

MEGGITT DEFENSE SYSTEMS – CARTWRIGHT ELECTRONICS (MDS-CE)
MATERIAL CONTROL POLICY
PURCHASE ORDER TERMS AND CONDITIONS

ACCEPTANCE ACKNOWLEDGEMENT AND TERMS

This purchase order shall become the exclusive agreement between the parties for the articles, subject to the terms and conditions hereof, when accepted by acknowledgement or commencement of performance communicated to the Buyer by the Seller. Additional or difference terms or variances thereof proposed by Seller shall not be applicable unless accepted in writing and signed by Buyer. The headings used in this order are for convenience only and shall not alter or change the meaning of the context herein.

DEFINITIONS

As used herein, "order" means this purchase order, "articles" means all supplies, materials, products, data, tangible and intangible property, services, or other items to be furnished by Seller under this order. "FAR" means Federal Acquisition Regulations in effect on the date of this order unless a revision date is specified; "contracting officer" means any officer or civilian employee of the Government that is duly authorized and designated as a contracting officer for the contract to which this order pertains, and includes the authorized representative of the contracting officer when acting within the scope of his authority.

PACKING AND SHIPPING

Unless otherwise specified, all packing and packaging shall comply with best commercial practice and applicable carrier's regulations, and shall consist of suitable containers for optimum protection of the articles, and to facilitate in plan handling and storage. The price of this order includes all charges for such packing and packaging and transportation to the R.O.B. point. Seller shall mark the number of this order on each container and include a packing slip with each shipment.

INSPECTION AND QUALITY CONTROL

- (a) Each article shall be subject to inspection and test by Buyer to the extent practicable at all time and places, including during manufacture and, in any event prior to final acceptance irrespective of the date of payment. Buyer may inspect the plant or plants of Seller or any of its subcontractors engaged in the performance of this order. Such right of inspection or test shall extend to the Government if a Government prime contact number appears on the face of this order. If any inspection or test is made by Buyer or the Government on the premises of Seller, Seller without additional charge, shall provide all reasonable data, facilities and assistance for such inspectors in the performance of their duties. All inspections and tests shall be performed in such manner as not to unduly delay the work. No inspection or test made prior to final inspection and acceptance shall relieve Seller from responsibility for defects or other failure to meet the requirement of this order.
- (b) In case any article is defective in material or workmanship, or otherwise not in strict conformance with requirements of this order, Buyer shall have the right either to reject it, require its correction, or accept it with an equitable adjustment in price. Any article which has been rejected or required to be corrected may be returned to and replaced or corrected by and at the expense of Seller, including transportation charges, promptly after notice. If, after being requested by Buyer, Seller fails promptly to replace or correct any defective article within the contractual delivery schedule, Buyer may (i) by contract or

otherwise, replace or correct such article and charge to Seller the cost occasioned Buyer thereby; (ii) without further notice terminate this order for default, in accordance with Section 15 titled "TERMINATIONS STOP WORK", below; or (iii) require an appropriate reduction in price.

- (c) Final inspection and acceptance of articles shall be made by Buyer after delivery or as otherwise indicated in this order. Acceptance shall not waive Buyer's rights regarding latent defects, fraud, and such gross mistakes as amount to fraud, and the Seller's warranty obligations.
- (d) Seller shall provide and maintain an inspection system in accordance with sound technical practice and as otherwise provided in this order. Records of all inspections by Seller shall be kept complete and available to Buyer during the performance of this order.

5. WARRANTY

Seller by accepting this order indicates a full understanding of the requirements to fulfill this order such as drawings, specifications, test and acceptance criteria, packing and marking requirements, and other information, and will comply therewith. Seller confirms any express warranty (oral or written) previously made, and warrants that all items shall be free from defect in material or workmanship; shall conform to drawings, specifications, their acceptance criteria, or any samples previously delivered, regardless of any previous dealings; shall be merchantable quality and fit for the purpose intended; and unless buyer's specifically detailed design, be free from design defect. Seller warrants that any items or component's (except those excepted herefrom in writing) supplied under this order shall be new, that is not used or recondition. Or will not in any manner be impaired as to affect their usefulness or safety. Such warranties, together with all other service or parts warranties and guarantees of Seller, not including any disclaimers, shall run in favor of Buyer, its employees, its customers and subsequent users thereof.

6. DELIVERY

Unless otherwise specified on the face hereof, delivery shall be Buyer's factory (F.O.B. place of destination.) Time is of the essence in this agreement. Seller shall follow the delivery schedule stated on this order and, unless earlier deliveries are stated as acceptable, shall not make deliveries earlier than two weeks before the schedule delivery dates. If items are received more than two weeks in advance of schedule delivery date, Buyer may return them at Seller's expense, or payment for such items may be withheld to conform to the delivery schedule.

7. CHANGES

- (a) Buyer may at any time, by a written change order, issued by an authorized purchasing representative, and without notice to sureties to assignees make changes within the general scope of this order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; (iv) delivery schedule. Should any such change increase or decrease the cost of, or the time required for performance of this order, an equitable adjustment under this clause shall be deemed waived unless asserted in writing within thirty (30) days from the date of the change order, provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon any such claim must set forth an itemization of the amount of an increase or

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decrease in the cost of performance resulting from the change. All articles covered hereunder shall be manufactured in accordance with this order and such changes thereto as are subsequently authorized by a written change order issued by said excuse Seller from proceeding with the contract as changed.

(b) Buyer's engineering and technical personnel may, from time to time, render assistance or give technical advice to, or effect an exchange of information with Seller's personnel in a liaison effort concerning the articles to be furnished hereunder. However, such exchange of information or advice shall not vest Seller with the authority to change the articles hereunder or the provisions of the order, nor shall such change in articles or the provisions of the order be binding upon Buyer unless incorporated in a written change order in accordance with paragraph (a) hereof.

(c) Where the cost of property made obsolete or excess as a result of a change order is included in the Seller's claim for adjustment pursuant to this clause. Buyer shall have the right to prescribe the manner of disposition of such property.

8. INDEMNIFICATION

In the event Seller, its employees agents and subcontractors at any tier enter premises occupied by or under the control of Buyer in the performance of this order, Seller shall indemnify and hold harmless, Buyer, its officers and employees from any loss, cost, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Seller, its employees, agents and said subcontractors.

9. BUYER'S PROPERTY

All tools, dies, jigs, pattern, equipment, material, industrial property or other items purchased, furnished, charged to or paid for by Buyer, and any replacement thereof, shall remain the property of Buyer. Such property shall be plainly marked to show it is the property of Buyer, and shall be safely stored apart from other property. Seller shall not substitute other property for Buyer's property and shall not use such property except in filling Buyer's orders. Seller shall hold such property at its own risk and, upon Buyer's written request, shall redeliver the property to Buyer in the same condition as originally received by Seller, reasonable wear and tear expected.

10. DRAWINGS, SPECIFICATIONS, INTELLECTUAL PROPERTY AND TECHNICAL DATA

The ideas, information, designs, drawings, specifications, photographs and other engineering, research, business and manufacturing technical data supplied by Buyer, shall remain Buyer's property. Such data shall be retained in confidence by Seller and not disclosed to any other person or entity, and shall not be used or incorporated into any product or item later manufactured or assembled by Seller for anyone other than Buyer. Any patented or unpatented materials, technology or technical data concerning Seller's processes, present or contemplated products or their uses which Seller may disclose to employees of Buyer in connection with the ordering, acquisition and use by Buyer of the goods or services covered by this order shall, unless otherwise specifically agreed to in writing, be deemed to have been disclosed as a part of the consideration for this order, and Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer

by reason of any use or alleged use to which any such information or knowledge may be put to by Buyer.

11. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY

Seller agrees to indemnify Buyer and hold it harmless from and against all claims, loss, liability, damage or expense, including counsel fees, arising from or by reason of any actual or claimed trademarks, patent, or copyright infringements, or litigation based thereon, with respect to the articles or any part thereof covered by this order, and such obligation shall survive acceptance of the goods and payment therefore by the Buyer. Buyer agrees to give Seller prompt notice in writing or any suit for infringement and such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof.

12. NOTICE OF LABOR DISPUTES AND LATE DELIVERY

Wherever Seller has knowledge that nay actual or potential labor disputes is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice in writing thereof to Buyer. If Seller encounters and/or anticipates difficulty in meeting performance requirements; or complying with the order delivery schedule, he shall immediately notify the Buyer in writing, giving pertinent details. The foregoing notification is for information only, and this provision shall not be construed as a waiver by Buyer of any stated delivery schedule, or any rights or remedies provided by law or under this order.

13. ASSIGNMENT

Seller agrees not to assign its rights or delegate its duties under this order without the prior written consent of Buyer. This prohibition or assignment and delegation extends to all assignments and delegations that may lawfully be prohibited; Buyer shall be furnished with two signed copies of any assignment which is not prohibited by this clause or which is consented to by Buyer. Payment to an assignee in accordance with any such assignment shall be subject to set off or recoupment for any present or future claim or claims which Buyer may have against Seller or assignee except to the extent that any such claims are expressly waived in writing by Buyer. Buyer reserves the right to make, without notice to the assignee, direct settlements and/or adjustments in price with Seller under the terms of this order notwithstanding any assignment of monies due or to become due hereunder.

14. CHOICE OF LAW

Irrespective of the place of performance, this order shall be construed in accordance with the laws of the state of California.

15. TERMINATION STOP WORK

(a) The Buyer may terminate this order for the following reasons: (i) for convenience and that clause in FAR 52-249-1 incorporated herein by reference, (ii) for default, and that clause in FAR 52-249-8 incorporated herein by reference, (iii) for insolvency, or in the event of any institution of proceedings by or against Seller in bankruptcy under any provisions of the Bankruptcy Act, or for the appointment of a receiver or trustee or an assignment for the benefit of creditors of Seller, and any termination for such insolvency shall be covered by the provisions of part (ii) above of this clause.

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(b) The Clause in FAR 52.212-13 relating to stop work orders is incorporated herein by reference.

16. DISPUTES

Buyer and Seller shall exercise their best efforts to settle, by agreement, all disputes arising hereunder. If agreement cannot be reached, the parties shall be free to exercise any legal or equitable remedies which may be available under this order and the law applicable thereto. Notwithstanding the foregoing, Seller shall proceed diligently with the performance of this order and in accordance with Buyer's decision, pending final decision of a dispute hereunder.

17. REMEDIES AND NONCONTINUING WIAVER

The remedies contained herein shall be cumulative and additional to any other remedies in law or equity. No waiver of a breach, or failure to enforce any provisions of this order shall constitute a continuing waiver of any other provision. The invalidity in whole or in part of any condition of this order shall not affect the validity of other conditions.

18. OSHA REQUIREMENTS

Seller warrants that all items furnished on this purchase order are in complete and strict compliance with the provisions of the Occupational Safety and Health Act of 1970 (P.L. 91-596), and all regulations issued pursuant thereto as well as any state or local laws or regulations pertaining to safety requirements. Seller specifically agrees to indemnify and save harmless purchaser from any and all costs, damages, fines or assessments resulting from failure of items covered by this purchase order to comply with the provisions of the aforesaid laws and regulations.

19. FAR, OTHER REGULATIONS AND LAWS

If this order is part of a Government contract as indicated on the face of this order by the inclusion of a Government prime contract number or by use of the word "Military", it is acknowledged by acceptance of this order that Seller is cognizant and aware of the following FAR clauses and will act in accordance with their intent and the intent of their incorporation herein. As used in the reference FAR clauses, the terms "Government" and "contracting officer" shall mean "Buyer" the term "contract" shall mean the "purchase order" and the word "contract" shall mean "Seller".

FAR

- 52.203-6 Restrictions on Subcontractor Sales to the Government
- 52.203-7 Anti-Kickback Procedures
- 52.203-11*** Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions
- 52.204-2 Security Requirements
- 52.208-1 Required Sources for Jewel Bearings and Related Items
- 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters
- 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment
- 52.214-26* Audit by Department of Defense
- 52.215-1 Examination of Records by Comptroller General
- 52.215-2* Audit Negotiation
- 52.215-24*** Subcontractor Cost or Pricing Data

- 52.215-25*** Subcontractor Cost or Pricing Data – Modifications
- 52.215-26 Integrity of Unit Prices
- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
- 52.220-3 Utilization of Labor Surplus Area Concerns
- 52.220-4**** Labor Surplus Area Subcontracting Program
- 52.222-1 Notice to the Government of Labor Disputes
- 52.222-4 Contract Work Hours & Safety Standards Act O/T Compensation
- 52.222-21* Certification of Non-segregated Facilities
- 52.222-22 Previous Contracts and Compliance Reports
- 52.222-25 Affirmative Action Compliance
- 52.222-26 Equal Opportunity
- 52.222-35* Affirmative Action for Special Disabled and Vietnam Era Veterans
- 52.222-36 Affirmative Action for Handicapped Workers
- 52.222-37* Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
- 52.223-1*** Clean Air and Water Certification
- 52.223-2*** Clean Air and Water
- 52.225-10* Duty-Free Entry
- 52.225-11 Restrictions on Certain Foreign Purchases
- 52.225-12 Notice of Restrictions on Contracting With Sanctioned Persons
- 52.225-13 Restrictions on Contracting With Sanctioned Persons
- 52.227-1** Authorization and Consent
- 52.227-2** Notice and Assistance Regarding Patent and Copyright Infringement
- 52.227-10 Filing of Patent Applications
- 52.232-16 Progress Payments
- 52.245-17 Special Tooling
- 52.248-1*** Value Engineering

DFARS

- 252.203-7001** Special Prohibition on Employment
- 252.225-7001 Buy American Act and Balance of Payment Program
- 252.225-7007 Trade Agreement Act
- 252.225-7009 Duty Free Entry-Qualify Country End Products and Supplies
- 252.227-7013 Rights in Technical Data and Computer Software

NOTES

- * - Required only for subcontracts over \$10,000
- ** - Required only for subcontracts over \$25,000
- *** - Required only for subcontracts over \$100,000
- **** - Required only for subcontracts over \$500,000

20. EXECUTIVE ORDER 11348

The provisions of Section 202 of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam era Veteran's Readjustment Assistance Act of 1974, 38 USC 2012 are expressly incorporated herein by reference and shall be applicable to this purchase order, contract, subcontract, lease or government bills of lading – unless exempted under the rules, regulations or orders of the Secretary of Labor.