay or failure of performance due solely to strikes, or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall give written notice thereof to the other as soon as same could be anticipated, and if it could not be anticipated, promptly following the commencement thereof. Seller's delay or failure of performance must also be due to causes beyond the control of and without the fault or negligence, of all of Seller's subcontractors, for Seller to escape liability pursuant to this provision.

b. If Seller should be unable, due to such cause, to meet all its delivery commitments for the Materials ordered hereunder as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such Materials. Seller shall use its best efforts to anticipate the effects of such cause, to mitigate the effect of such cause and to make deliveries as expeditiously as possible.

c. If Buyer believes that the delay or anticipated delay in Seller's deliveries may impair Buyer's ability to meet Buyer's production or delivery schedules or may otherwise interfere with Buyer's operations, Buyer may, at its sole option, and without liability to Seller, cancel outstanding deliveries hereunder wholly or in part.

10. TITLE AND RISK OF LOSS: Title to, and risk of loss of, Materials purchased under this Purchase Order shall remain with Seller until such Materials are delivered at the F.O.B. point

specified in the Purchase Order, or at such other point specified in this Purchase Order where title is to pass. If no such point is given, then until the Materials are delivered to a public carrier consigned to Buyer or delivered to Buyer, whichever delivery shall occur first, title and risk of loss remain with Seller. In the case of deliveries by barge or ship, however, title and risk of loss will pass when the Materials are unloaded into Buyer's tanks, bins, or other storage facilities.

11. INDEMNITY:

a. Seller agrees to indemnify, defend, and hold harmless Buyer from all losses, claims, demands, suits (including those from Seller's employees), expenses, damages and costs including, but not limited to, all reasonable attorney's fees incurred or suffered by Buyer as the result of:

- (1) Seller's breach of warranty;
- (2) The injury to or death of any person, or damage to or destruction of property arising out of the failure of Materials hereunder to meet the warranties set forth herein;
- (3) Defect in the Materials purchased under this Purchase Order;
- (4) The failure of Seller or any of the Materials to comply with all applicable Federal, State, and Local laws and ordinances;
- (5) The negligent acts or omissions of Seller, irrespective of Buyer's negligence in any degree.

b. If this Purchase Order covers the performance of labor and/or supervision of installation on Buyer's premises or within facilities owned or controlled by Buyer, Buyer's customer, or any other entity, Seller shall be solely responsible for the safe conduct of such work and the protection of the premises or facilities, and of any persons on the premises or facilities. Seller agrees to defend, indemnify, hold harmless, and protect Buyer against all losses, claims, damages, suits, including those suffered or brought by Seller's employees, liabilities, cost, and attorney's fee for injury to or death to any person, or damage to or destruction of property arising out of the performance of this Purchase Order, irrespective of Buyer's negligence in any degree.

c. If Materials purchased are of an explosive, flammable, toxic, hazardous or otherwise dangerous nature, Seller shall fully indemnify and hold Buyer harmless against any claims asserted against Buyer on account of any personal injury, property damages, or violation of law or regulation caused by such Materials, or by the transportation, manufacture, sale, handling, or disposal thereof, prior to the completion of unloading at Buyer's plant, warehouse, or facility, regardless of the passage of title or responsibility for risk of loss.

d. Seller shall save Buyer, its agents and customers, and users of its products harmless from all loss, damage and liability, which may be incurred on account of infringement or alleged infringement of any United States or foreign patent, copyright, trademark, trade name or trade secret arising out of the manufacture, sale or use of such items by Seller, Buyer, Buyer's agent or customers, or users of its products and Seller shall, at its own expense, defend all claims, suits and actions against Buyer, its agents or customers, or users of its products in which such infringement is alleged, provided Seller is duly notified of such claims, suits and actions.

12. PACKING: Buyer is not responsible for any charge for packing, boxing, storage or cartage.

13. INSURANCE: Seller shall not insure the Materials for Buyer's account unless the terms of this Purchase Order so require. Seller also agrees to furnish Buyer on request a certificate from Seller's insurance carriers, showing that it carries adequate workman's compensation (if Seller is self-insurer, Seller shall arrange to have the Department of Labor, or other appropriate agency, in the state in which such labor is to be performed, furnish

a certificate of same to Buyer), public liability, automotive liability, and property damage insurance, and showing the amount of coverage, number of policy and date of expiration. Seller also agrees that, its employees, agents, and subcontractors, will comply with all of Buyer's safety and other rules covering outside contractors while on Buyer's premises.

14. TAXES: Prices shown on this Purchase Order do not include taxes. Seller shall add taxes as a separate line item on the Seller's invoice, if applicable. Refer to the face of this Purchase Order for tax status.

15. DESIGN, TOOLS, DIES, ETC.:

a. Unless otherwise agreed herein, Seller at its sole cost shall supply all material, equipment, designs, drawings, tools and facilities required to perform this Purchase Order.

b. Any Materials, equipment, designs, drawings, tools or other property furnished by Buyer or specifically paid for by Buyer shall be Buyer's property, shall be used only in filling orders from Buyer and may on Buyer's demand be removed by Buyer without charge. Seller shall use such property at its own risk and shall be responsible for all loss of or damage to the same or to any person while property is in Seller's custody. Seller shall, at its sole cost, store and maintain all such property in good condition and repair. Buyer makes no warranties of any nature with respect to any such property, which is furnished "AS IS".

c. Graphics arts and packaging materials: All film negatives, positives, engravings, electrodes and dies made by Seller for the production of Material of this Purchase Order will become the property of Buyer and be delivered to Buyer at the completion of work under this Purchase Order.

d. Notwithstanding anything herein to the contrary, the provisions of this paragraph 15 do not apply to property owned by the United States Government. Disposition and use of United States Government property shall be governed by applicable United States Government regulations.

16. ASSIGNMENT: No assignment of this Purchase Order by Seller or of monies due or to become due hereunder shall be made without the prior written consent of Buyer. No goods to be delivered under this Purchase Order shall be procured by Seller from a third party in completed or substantially completed form without Buyer's prior written consent.

17. INSOLVENCY: Buyer may terminate this Purchase Order for cause if Seller files a voluntary petition under any Federal or State bankruptcy act, is adjudicated a bankrupt, or if Seller becomes insolvent or commits an act of bankruptcy or engages in any act which reasonably causes Buyer to deem itself insecure.

18. TERMINATION:

a. Convenience. Buyer may, at any time, terminate this Purchase Order in whole or in part for its convenience by written or telegraphic notice, or oral notice confirmed in writing.

(1) Upon termination for convenience of Buyer, settlement shall be made in accordance with the following principles:

(a) If the materials covered by the Purchase Order are shelf items, then Buyer shall be liable to Seller only for the difference between Purchase Order price and the fair market price or the amount received on disposal of the items, whichever price or amount is higher. In no event shall Buyer be liable for an amount in excess of 15% of the Purchase Order price.

(b) If the materials covered by the Purchase Order are special order items or services, then Buyer shall be liable only for costs of direct materials, direct labor and variable overhead incurred prior to the date of termination that relate directly to the materials covered in the Purchase Order, less any salvage value. In no event shall Buyer be liable in an amount more than the Purchase Order price for the terminated Materials.

(2) In the event that this Purchase Order is issued to support a United States Government contract and an alternate Termination for Convenience clause for application between Seller and Buyer is attached or referenced in an accompanying document thereto, such Termination for Convenience clause shall prevail.

b. Default. If Seller fails to make delivery of the Materials, in accordance with the delivery dates specified in this Purchase Order, fails to perform any of the requirements or to perform any of the other provisions of this Purchase Order, or fails to make progress so as to endanger performance of this Purchase Order in accordance with its terms and does not cure such latter failure within ten (10) days after notice from the Buyer, Buyer may (in addition to any other right or remedy provided by this Purchase Order or by law) terminate all or any part of this Purchase Order by written notice to Seller without liability and purchase substitute goods elsewhere, and Seller shall be liable to Buyer for any excess cost occasioned Buyer thereby. Seller shall continue performance of this Purchase Order to the extent not terminated pursuant to this Clause 18(b). Except with respect to defaults of subcontractors at any tier, Seller shall not be liable to Buyer for any excess costs if the failure to perform this Purchase Order arises out of causes beyond the control and without the fault or negligence of the Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both the Seller and subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable for any excess costs for failure to perform to Buyer, unless the Materials to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the requirements of this Purchase Order.

If this Purchase Order is terminated as provided in this Clause 18(b), the Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and deliver to the Buyer: (i) any completed Materials, and (ii) such partially completed Materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as the Seller has specifically produced or specifically acquired for performance of this Purchase Order.

If, after notice of the termination of this Purchase Order "with cause," it is determined that the failure to perform is due to causes totally beyond the control and totally without the fault or negligence of the Seller, such notice of default shall be deemed to have been issued pursuant to Clause 18(a) hereof, and the rights and obligations of the parties hereto shall be governed by Clause 18(a).

19. BUYER'S LIMITATION OF LIABILITY: In no event shall Buyer be liable, for any reason or arising from any cause whatsoever, for special, incidental, or consequential damages.

20. AMENDMENTS AND GOVERNING LAW: No agreement or understanding to modify this Purchase Order shall be binding upon the Buyer unless in writing and signed by Buyer's authorized agent. All specifications, drawings, and data submitted to Seller with this Purchase Order are hereby incorporated herein and made a part hereof. The validity and construction of this Purchase Order shall be governed by the laws of the State of Texas, except for its conflicts of law provisions.

21. PUBLICITY: Seller shall not make or authorize any news release, advertisement, or other disclosure (except as required by law) that denies or confirms the existence of this Purchase Order without prior written consent of Buyer.

22. CHANGES: Buyer may, at any time, by written instruction from Buyer's Procurement Department to Seller, make changes in the work to be performed or the items to be furnished hereunder in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; (c) time and/or place of inspection, delivery, or acceptance of the Materials; and (d) the quantity of items ordered. If such changes cause an increase or decrease in the amount due under the Purchase Order or the time required to perform, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly; provided however, that any equitable adjustment in price to which Seller may be entitled as a result of an increase in the quantity of items ordered shall not exceed the unit price established for such items herein. Any claim hereunder must be asserted in writing within fifteen (15) days from the date the change is ordered. Nothing contained herein shall excuse Seller from proceeding without delay with the Purchase Order as changed, including failure of the parties to agree upon any equitable adjustment. Changes shall not be binding upon Buyer, except when confirmed in writing by a member of Buyer's Procurement Department.

23. DISPUTES: Any dispute arising under this Purchase Order which is not settled by agreement of the parties hereto shall be resolved by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under or in connection with this Purchase Order, Seller shall proceed diligently with the performance of this Purchase Order in accordance with the decision and instructions of Buyer.

24. UNITED STATES GOVERNMENT SUBCONTRACTS: If this Purchase Order is issued under a United States Government prime contract or subcontract issued to Buyer, then the following Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement clauses are incorporated herein by reference and shall be applicable to this Purchase Order:

FAR 52.244-6, Subcontracts for Commercial Items (May 2002).

DFARS 252.244-7000, Subcontracts for Commercial Items and Commercial Components (DOD contracts) (March 2000).