

SBIRTC-01 TERMS AND CONDITIONS COMMERCIAL PURCHASE ORDER (3/16) PAGE 1

1. **General Acceptance:** The Purchase Order (which term shall be deemed to include plans, specifications, and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the supplies/services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this Purchase Order, (a) received acknowledgment (b) furnishing of any part of the supplies/services under this Purchase Order; (c) acceptance of any payment for the supplies/services or (d) commencement of performance under this Purchase Order. Any additional or different terms proposed by the Seller are objected to and are hereby rejected unless the same shall be accepted in writing by the Buyer. Failure of any party to enforce its rights under this Purchase Order shall not constitute a waiver of such rights or of any other rights under this Purchase Order.
2. **Assignment:** Neither this Purchase Order, nor any payments hereunder are assignable nor transferable without Buyer's written approval which approval will not be unreasonably withheld.
3. **Buyer Furnished Property:** If in connection with the performance of this Purchase Order any property is furnished to Seller by Buyer, the Seller shall assume the risk of, and be responsible for, any loss destruction of or damage to the property while in the Seller's possession or control, except to the extent that this Purchase Order, with the prior approval of the Buyer, provides for relief of the Seller from such liability. In the absence of such approval the Seller shall return all such property in as good a condition as when received, except for reasonable wear and tear caused by the utilization of such property in accordance with the provisions of this Purchase Order. Buyer shall have the right to enter Seller's premises during normal working hours to inspect its property. Seller shall maintain all Buyer furnished property at Seller's expense
4. **Changes:** Buyer may at any time, by written order, without notice to any surety, make any/and all changes or additions within the general scope of this Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, whether changed or not changed by any such written order, Seller shall notify Buyer in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this Purchase Order.
5. **Choice of Law:** Irrespective of the place of performance, this Purchase Order will be construed, and interpreted according to the laws California.
6. **Compliance with Laws & Regulations:** Seller agrees to indemnify Buyer against any loss cost, liability, or damage by reason of Seller's violation of any applicable law, executive order or regulation.
7. **Default to Seller:** In the event that Seller (a) becomes bankrupt or otherwise insolvent, (b) commences or becomes the object of any proceeding involving Seller's insolvency, bankruptcy, reorganization, dissolution, liquidation, or any similar proceeding for the relief of financially distressed debtors, and such proceeding is not dismissed within sixty (60) days or (c) fails in any material way to perform any of Seller's obligations under this Purchase Order, or so fails to make progress as to endanger such performance and does not cure such failure within ten (10) days of receipt of Buyer's notice of such failure, then Buyer may, at its sole election, by notice to Seller, terminate this Purchase Order, in whole or in part, for default.
8. **Defective Work:** Buyer may reject, or require prompt correction (in place or elsewhere) of any supplies or goods which are defective in material or workmanship or otherwise fail to meet the requirements of this Purchase Order.
9. **Delivery:** Time is of the essence. Seller shall comply with delivery schedule but shall not make material or production commitments in advance of such time as the Seller reasonably believes necessary to meet the schedule without prior written approval by the Buyer. Representatives of Buyer shall during Seller's regular working day have access to Seller's plant for the purpose of assuring delivery in accordance with the schedule.
10. **Disputes:** Any dispute arising under this Purchase Order which is not settled by agreement of the parties will participate in mediation and/or arbitration in the state or federal courts of California. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Purchase Order, Seller shall proceed diligently with the performance of this Purchase Order unless otherwise agreed between the parties.
11. **Federal and Local Taxes:** Except as may be otherwise provided in this Purchase Order, the price includes all applicable federal, state and local, taxes and duties.
12. **Indemnity:** If Seller in connection with the performance of this Purchase Order shall send any of its agents or employees onto premises owned or controlled by Buyer, Seller shall provide safety protection for persons and property in accordance with all applicable laws and regulations and indemnify and save harmless Buyer from and against any and all liabilities and losses whatsoever, whether resulting from or contributed to by negligence of Buyer, including without limitation, costs and expenses in connection therewith, on account, or by reason of, injury to, or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the course of, or in connection with, the performance of the work. Buyer at its option may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification provided above but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify.
13. **Inspection:** Inspection and Acceptance will be at destination, unless otherwise provided in this Purchase Order. Buyer and its customer may inspect and test material, work in progress, and supplies at all times and places, during manufacture and otherwise. If Inspection and test are made on Seller's premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing such inspections. Inspections shall be performed in such manner as not to delay the work unduly.
14. **Responsibility for Supplies or Goods:** Except as specifically otherwise provided in this Purchase Order, Seller shall be responsible for supplies meeting the requirements of this Purchase Order until final inspection and acceptance thereof by Buyer, and shall bear all risks as to rejected supplies or supplies requiring correction after notice of rejection notwithstanding any prior acceptance.
15. **Invoicing and Payment:** A separate invoice shall be issued for each shipment. Unless otherwise specified in this Purchase Order, no invoice shall be issued prior to shipment of goods and no payment will be made prior to receipt of goods and a correct invoice. Payment due dates will be computed from the date of receipt of goods or the date of receipt of a correct invoice, whichever is later.
16. **Liens:** Seller warrants that on the date Buyer pays for all the supplies or goods delivered under this agreement, all liens, rights of lien and claims against Buyer or the supplies or goods arising by virtue of work performed by Seller of any subcontractor with respect to the provision of the supplies or goods will have been released or satisfied. Upon request, Seller will provide to Buyer certification, releases or other satisfactory evidence in support thereof, stating that no such liens, right of lien or claims exist.
17. **Intellectual Property Indemnity:** Seller shall indemnify Buyer, and/or Buyer's customer, and their respective officers, agents, and employees against liability, including costs, for infringement of any patent, copyright, trademark or other intellectual property arising out of the manufacture or delivery of supplies or goods or performance of services under this Purchase Order or out of the use or disposal by, or for the account of, Buyer and/or Buyer's customer, of such supplies or goods.
18. **Property Rights:** Seller agrees to make prompt and complete disclosure to Buyer of all inventions, and disclosures made or conceived as a result of work performed under this Purchase Order. Seller agrees to keep necessary records supporting such inventions and discoveries and will furnish to Buyer upon request all such records. Any invention, discovery, proprietary information, software, system, data, or report resulting from the work performed under this Purchase Order shall be the sole property of the Buyer. All patents, copyrights, trade secrets, trademarks, or other intellectual property resulting from work under this Purchase Order shall be the sole property of the Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of the Seller and without any duty to account to the Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this Purchase Order, and to provide reasonable support for the Buyer's prosecution of such patent or patent application. The parties agree that any original work of authorship created under this Purchase Order is a work made for hire for purposes of copyright ownership. To whatever extent the Seller has any interest in any original work of authorship created under this Purchase Order, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works. This Purchase Order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of the Purchase Order.



SBIRTC-01 TERMS AND CONDITIONS COMMERCIAL PURCHASE ORDER (3/16) PAGE 2

19. **Subcontracting:** Seller shall not subcontract all or substantially all work on any article to be supplied under this Purchase Order without prior written approval of Buyer. This provision shall not apply to purchases of standard commercial articles or raw materials on which Seller will perform further work.
20. **Equal Employment Opportunity:** To the extent applicable, Supplier will comply with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and the implementing regulations for each found at 41 CFR Part 60. The Parties incorporate into this Agreement, as applicable, the Equal Opportunity clauses found at 41 CFR § 60-1.4(a), 60-250.5(a), 60-741.5(a), and 60-300.5(a), and Supplier will likewise incorporate the clauses into all applicable subcontracts as required by 41 CFR § 60-1.4(d).
21. **Substitutions:** Seller shall not substitute materials or accessories without written consent of Buyer.
22. **Termination:** This Purchase Order and any and all obligations assumed hereby may be terminated in whole or part by the Buyer giving written notice to Seller. Upon receipt of a notice of termination and except as otherwise mutually agreed, Seller shall: (a) Stop work under this Purchase Order on the effective date of the notice, and (b) submit a termination claim within sixty (60) days incorporating all claims of the Seller. In the event payment has been made in excess of the amount determined as being the entitlement of Seller, Seller shall repay such excess costs immediately. Buyer may deduct as a set off any excess amounts from other open Purchase Orders with Seller, if any. In the event it is determined that the Seller is entitled to payment by Buyer, payment will be made within 30 days of Buyer's receipt of Seller's invoice for said amount.
23. **Counterfeit Parts Control and Supply Chain Traceability (Suppliers of electrical/electronic/electromechanical [EEE] components, subassemblies and assemblies):** The vendor shall ensure that only new and authentic materials/components are used in products delivered to SBIR. The vendor shall procure parts directly from the Original Component Manufacturers (OCMs), OCM-franchised distributors, or OCM-authorized aftermarket manufacturers only. Use of components not procured from these sources is not allowed unless approved in writing by SBIR. Requests to procure materials/components from non-OCMs, or OCM-authorized sources must include actions the vendor will perform and the evidence that will be provided to ensure to SBIR the materials/components thus procured are new and authentic. In addition, the vendor shall maintain a method of materials/components traceability that ensures tracking of the supply chain back to the manufacturer of all EEE parts, and parts in assemblies and subassemblies delivered to SBIR. The traceability method must clearly identify the name and location of all of the supply chain intermediaries from the manufacturer through to the direct source of parts, and must include identification by serial number(s), or batch/lot code.
24. **Warranty:** Seller warrants for a period of one (1) year that the supplies covered by this Purchase Order will conform to the design, specifications, drawings, samples or other descriptions referred to in this Purchase Order and will be free from defects in material and workmanship, and to the extent that the seller knows or has reason to know of the purpose for which the supplies/services are intended, will be fit and sufficient for such purpose. The warranties contained in this paragraph shall run to Buyer and its Customers. Seller warrants that supplies/services provided under this Purchase Order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which in any manner would interfere with Buyer's property rights as described in paragraph entitled "Property Rights".
25. **Trade Control:** Buyer will comply with all relevant United States and foreign laws, rules and regulations governing its activities, including but not limited to, the Foreign Corrupt Practices Act, Arms Export Control Act, Export Administration Act, Anti-Boycott Law of the United States, and their implementing regulations.
26. **Specialty Metals:** Materials purchased under this purchase order may be incorporated into a government contract. DFAR 252.225-7014 Alt 1 is incorporated herein by reference as if it was set forth in full herein.