

TC-01 Terms and Conditions for Fixed-Price, Non-Production Orders (Short Form)

1. DEFINITIONS

The headings used herein are for convenience only and shall not define, limit, or describe the scope or the intent of the terms of the Order.

“Buyer” means GENERAL ATOMICS AERONAUTICAL SYSTEMS, INC., as identified on the first page of the Order.

“Work” means all labor, products, goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and services as described in the Order.

“Order” means the instrument of contracting, including the Buyer’s standard purchase order form, and all referenced documents, attachments and amendments.

“Seller” means the person, firm, or corporation executing the Order with the Buyer and who will furnish the Work provided for herein.

2. ACCEPTANCE OF ORDER

The Order is Buyer’s offer to Seller. Seller’s acceptance of the Order creates a binding contract between Buyer and Seller, which shall be governed by the provisions of the Order. Acceptance of Buyer’s offer is strictly limited to the terms and conditions in the Order. Any one of the following methods will constitute acceptance of the Order by Seller: (i) acknowledgement in writing; (ii) commencement of performance, or (iii) acceptance of payment.

ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER’S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY BUYER AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY BUYER’S AUTHORIZED PROCUREMENT REPRESENTATIVE.

3. WRITINGS REQUIRED; APPLICABLE LANGUAGE

No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall bind either Party unless provided in writing. No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of the Order. No extra charge of any kind, or change in the price or schedule of the Order will be allowed unless specifically agreed to in writing and signed by Buyer. The parties agree that the Order, as well as all contractual documents, correspondence, invoices, notice, and other documents, whether technical or non-technical in nature, will be used and delivered in American English. Any conversations and communications shall be in English. Measurements shall be employed in the unit of measure customarily used by Buyer in the United States of America, unless otherwise specified by Buyer in writing.

4. ACCEPTANCE AND REJECTION OF WORK

Buyer shall accept the Work or give Seller notice of rejection due to any defect or nonconformance within twenty (20) working days after the date of delivery to Buyer. Buyer shall have the right to inspect and test the Work prior to acceptance. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under the Order or impair any rights or remedies of Buyer, including revocation of acceptance. The Buyer’s right of rejection contained in this “Acceptance and Rejection of Work” clause is in addition to and shall not in any way impact or replace Buyer’s rights as set forth in the “Warranty” clause contained herein. If Seller delivers defective, damaged or non-conforming Work, Buyer may at its option and at Seller’s expense: (i) require Seller to promptly correct or replace the Work; (ii) return all or part of the Work for credit or refund; or (iii) obtain replacement Work from another source, at Seller’s expense.

5. PACKING AND SHIPMENT

Except as otherwise specified in the Order, standard commercial packaging shall be utilized to assure receipt of acceptable Work. No packing or crating charges are authorized without Buyer’s prior written approval. Seller shall clearly mark all packages and correspondence with the Order number and the part number. Damage resulting from improper packaging will be charged to Seller.

6. DELIVERY, NOTICE OF DELAY

The date of delivery shall mean the date the Work is to be delivered to Buyer’s facility, or if the Order includes services, the date the services are to be completed. All deliveries shall be strictly in accordance with the applicable quantities set forth in the Order. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reason(s) for the delay and the estimated length of the delay; and (ii) if requested by Buyer, accelerate the Work or ship via air or other expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible. If Seller is unable to meet the Order delivery or performance schedules for any reason, Buyer shall have the option, pursuant to the Changes clause herein, to (i) terminate the Order, or (ii) fill such Order, or any portion thereof, from sources other than Seller, and reduce Seller’s Order quantities accordingly at no increase in unit price, without any penalty to Buyer.

7. TITLE AND RISK OF LOSS

Title shall pass to Buyer upon acceptance regardless of when or where Buyer takes physical possession, unless the Order specifically provides for earlier passage of title. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item, and shall not relieve Seller of any other obligations under the Order.

8. WARRANTY

Notwithstanding inspection and acceptance by Buyer of Work furnished under the Order, Seller warrants that all Work furnished under the Order conform to the requirements of the Order. All Work furnished hereunder is warranted to be new, merchantable, and to be of good material and workmanship and be free of defect for a period of 1 year after acceptance by Buyer. All statutory warranties shall apply. Warranties shall run to Buyer, its successors, assigns, and customers. If any Work fails to comply in any respect to this warranty, Seller, at Buyer’s option, shall promptly repair or replace the Work. Transportation of replacement Work and return of nonconforming Work shall be at Seller’s expense. If repair or replacement of Work is not timely, Buyer may elect to return, repair, replace, or re-procure the nonconforming Work at Seller’s expense.

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9. PAYMENT

Payment date and cash discount period shall be calculated from either the date of Buyer's receipt of an accurate invoice or Buyer's acceptance of the Work and supporting documentation at destination, whichever occurs last. Payment, pursuant to the Order, shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly refund Buyer for any amounts paid in excess of amounts due Seller.

10. INTELLECTUAL PROPERTY

Seller warrants that any and all Work purchased hereunder, and the manufacture, sale, or use thereof, does not violate or infringe upon any patent, copyright, trademark, trade secret, or other intellectual property right of any third party ("Third Party IP"). Seller will indemnify, defend and hold Buyer, its customers and end-users, harmless against all losses, damages, costs, and expenses based on any claims, demands, suits, proceedings and actions ("Claims") in connection with any alleged infringement of any Third Party IP. Buyer will provide Seller with written notice of any such Claims and provide reasonable assistance and information, at Seller's costs and expense.

11. CHANGES

Buyer may, at any time, make changes within the general scope of the Order. If any such change causes an increase or decrease in Seller's cost, Seller shall submit a detailed cost breakdown within fifteen (15) days showing the reason(s) for such increase/decrease. Seller shall proceed with the changes pending final settlement of any equitable adjustment to the Order.

12. ADVERTISING, USE OF NAME

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer the Work provided for in the Order.

13. INDEMNIFICATION

Seller agrees to indemnify, defend, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs and expenses, attorney's fees and cost of litigation, judgments, fines, liens, and awards for: (i) any breach of representations, certifications, and warranty of Seller hereunder, and (iii) damages of any kind and nature whatsoever incurred by Buyer or any third party for property damage, products liability, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof), as a result of, arising out of or in any way related to Seller's performance of the Order, including operations on Buyer's or Buyer's customers premises, except when arising solely out of Buyer's fault or negligence.

14. INSURANCE

Seller shall maintain comprehensive general liability insurance (including products liability), automobile liability insurance, workers' compensation and employer's liability insurance as will adequately protect Buyer against such damages, liabilities claims, losses and expenses. Buyer shall be named as additional insured when requested by Buyer.

15. TAXES

Unless Buyer furnishes a valid exemption certificate or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order.

16. APPLICABLE LAWS

The Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's choice of law provisions shall not apply. Seller agrees that in performing its duties under the Order, Seller will conduct itself in adherence to and comply with all applicable Federal, State and local laws, statutes, rulings, ordinances, orders, and regulations in effect on the date of the Order.

17. DISPUTES

Any dispute arising out of the Order shall be submitted in writing for resolution to Buyer and Seller's ascending levels of management up to the executive level. If the parties are unable to settle the dispute within 60 calendar days, or as agreed by Buyer and Seller in writing, either party may submit the dispute to a court of competent jurisdiction.

18. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Seller represents, after conducting a reasonable inquiry, that it will not provide to Buyer, or use, telecommunications equipment or services in the performance of the Order that is produced or provided by Huawei Technologies Company, or any subsidiary or affiliate of those entities, and video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of those entities, owned or controlled by the People's Republic of China. Seller agrees to contact Buyer's authorized purchasing representative immediately in the event Seller is not able to fully comply with this representation. Buyer reserves the right to enhance or minimize this representation pursuant to changes to Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

19. ENTIRE AGREEMENT

These terms and conditions, and those on the face of the Order to which this form is attached, constitute the complete and exclusive agreement between Buyer and Seller, and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral, between the parties related to the subject matter of the Order.