

CUSTOM CONTROL SENSORS - PURCHASE ORDER TERMS AND CONDITIONS

1. ACCEPTANCE. Buyer shall not be bound by this order until Seller executes and returns to Buyer an acknowledgment of acceptance of this order. Seller shall be bound by this order and its terms and conditions when it executes and returns the acknowledgment copy of this purchase order or, at Buyer's option, when Seller commences performance hereunder. By acceptance of this order Seller agrees to all terms and conditions stated on the face of this order, on the reverse hereof or otherwise incorporated by reference herein. No contract shall exist unless adopted as provided herein. Any acknowledgment of this order which contains terms and conditions which are in addition to or are inconsistent with the terms and conditions shall be considered a counter-offer and will not be binding unless agreed to in writing by the Buyer. Commencement of performance by Seller in the absence of Buyer's acceptance of the counter-offer will constitute Seller's acceptance of these purchase order terms and conditions.

2. INVOICES. Invoices and credits shall be submitted in duplicate. Discounts shall be calculated from the date the articles are received by Buyer, the date delivery is specified herein, or from the date an acceptable invoice is received by Buyer, whichever later occurs.

3. PACKING AND SHIPPING.

(a) Seller shall mark containers or packages with necessary lifting, loading and shipping information, the purchase order number, dates of shipment and names and address of consignor and consignee Bill of Lading number and weight of shipment shall be shown for shipment on Government Bills of Lading. All shipments must be packaged in a manner that will provide and preclude the possibility of damage to the supplies or other items shipped. Shipments tendered to common carriers for delivery must conform to the packaging requirements applicable to such carrier.

(b) No changes will be allowed for transportation, packaging, packing or returnable containers unless stated.

(c) Seller shall not, without Buyer's prior written consent, procure materials or manufacture in advance of Seller's normal flow time or deliver in advance of schedule. Buyer may return, shipping charges collect, all supplies received in advance of the schedule set forth herein.

4. CHANGES. Buyer may at any time, by written order and without notice, suspend performance, make changes in the quantities, drawings, design, specifications, delivery schedule, method of shipment or packaging of the supplies, or any combination of the foregoing. If any such change results in an increase or decrease in the cost of, or time required for, performance of this order, an equitable adjustment shall be made in the purchase order price, delivery schedule, or both. Any claim for such adjustment shall be deemed waived by Seller unless asserted by Seller in writing within ten days of receipt of the change order. Nothing herein shall excuse Seller from proceeding without delay in the performance of this order as changed.

5. WARRANTIES. Unless otherwise agreed in writing, Seller expressly warrants that all materials or articles will be free from defects of material and workmanship and will comply with all specifications, drawings or other description furnished by Buyer and if not ordered to specifications will be fit and sufficient for the use and purpose intended. This warranty shall run to the Buyer, its successors, assigns, customers and users of the articles or materials and shall be construed as conditions as well as warranties and the representations and conditions herein contained shall not be deemed to be exclusive.

6. USE. The articles contracted for herein are understood to be for the use of the Buyer, its affiliated companies or its or their suppliers. All articles contracted for may be subjected to further processes of manufacture, combined with any articles, or put to any use whatsoever, by the Buyer, its affiliated companies or its or their suppliers, as it or they may elect, and no event shall any claim for royalty or other additional compensation be made by the Seller by reason of such manufacture, combination or use.

7. INSPECTION. All articles and materials will be subject to final inspection and approval by Buyer after delivery notwithstanding prior payments, it being expressly agreed that payments shall not constitute final acceptance. Defective material or items or such not in accordance with Buyer's specifications will be held for Seller's instruction and at Seller's risk and if Seller directs will be returned to Seller at Seller's expense. No goods returned as defective shall be replaced without authorization from Buyer. The Buyer, or the Buyer accompanied with its customer, reserves the right to conduct surveillance at Seller's facility to verify quality of work during manufacture.

8. EXCUSABLE DELAYS. Seller shall not be liable for damages or delay in delivery arising out of causes beyond its control and without its fault or negligence, including but not limited to acts of God, or of the public enemy acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. If the delay is caused by the delay of a subcontractor at any tier and without the fault or negligence of either of them, Seller shall not be liable to Buyer in damages unless the supplies to be furnished by the subcontractor (at any tier) were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after the beginning of any such cause.

9. TERMINATION.

(a) Time is of the essence in this contract.

(b) If Seller fails to comply with any of the provisions hereof, or if Seller becomes the subject of a proceeding under State or Federal law for relief of creditors, or if Seller makes an assignment for the benefits of creditors, Buyer shall have the right notwithstanding the provisions of the clauses hereof entitled "Excusable Delay" to hold Seller in default and cancel this order in whole or in part.

(c) Without affecting its right to cancel this order under subparagraph (b) hereof, Buyer may terminate this order in whole or from time to time in part, and such termination shall be effected in accordance with the provisions of "Subcontract Termination Clause" contained in ASPR Section 8706 in effect on the date hereof, which is incorporated herein by reference, except that claims shall be submitted not later than ninety (90) days from the effective date of termination. The word "Contract" as used in said clause shall be deemed to refer to this order. If this order is not placed under a government contract, referenced to the "government" shall be deemed deleted.

10. INDEMNITY. Seller shall, at its expense, hold harmless and defend Buyer, its successors, assigns, customers and users and all persons claiming under Buyer against any claim or action for the infringement of any patent, copyright or trademark, and shall indemnify the aforesaid party against all damages, costs, and expenses arising therefrom by reason of the manufacture, sale or the use of supplies covered by this contract. Buyer agrees to give the Seller prompt notice in writing of any such claim or for infringement and full opportunity to conduct the defense thereof.

11. PATENT RIGHTS. Patent rights to all improvements embodied in designs, tools, patterns, drawings, information and equipment supplied by the Buyer under this contract and exclusive rights for the use and reproduction thereof are reserved by the Buyer.

12. SPECIAL EQUIPMENT. If the price to be paid is stated on the face of this order to include jigs, dies, fixtures, tools, patterns, drawings, specifications or other special equipment and manufacturing aids used in the manufacture of the supplies, such item or items shall become the property of Buyer, its successors, assigns, and customers immediately upon acquisition by Seller. Such items and any similar items furnished Seller by Buyer are hereinafter referred to as "Special Equipment". Special Equipment shall be kept in good condition and from time to time replaced by Seller without expense to Buyer, except that the cost of changes due to Buyer's change of design or specifications shall be paid for by Buyer. If such changes are made prior to the exhaustion of the useful life thereof, Seller shall not, except with written consent of Buyer disclose any information to other persons with regard to Special Equipment except as may be required to carry out its obligations hereunder. Special Equipment shall not, except with written consent of Buyer be used in the production, manufacture or design of any supplies other than those called for by this order. Seller shall not destroy nor make any disposition of Special Equipment except as Buyer shall, in writing, direct. Seller shall maintain adequate property control records for Special Equipment and as and when the Special Equipment is no longer required hereunder. Seller shall

promptly furnish Buyer with a list thereof. Upon completion or termination of this contract, Buyer shall be entitled to storage of Special Equipment by the Seller, at no additional cost for a period not to exceed one (1) year and have the right to direct disposition of such equipment at no additional cost except for freight and shipping charges and Seller shall deliver such equipment in accordance with such directions.

13. LAW GOVERNING. This contract shall be governed by, subject and construed according to the laws of the State of California. The Seller will comply with all applicable Federal, State and local laws.

14. ASSIGNMENT. The Seller may not assign the contract or any rights thereunder, including monies due or to become due, without the written approval of Buyer.

15. RISK OF LOSS. All risk of loss on supplies or items furnished under this contract shall follow the custody thereof, except that Seller shall bear the risk of loss on rejected supplies after receipt of notice from Buyer of such rejection.

16. SUBCONTRACTS. No subcontractor shall be made by the Seller with any other party for furnishing any of the supplies hereunder in completed or substantially completed form without the prior written approval of Buyer.

17. LABOR DISPUTES. Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer and comply with the provisions of ASPR Section 7-104.4 whether or not this contract is under a Government prime contract.

18. WAIVER. No waiver, alteration or modification of any of the provisions of this contract shall be binding on Buyer unless evidenced by a change order or written amendment duly signed by Buyer.

19. DISCLOSURE OF INFORMATION. Seller shall not, without prior written consent of Buyer, disclose information relative to this order, except as may be required to insure performance.

20. PRICES. Seller represents that the prices specified in this order are based on current pricing data and do not exceed the lowest current selling price for the same or substantially similar articles whether to the Government or to any other purchaser, taking into account the quantity and schedule under consideration, and that such prices include all applicable Federal, State and local taxes, in effect on the date of this order, except any sales or use tax payable at source.

21. TAXES. No charges will be made for taxes, unless stated. All sales, use, excise or similar taxes to be paid by Buyer must be itemized separately hereon and on invoices.

22. ADVERTISING. Seller shall not without the prior written consent of Buyer in any manner advertise or publish the fact that Buyer has placed this purchase order.

23. GRATUITIES. Seller warrants that neither it nor any of its employees, agents or representatives with a view toward securing this order or securing favorable treatment with respect thereto.

24. NON-EXCLUSIVE RIGHTS AND REMEDIES. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

25. EFFECT OF INVALIDITY. The invalidity in whole or in part of any condition of this purchase order shall not affect the validity of other conditions.

GOVERNMENT CONTRACTS

When work, materials or products covered by this purchase order are for use on a United States Government contract or subcontract, the following additional provisions are applicable the acceptance of which Seller is agreed by acceptance of this purchase order.

(a) **FEDERAL LAWS AND REGULATIONS.** This purchase order shall be subject to all applicable provisions and will contain all clauses and agreements required by the terms of any government contract under which this purchase order is issued, by Federal Laws and Regulations and by the applicable sections of the Armed Services Procurement Regulations.

(b) **EXAMINATION OF RECORDS.** The Comptroller General of the United States and the Department or Agency having cognizance over the prime contract referred to on the face of this order and any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this order, have access to and the right to examine any directly pertinent books, documents, papers and records of Seller involving transactions related to this order.

(c) **EMPLOYMENT OF ALIENS.** If forbidden by law or regulations, no alien in the employ of Seller shall be permitted to have access to the plans or specifications of the work hereunder unless the written consent of the United States Government has first been obtained.

(d) **BUY AMERICAN ACT.** Seller warrants that the goods delivered under this order will be mined or produced in the United States or manufactured therein from components mined, produced or manufactured therein to the extent required under the Buy American Act (41 U.S.C. Sec. 10 a-d) and the applicable determinations thereunder referred to in NASA PR. Part 6, Subpart 1.

(e) **PATENT RIGHTS.** If payment under this order is to be made for experimental, development, or research work as such, Seller agrees to disclose to the United States Government each invention, improvement or discovery conceived or first actually reduced to practice in the performance hereof, and to grant such rights to the United States Government and to perform such other acts as are required by the patent provisions of Buyer's prime contract under which this order is issued. Buyer will furnish copies of patent clauses on request of Seller.

(f) **NON-DISCRIMINATION.** The Seller in performing the work required by this order, shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age and represents he will comply with Sec. 202, Paragraph 1.7 of Executive Order 11246, which is incorporated herein by reference, the Seller shall include in all subcontracts a provision similar to the foregoing.

(g) **RENEGOTIATION.** This contract and any subcontract hereunder, is subject to the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211 et seq.) and shall be deemed to contain all the provisions required by Section 104 thereof, and is subject to any subsequent act of Congress providing for the renegotiation of Contracts.

(h) **COVENANT AGAINST CONTINGENT FEES.** Seller warrants that he has not employed any person to solicit or secure this order upon any agreement for a commission, percentage, brokerage or contingent fees. Breach of this warranty shall give the Buyer the right to annul this order, or, in its discretion, to deduct from the agreed price or consideration the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable to Seller upon orders or sales secured or made through bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business.

(i) **OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this order or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this order if made with a corporation for its general benefit.

(j) **INSPECTION REQUIREMENTS.** All material and workmanship furnished in the performance of this contract shall be subject to inspection and test by Government and the Buyer at all times and places, and when practicable, during manufacture. Both the Government and the Buyer shall have the right to reject any articles found to be defective in material or workmanship, or to require their replacement or correction.