

## TERMS AND CONDITIONS OF PURCHASE ORDER TO NEXOLVE

### 1. SHIPMENT OF GOODS; PERFORMANCE OF SERVICES; PRICE

**Shipment of Goods.** The risk of loss from any casualty to the goods regardless of the cause of the casualty shall be on the Seller until the goods have been accepted by Buyer at Buyer's dock unless otherwise stated on the face of this Purchase Order (the "Order"). All shipments shall be FOB Buyer's dock unless otherwise stated on the face of this Order. If Buyer is required to pay any freight costs, Seller shall ship in accordance with specified shipping instructions on the face of this Order and Seller shall determine that the shipping agent is properly insured to replace shipment due to any casualty. If the shipment value exceeds coverage limits, Seller shall notify Buyer to secure written insurance instructions prior to shipment.

**Performance of Services.** The Statement of Work applicable to this Order is attached. Seller shall only perform the work and incur costs under this Order as directed and in accordance with the Statement of Work, authorized hereunder by Buyer's Contractual Representative. Seller shall not perform any work or be reimbursed for any work not authorized by Buyer's Contractual Representative in writing. Any work performed outside the scope of the Statement of Work is not authorized and shall not be reimbursed.

**Price.** Seller shall provide the Goods and/or perform the Services for a total firm, fixed-price as stated on the PO. In no event shall Buyer be obligated to pay Seller any amount in excess of the Order Price.

### 2. DELIVERY; NOTICE OF LABOR DISPUTES

Time is and shall remain of the essence of this Order, and no acts of Buyer, including without limitation modifications of the Order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's orders or in advance of required schedules, or to defer payments, on advance deliveries until scheduled delivery dates. Seller shall notify Buyer immediately of any actual or potential labor dispute which is delaying or threatens to delay the timely performance of this Order.

### 3. TERMINATION: BREACH OF CONTRACT: DAMAGES: COSTS

Buyer may terminate all or any part of this Order by written notice to Seller if: (i) Seller fails to deliver the Goods or perform the Services within the time specified in this Order or any written extension granted by Buyer; (ii) Seller fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, does not cure the failure within ten (10) days after receipt of notice from Buyer specifying the failure; or (iii) in the event Seller declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue work not terminated. If Buyer terminates all or any part of this Order, Buyer may acquire, under terms and conditions and in a manner Buyer considers appropriate, Goods or Services similar to those terminated, and the Seller shall be liable to Buyer for any excess costs for those replacement Goods or Services. If the Order is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer any completed Goods or partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the Seller has specifically produced or acquired for this Order. Seller shall protect and preserve property in its possession in which Buyer has an interest. Buyer and Seller shall agree on the amount of payment for in process work or manufacturing materials, title to which has been transferred and delivered to Buyer. Failure to agree shall be deemed a dispute, which shall be resolved under the Dispute Resolution article. Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Order Price. The rights and remedies provided Buyer in this clause are in addition to any other right or remedies provided by law or in equity. Seller agrees to pay any and all costs including reasonable attorney fees incurred by Buyer to enforce any obligation hereunder or in the successful defense of any claim or action brought by Seller under this Article 3.

### 4. BUYER'S PROPERTY

All specifications, drawings, tools, jigs, dies, fixtures, materials or other items which are supplied by Buyer or which are to be furnished by Seller as an item or items on this Order shall be confidential. They shall be and remain the property of Buyer (or of the United States Government or other party where the Government or such other party has or acquires title thereto) and Buyer shall have the right to enter Seller's premises and remove them at any time without being guilty of trespass or liable to Seller for damages of any sort. All such items shall be used only in the performance of work under this Order unless Buyer

consents otherwise in writing except as to any such items which are owned by the Government or which the Government has the right to use, the Seller may use such items in the performance of any direct contract between the Seller and the Government on a non-interference basis after the Government has expressly authorized such use in writing with written notice of such authorization to the Buyer. Seller shall prominently mark all such items as the property of and, if directed, the area in which they are located as containing property of Buyer (or, as the case may be, of the United States Government or said other party). Seller also shall mark such items with the corresponding drawing number and/or Government number. Seller shall similarly list all such items on invoices, and shall be responsible for them as an insurer until delivered to Buyer. Seller shall not dispose of any such items without Buyer's written consent. The provisions of this Article 4 herein above set forth shall survive delivery and payment, and remain in consent. Seller shall without limitation as to time indemnify and save Buyer harmless from all claims which may be asserted against said property, including without limitation mechanic's liens or claims arising under Workmen's Compensation or Occupational Disease laws, and from all claims for injury to persons or property arising out of or related to such items unless the same are caused solely and directly by Buyer's negligence.

### 5. SUBCONTRACTING

None of the work contemplated by Buyer as to be performed by Seller under this Order shall be subcontracted without the prior written consent of Buyer.

### 6. SPECIFICATIONS: WARRANTY: INSPECTION

**Goods.** Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted to any other person or concern without Buyer's written consent. The foregoing shall not be construed as applicable to any use by Seller of drawings or specifications which are owned by the Government or as to which the Government has the right to authorize use, in the performance of any direct contract between the Government and the subcontractor on a non-interference basis provided the Government will give notification of such use to Buyer. In the event of conflict between specifications, drawings, samples, designated type, part number or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer, and samples over designated type, part number or catalog description. In cases of ambiguity in the specifications, drawings, or the requirements of the Order, Seller must, before proceeding, consult Buyer, whose written interpretations shall be final. Seller warrants the materials delivered hereunder shall be free from defects in workmanship, materials, and design, and to be in accordance with Buyer's specifications, drawings, and/or samples in all respects. These warranties shall survive acceptance and payment. Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties. All material and workmanship shall be subject to inspection by Buyer before and after delivery. The Buyer may require Seller to replace rejected material or Buyer may accept any materials that conform to Seller's warranties and upon discovery of materials not so conforming may reject or keep and rework any such materials not so conforming. Buyer may make 100% inspection or reject an entire shipment if Buyer's sampling plan indicates rejection at the 1% acceptable quality level (or such greater or lesser percentage as Buyer and Seller may agree upon in writing). Cost of rework, inspection, transportation, re-packaging, and/or re-inspection by Buyer shall be at Seller's expense.

**Services.** In addition to any other warranties specified herein or provided by Seller, Seller warrants that the services provided under this Purchase Order shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature. All services will conform to applicable specifications, drawings, and standards of quality and performance. In the event of any breach of the foregoing warranties, Seller shall, at its own expense, at Buyer's election either: (1) re-perform the non-conforming services to conform to this standard; or (2) refund to Buyer that portion of the amounts received by Seller attributable to the non-conforming services. All warranties of Seller shall inure to the benefit of both Buyer and Buyer's customers. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Buyer.

**General.** Seller further warrants the accuracy of its representations and certifications provided in connection with this Order and shall promptly notify Buyer of any material changes to them during the term, including changes to its Accounting System and/or related internal control structure or business system(s) that could affect its ability to properly report hours and bill costs in a

compliant manner. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Buyer.

#### **7. CHANGES**

Buyer shall have the right by written order to suspend work, or to make changes from time to time in the services to be rendered or the materials to be furnished by Seller hereunder. If such suspension or changes cause an increase or decrease in the cost of performance of this Order or in the time required for its performance, and equitable adjustment shall be negotiated promptly and the Order shall be modified in writing within thirty (30) days from the date of receipt by seller of notification of the change or suspension, and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse the Seller from proceeding with this Order as changed.

#### **8. CONFIDENTIAL RELATIONSHIP**

Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models, and other information supplied by Buyer. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish, or release for publication any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer items and/or services required by this Order, or quote the opinion of any employees of Buyer. Seller shall not disclose any information relating to this Order to any person not authorized by Buyer to receive it. Seller shall use the information supplied by Buyer only to accomplish work covered by this Order and for no other purpose. Upon completion, all information is to be return to Buyer upon Buyer's written request. In the event of a conflict between the terms of this Article and the terms and conditions of any separately executed an applicable Mutual Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Mutual Non-Disclosure Agreement shall control.

#### **9. PATENTS**

The Seller warrants that the sale, use, or incorporation into manufactured products of all machines, devices, and material furnished hereunder which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, or trademark. Seller shall save Buyer and its customers harmless from any and all expenses, liability, and loss of any kind (and the costs and expenses, including attorneys' fees) growing out of claims, suits, or actions alleging such infringement, which claims, suits, or actions Seller agrees to compose or defend.

#### **10. RIGHTS IN DATA AND INVENTIONS**

(a) All specifications, information, data, drawings, software, and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless: (1) otherwise required by the U.S. Government Regulations referred to below, or (2) the Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.

(b) Unless otherwise expressly agreed in writing to the contrary and subject to this Article 10(c) below, all specifications, information, data, drawings, software, and other items which are (1) supplied to Seller by Buyer or (2) obtained or developed by Seller in the performance of this Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing items or services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer shall be considered by Seller in the performance of this Order or which is derived from or based on information supplied by Buyer shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto. Subject to Article 10(c) below, any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire."

(c) Applicable Government Procurement Regulations incorporated into this Order shall, when applicable, take precedence over any conflicting provision of this Article 10 to the extent that such Regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with subcontractors rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

#### **11. TAXES**

The Order Price stated on the face hereof includes all taxes. All local, state, and Federal excise, sales and use taxes, where applicable, shall be stated separately on Seller's invoice.

#### **12. ASSIGNMENT**

This Order shall be binding upon and shall inure to the benefit of each of the Parties and/or their respective successors and/or assigns and/or delegates; provided, however, that neither Party may assign or transfer its interest hereunder or delegate its duties without the prior written consent of the other Party, which consent cannot be unreasonably withheld, conditioned, or delayed. The obligations of either Party hereunder shall not terminate upon any assignment attempted without such prior written consent. Either Party may, however, without consent, assign or delegate this Order to a wholly or principally owned subsidiary or other affiliate of such Party, or other division of the Party.

#### **13. COMPLIANCE WITH LAW / GRATUITIES**

Seller warrants that the materials to be furnished and the services to be rendered under this Order, and the classes of property described in Article 4, shall be manufactured, sold, and used in compliance with all relevant Federal, state and local laws and regulations. All invoices must carry the following certificate: "Seller certifies that with respect to the production of the articles and/or the performance of the services covered by the invoice, it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof." Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity with a view toward securing any business from Buyer for influencing such person with respect to the terms, conditions, or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller (including, but not limited to, this Order).

#### **14. INDEMNITY AGAINST CLAIMS**

Each Party shall indemnify the other Party against all loss on account of claims of injury to person (including death) or damage to property which may result in any way from any act or omission of the indemnifying Party, or of its agents, employees, or subcontractors. Seller also shall maintain such Public Liability, Property Damage, Employers' Liability and Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) as will protect Seller (or its subcontractors) and Buyer from such risks and from any claims under any applicable Workmen's Compensations or Occupational Disease statutes.

#### **15. INSPECTION**

All materials furnished and services performed pursuant hereto shall be subject to inspection and test by Buyer and its customer at all times and places, during the period of performance, and in any event before acceptance. If inspection and test are made on the premises of Seller or Seller's subcontractor, Seller shall furnish without additional charge all reasonable facilities and assistance for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of the Article are supplementary to and not in lieu or in derogations of, the provisions in Article 6 above.

#### **16. STOP WORK ORDER**

(a) Buyer may at any time, by written order to Seller require Seller to stop all, or any part of the work called for by this Order for a period of 90 days after the Stop Work Order is delivered to Seller, and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt thereof Seller shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within said period, or any extension thereof, Buyer shall either (i) cancel the Stop Work Order, or (ii) terminate the work covered by such Order as provided in Article 3 above.

(b) If a Stop Work Order is cancelled or the period of the Order or any extension thereof express, Seller shall resume work. An equitable adjustment shall be made in the delivery schedule or Order Price or both, if (i) the Stop Work Order results in an increase in the time required for, or in Seller's costs properly allocable to, the performance of any part of this Order, and (ii) Seller asserts a claim for such adjustment within 25 days after the end of the period of the work stoppage.

(c) If a Stop Work Order is not cancelled and the work covered by such Order is terminated for convenience; the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement, however, if such termination is for Seller's default, the reasonable cost resulting from the Stop Work Order only shall be allowed, by equitable adjustment or otherwise.

#### **17. GOVERNING LAW**

This Order shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict of law provisions.

## 18. DISPUTES

(a) Buyer and Seller agree to enter into negotiations to resolve any dispute arising under or relating to this Order. Both Parties agree to negotiate in good faith to attempt to reach a mutually agreeable settlement within a reasonable amount of time.

(b) If negotiations are unsuccessful, the Parties expressly agree that the sole and exclusive venue for any legal proceedings concerning the dispute shall be in the state or federal courts of the State of Alabama, and the Parties expressly submit to the jurisdiction of such courts.

(c) Seller shall proceed diligently with performance of the Order pending final resolution of any dispute, request for relief, claim, appeal, or action arising under or relating to the Order.

## 19. CODE OF CONDUCT

Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner, and expects its suppliers and third-party vendors to do the same. Accordingly, Seller agrees to comply with the Third Party Code of Conduct attached hereto.

## 20. EXPORT CONTROL

Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the Export Administration Act of 1979, as amended, 50 U.S.C. app 2401-2420, the Export Administration Regulations, 15 C.F.R. 730 et seq., the Arms Export Control Act, 22 U.S.C. 2751-2799, as amended, and the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., including but not limited to any applicable registration requirement and to obtain any required export license or agreement. Seller agrees that it will not export, sell, divert or otherwise transfer to any foreign person, whether within or outside of the United States any defense article, technical data or any other item or information subject to U.S. export control laws and regulations received from Buyer without the authority of an export license, agreement or applicable exemption or exception.

Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its directors, officers, employees, agents, suppliers or subcontractors at any tier, in the performance of any of its obligations under this clause."

## 21. PAYMENT TERMS

(a) Payment. Buyer shall pay for the delivered and accepted Goods and/or performed and accepted Services within forty-five (45) days after receipt of a proper invoice from Seller. Buyer may pay Seller by electronic funds transfer (EFT) or by check unless otherwise stated in the Order. Seller shall provide Buyer with its EFT information. Payment is made on the day Buyer gives instructions to execute payment, or the date Buyer's check is deposited into the U. S. mail, or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

(b) Records. For a period no less than three (3) years after final payment, Seller shall maintain complete and accurate books, records, documents, and other evidence of the time worked, costs, expenses, and allowances pertaining to this Order to the extent and in such detail as will properly reflect all net costs (indirect and direct) of labor, materials, equipment, supplies, and services and other costs and expenses of whatever nature.

(c) Audit. At any time before final payment under this Order, Buyer may request audit of the invoices or vouchers and supporting documentation. Seller shall accommodate any such Buyer request, but may request that Buyer and Seller execute a non-disclosure agreement to provide for the confidentiality of the information that is exchanged. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by Buyer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by Seller as the "completion voucher" and supporting documentation, and upon compliance by Seller with all terms of this Order, Buyer shall pay any balance due Seller.

## 22. GENERAL RELATIONSHIP

(a) Buyer shall be solely responsible for all liaison and coordination with Buyer's customer as it affects the applicable prime contract and this Order. Any other communications between Seller and Buyer's customer requires the prior written approval of Buyer, which shall not be unreasonably withheld.

(b) Seller is an independent contractor in all respects with regard to this Order. Nothing contained in this Order shall be deemed or construed to create a partnership, joint venture, agency, or other relationship other than that of contractor and customer. Seller is not an employee of Buyer for any purpose

whatsoever. Seller agrees that in all matters relating to this Order it shall act as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to Seller's employees. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

## 23. WAIVER; SEVERABILITY; HEADINGS

(a) The failure of either Party to insist upon strict performance of any of the terms and conditions in the Subcontract, or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of the same or to rely on any such terms or conditions at any time thereafter.

(b) The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of other parts hereof.

(c) The headings in this Order are inserted for convenience and identification only, and are in no way intended to define or limit the scope, extent, or intent of this Order or any of its provisions hereof.

## 24. SURVIVAL

Termination or expiration of this Order for any reason shall not release either Party from the liabilities or obligations set forth in the Order which remain to be performed or by their nature would be intended to be applicable following any such termination or expiration, including without limitation provisions relating to payment, warranty, indemnification, intellectual property, non-disclosure, audit, compliance with laws, and disputes.

## 25. ENTIRE AGREEMENT

This Order constitutes the entire agreement and understanding between the Parties and shall supersede and replace any and all prior or contemporaneous representations, agreements, or understandings of any kind, whether written or oral, relating to the subject matter hereof.