

# KEARFOTT CORPORATION

# TERMS AND CONDITIONS

**1. ENTIRE AGREEMENT AND ACCEPTANCE.** This Purchase Order will become the exclusive agreement between the parties, subject to the terms and conditions hereof, when accepted by acknowledgment or commencement of performance. Additional or different terms proposed by Supplier shall not be applicable, unless accepted in writing by KEARFOTT CORPORATION (hereinafter called "Kearfott"). No change in, modification of, or revision to this Purchase Order shall be valid unless in writing and signed by an authorized employee of Kearfott. All supplements, sheets, specifications, schedules, exhibits, riders or other attachments annexed hereto or referenced herein are made part of this Purchase Order and Supplier agrees to them by acceptance of this Purchase Order. Failure of Supplier to send to Kearfott a written acceptance or advice that Supplier has commenced performance within ten (10) days after the date hereof shall entitle Kearfott, at Kearfott's option, at any time prior to receipt of such written acceptance or advice, to cancel this Purchase Order without cost or liability to Kearfott.

**2. DEFINITIONS.** As used herein, the term "products" shall include goods, supplies, materials, packaging, services, work and data expressly or impliedly ordered herein. The term "FAR" means Federal Acquisition Regulation. The term "DoD FAR Supp." (DFARS) means Department of Defense Federal Acquisition Regulation Supplement.

### **3. CHANGES.**

(a) Kearfott may at any time make changes by means of written change order to this Purchase Order in one or more of the following: quantity, drawings, designs, specifications, technical data, delivery schedules, place of inspection, acceptance or delivery, method of shipment, and packaging. If such change results in an increase or decrease in the cost or time required for performance of the work under this Purchase Order, an equitable adjustment shall be made in price, delivery schedule, or both. Any claim for such adjustment shall be deemed waived by Supplier unless submitted in writing to Kearfott within thirty (30) days of receipt by Supplier of the change order or within such other period of time as may be agreed upon in writing by Kearfott and Supplier. Kearfott may require that claims for equitable adjustment pursuant to this paragraph shall be submitted on the applicable forms contained in FAR Part 53, and shall be governed by the principles prescribed by FAR Part 31, whether or not this Purchase Order bears a government contract number. Failure of Supplier to submit its claim in the prescribed manner or within the time allowed shall be grounds for Kearfott to make a unilateral determination of the amount, if any, due Supplier for the change and such determination shall be final. Where the cost of property made obsolete or excess as a result of a change is included in Supplier's claim for adjustment, Kearfott shall have the right to prescribe the manner of disposition of such property. Failure to agree on any claim for equitable adjustment under this paragraph shall be a dispute within the meaning of the disputes clause hereof. Such dispute shall not relieve Supplier from proceeding without delay in the performance of this Purchase Order as changed. Changes shall not be binding upon Kearfott unless evidenced by a change order issued and signed by an authorized employee of Kearfott.

(b) Any communication, purchase order, agreement, amendment, change, stop work order, course of performance or course of dealing, supplementing, modifying, rescinding, or waiving any of Kearfott's rights or obligations shall be void unless executed or ratified in a writing which expressly states that it constitutes an amendment or change of this Purchase Order and which is signed by Kearfott's representative duly authorized in writing in order that Kearfott shall be bound only by such writing and not by construction, implication, or apparent authority. Information, advice, approvals, or instructions by Kearfott's technical or other personnel shall be deemed expressions of personal opinions only and shall not affect Kearfott's or Supplier's rights and obligations.

**4. DISPUTES.** This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin. By entering into this Agreement, Supplier irrevocably consents to the jurisdiction of the courts located in the State of Wisconsin. Supplier may litigate any dispute arising hereunder or in connection herewith in a court of competent jurisdiction, provided, however, that no action may be instituted or maintained against Kearfott in any state, without Kearfott's prior written consent, except in the State of Wisconsin. Pending settlement or final judgment, Supplier shall proceed diligently with the performance of this Purchase Order.

**5. DELIVERY.** Time is of the essence in the performance by Supplier of this Purchase Order. Kearfott may at any time postpone delivery of

all or any of the products ordered herein for a reasonable time. Kearfott may retain or return to Supplier at Supplier's expense products received in advance of their required delivery dates as specified in this Purchase Order. No such retention shall waive Kearfott's rights to return subsequent shipments delivered in advance of the required delivery date, nor shall said retention accelerate the time for payment. Overshipments may be returned at Supplier's expense or retained by Kearfott at no increase in price. In the event of the return by Kearfott to Supplier of advance or overshipments, Kearfott shall charge to Supplier all shipping costs, both ways, plus a reasonable charge for its services in effecting such return. Supplier shall not, without Kearfott's written consent, manufacture or procure materials in advance of Supplier's normal flow time or deliver in advance of schedule. In the event of termination or change, no claims will be allowed for any such manufacture or procurement or delivery unless there has been such prior written consent by Kearfott. It is Supplier's responsibility to furnish the proper quantity called for in this Purchase Order. No variations in the quantity specified herein shall be accepted as compliance with this Purchase Order except by Kearfott's prior written consent.

**6. INSPECTION.** All products furnished pursuant to this Purchase Order must comply with specifications, or if no specifications are given, a standard quality as understood by the trade must be furnished. All products including raw materials, work in process, and end items shall be subject to inspection and test by Kearfott or its designee at all times prior to shipment by Supplier and final inspection and acceptance at destination within twelve (12) months of receipt notwithstanding any prior payment or inspection and acceptance. Final inspection shall not relieve Supplier of its obligations under its warranties. Kearfott may reject and hold at Supplier's expense, subject to Supplier's disposal, all products not conforming to applicable specifications, drawings, samples or descriptions. Kearfott shall have the option of returning rejected products to Supplier at Supplier's risk and expense and Kearfott shall charge to Supplier transportation both ways, plus a reasonable charge for Kearfott's services in effecting such return. Without limiting any other rights it may have, Kearfott at its option may require Supplier to repair or replace at Supplier's expense any products which fail to meet the requirements of applicable specifications, drawings, samples, or descriptions. Rejected products may not be retendered to Kearfott by Supplier unless notification of such past rejection is submitted with the retender and Kearfott has consented to such retender. Kearfott shall have the option to retain defective products, in which event Kearfott shall be entitled to an equitable reduction in price to be determined by Kearfott. Kearfott shall also have the option to perform or have performed by others the necessary repairs or to replace such products by contract or otherwise, and charge the cost of such repairs or replacements to Supplier. In the event that products furnished by Supplier fail to pass Kearfott's usual inspection, Kearfott may charge Supplier for the time required for such additional inspections as may be necessary. Supplier shall maintain an inspection and quality control system acceptable to Kearfott. Supplier shall keep records of all inspections made of the products and shall at all reasonable times, including the period of manufacture, allow Kearfott, the Government and regulatory agencies, Kearfott's customers or the customer's representative to inspect and test the products and inspect the plants, including those of Supplier's subcontractors where the work is performed. The records of all inspections by Supplier shall be kept complete and available to Kearfott during the performance of this Purchase Order and for the duration of any applicable warranties. Supplier shall provide without additional charge reasonable facilities and assistance for safe and convenient inspection or test. If this Purchase Order specifies that government source inspection is required prior to shipment from Supplier's plant, Supplier shall, upon receipt of this order, promptly notify the Government representative who normally services Supplier's plant so that appropriate arrangements for Government inspection can be made. In the event that the Government representative or office cannot be located, Kearfott shall be notified immediately. All facilities used to perform the work must comply with the requirements of this Purchase Order.

**7. WARRANTIES.** In addition to all other warranties, express or implied in law, Supplier warrants that all products delivered hereunder shall be merchantable, free from defects in workmanship and materials, and shall strictly conform to applicable specifications including performance specifications, drawings and approved samples, if any, and will be fit and sufficient for the purposes intended, and, if of Supplier's design, will be free from design defects.

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Supplier further warrants that all products shall be in conformance with the most current standards established by the Occupational Safety and Health Act of 1970 and the Consumer Product Safety Act of 1972 as amended. All warranties including service warranties and guarantees shall run to Kearfott, its customers and subsequent owners of the products or end products of which they are a part. In the event of a breach hereunder, Kearfott may require that the products be repaired or replaced by Supplier, or Kearfott may return all or some of the products to Supplier for refund or Kearfott may retain the products. In the event Kearfott retains the products, the price of this Purchase Order shall be equitably reduced. Kearfott may replace such products with similar products and charge the Supplier the cost occasioned to Kearfott thereby. Kearfott shall also have the option to perform or have performed by others the necessary repairs and charge the cost of such repairs to Supplier. Transportation charges to and from Supplier's plant and other incidental expenses and responsibility for defective products while in transit shall be borne by Supplier. In the event of a breach of any of the warranties herein provided or of any warranties express or implied in law, Supplier agrees to pay and indemnify Kearfott, its customers or subsequent owners for all liability, loss, costs and expenses resulting from such breach including the cost of tests performed by Kearfott in determining whether a breach has occurred, and all costs of disassembly and reassembly, attorney's fees and costs of litigation. The rights and remedies of Kearfott herein provided shall not be construed to negate, replace, or limit, but shall be additional to any rights of Kearfott as a result of breach of warranty by Supplier by virtue of any applicable laws or regulations. All warranties shall be construed as conditions as well as promises and shall not be deemed to be exclusive. Except for latent defects, fraud, or gross mistake amounting to fraud, the term of this warranty shall be twelve (12) months after delivery to and acceptance by Kearfott's customer or twenty-four (24) months after delivery to and acceptance by Kearfott, whichever first occurs. Any products corrected or furnished in replacement by Supplier pursuant to this paragraph shall also be subject to all the provisions of this paragraph to the same extent as products initially delivered. The warranty with respect to such products shall be equal in duration to that herein set forth and shall run from the date of delivery and acceptance by Kearfott of such corrected or replaced products.

**8. PACKING AND SHIPPING.** At a minimum, Supplier shall refer to documents (ASTM D3951 "Standard Practice for Commercial Packaging" and/or MIL-STD-2073-1E "Standard Practice for Military Packaging") for guidance and assurance that optimum protection during shipment, in-plant handling & storage. All goods shall be prepared for shipment and packed by Supplier to prevent damage or deterioration, secure lowest transportation rates, and comply with carrier tariffs. All packages must bear Kearfott's Purchase Order number and show gross fare and net weights and quantity. No additional charges will be made to Kearfott for boxing wrapping, packaging, packing, cartage or storage unless specified in this Purchase Order. When delivery is F.O.B. at a point other than Kearfott's plant, Supplier shall not declare a value on the bill of lading except when a declaration of value will result in decreased cost of shipment. Supplier shall make such declaration of value that will result in the minimum transportation rates. If it appears Supplier will not meet the delivery schedule specified in this Purchase Order, Supplier shall, if requested by Kearfott, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, the added cost to be borne by Supplier. This shall be in addition to Kearfott's other remedies.

**9. INVOICES AND PAYMENTS.** Payment of Supplier's invoices is subject to adjustment for any shortage or rejection, or any other cause specified in this Purchase Order. Individual invoices must be issued for each shipment. Freight and other similar charges as well as any discounts to which Kearfott is entitled, must be stated on the invoice.

**10. PRICES.** Supplier warrants that the prices for the products sold to Kearfott under this Purchase Order are not less favorable than those currently extended by Supplier to any other customer for the same or substantially similar products in equal or lesser quantities. In the event that the price or prices shown in this Purchase Order are less favorable or in the event that Supplier reduces its price to any other customer for such products during the term of this Purchase Order, Supplier agrees to reduce the prices hereof correspondingly.

**11. SUBCONTRACTING OR ASSIGNMENT BY SUPPLIER.** No contract shall be made by Supplier with any other party to furnish any of the completed or substantially completed products, spare parts or work herein contracted for, nor shall Supplier sell or assign this Purchase Order or any part thereof or any monies due or to become due hereunder without the prior written consent of Kearfott, except that a claim for monies due or to become due under this Purchase Order may be assigned by Supplier to a bank, trust company, or other financing institution, including any federal lending agency, without such consent. Kearfott shall be furnished with two (2) copies of the notice of assignment and two (2) copies of the assignment. The notice of assignment and assignment shall be signed by both the assignor and assignee. Payment to assignee of any such claim shall be subject to set off or recoupment for any present or future claim or claims which Kearfott may have against Supplier. Kearfott reserves the right without notice to the assignee to make direct settlements or adjustments in price with Supplier, notwithstanding any assignment of a claim for monies due or to become due.

**12. NON-WAIVER.** The remedies herein set forth shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver by Kearfott of any breach of any provision hereof shall constitute a waiver of any other or recurring breach of this or any other purchase order. Failure of Kearfott to insist upon strict performance of any of the terms and conditions of this Purchase Order shall not constitute a waiver of such terms and conditions or a waiver of any default.

## **13. DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION.**

(a) Drawings, specifications, data, designs, inventions, and other technical information supplied by Kearfott shall remain Kearfott's property and shall be held in confidence by Supplier. Such information shall not be reproduced, used or disclosed to others by Supplier without Kearfott's prior written consent, and shall be returned to Kearfott upon completion of this Purchase Order or upon demand. Kearfott does not grant indemnity to Supplier for infringement of any patent, trademark, copyright or data rights. Any information which Supplier may disclose to Kearfott with respect to the design, manufacture, sale or use of the products covered by this Purchase Order shall be deemed to have been disclosed as part of the consideration for this Purchase Order, and Supplier shall not assert any claim against Kearfott by reason of Kearfott's use of such information. All data generated or developed in the course of performance of this Purchase Order shall be the sole property of Kearfott and Supplier shall not use, duplicate or disclose such data for any purposes other than the performance of the work required hereunder without the prior written consent of Kearfott. The purchase price of this Purchase Order is, in part, consideration for any design work performed by Supplier in connection with this Purchase Order and incorporated in the products to be delivered hereunder, and Supplier shall not supply such products to others without Kearfott's prior written consent.

(b) To the extent authorized by the United States Government in a contract with Supplier or a subcontract to which Supplier is a party for the manufacture of products for the Government, and to the extent that such use will not interfere with Supplier's performance of this or any other purchase order from Kearfott in effect at the time the Supplier enters into such contract or subcontract, and upon prior written notice to Kearfott of such Government authorization and contract number, the Supplier shall have the right to use items mentioned in subparagraph (a) which the Government owns or has the right to use or the right to authorize others to use.

## **14. TERMINATIONS.**

(a) The termination for convenience provisions set forth in Part 49 of FAR are incorporated herein by reference and made a part hereof, except that "Government" and "Contracting Officer" shall mean Kearfott, "Contractor" shall mean Supplier, and "Contract" shall mean this Purchase Order. Kearfott may terminate all or any part of this Purchase Order at any time or times for convenience by telegraphic or other written notice to Supplier, whether or not this Purchase Order includes a Government contract number. The rights and obligations of the parties shall be in accordance with FAR 52.249-1 or 52.249-2, as appropriate, provided, however, that Supplier must submit its termination claim to Kearfott within sixty (60) days after the effective date of termination. The provisions of this subparagraph shall not limit or affect the right of Kearfott to terminate this Purchase Order for default.

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(b) The termination for default provisions set forth in Part 49 of FAR are incorporated herein by reference and made a part hereof. Kearfott may terminate all or any part of this Purchase Order in accordance with FAR 52.249-8 except that "Government" and "Contracting Officer" shall mean Kearfott, "Contractor" shall mean Supplier, and "Contract" shall mean this Purchase Order, and the references to a "Disputes" clause are inapplicable. If the parties fail to agree on the amount to be paid for items referred to in 52.249-8(e) of the default clause, the amount shall be the reasonable value thereof as determined by Kearfott.

(c) Kearfott may, by written notice to Supplier, terminate the whole or any part of this Purchase Order in the event that Supplier shall become insolvent or make a general assignment for the benefit of creditors, or a receiver or liquidator is appointed or applied for, or if Supplier admits in writing its inability to pay its debts as they become due, or if any proceeding under any Federal or State bankruptcy or insolvency law is brought by or against Supplier. Such termination shall be deemed for default in accordance with paragraph 14(b) of this Purchase Order and the rights and obligations of the parties shall be determined as therein provided.

**15. SUSPENSION OF WORK.** Kearfott may order the indefinite suspension of all or part of the work. If the suspension has a material effect on cost or delivery, an appropriate adjustment shall be made in price (excluding profit) or delivery, but not to the extent that the work would have been otherwise interrupted. No claim shall be allowed unless made within thirty (30) days after the suspension ends.

**16. COMPLIANCE WITH LAWS.** Supplier warrants that in the performance of this Purchase Order, it will comply with all applicable Federal, State and local laws and ordinances and all lawful orders, standards, rules and regulations thereunder now in effect or as hereafter amended, including but not limited to the Occupational Safety and Health Act of 1970 (Public Law 91-596), the Fair Labor Standards Act of 1938 as amended (29 U.S.C. Secs. 201-219), Walsh-Healey Public Contracts Act as amended (41 U.S.C. Secs. 35-45), the Contract Work Hours and Safety Standards Act (40 U.S.C. Secs. 327-333), the Office of Federal Procurement Policy Act as amended (41 U.S.C. Sec. 423), the Arms Export Control Act (22 U.S.C. Secs. 2751 – 2796), the International Traffics in Arms Regulations (22 C.F.R. Secs. 120 – 130), the Export Administration Act (50 U.S.C. Secs. 2401- 2420), the Export Administration Regulations (15 C.F.R. Secs. 768 – 799). Supplier covenants to save and hold Kearfott harmless and to reimburse Kearfott for any and all costs, damages, and expenses, including attorney's fees, suffered or occasioned to Kearfott directly or indirectly through any failure of Supplier to comply with any such law, ordinance, order, standard, rule or regulation. On Supplier's invoice or in other form satisfactory to Kearfott, Supplier shall submit certification that the products covered by this Purchase Order were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and of the regulations and orders of the U.S. Department of State, the U.S. Department of Commerce, and of the U.S. Department of Labor issued thereunder. Supplier shall also submit in a similar manner certification that the products named in this Purchase Order were produced in compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173). Supplier must specifically certify that materials containing or consisting of tantalum, tin, tungsten, or gold, did not originate from the Democratic Republic of Congo, Angola, Burundi, Central African Republic, Congo Republic, Rwanda, Sudan, Tanzania, Uganda, or Zambia, in accordance with Title XV, section 1502.

**17. RELEASE OF INFORMATION.** Supplier shall not, without obtaining Kearfott's prior written consent, disseminate the fact that Supplier has furnished or has contracted to furnish to Kearfott the products covered by this Purchase Order, nor shall Supplier disclose any of the details connected with this Purchase Order to third parties. No news releases, photographs, films, advertisements, public announcements, confirmation or denial of this Purchase Order, its subject matter or any phase thereof, shall be made without Kearfott's prior written consent.

**18. INSURANCE AND INDEMNITY.** Supplier agrees to defend and shall indemnify and hold harmless Kearfott, its agents, customers, successors, assigns and users of its products against any loss, damage and liability, including costs and expenses by reason of any and all claims and suits charging (a) personal injury, property or other damage or (b) actual or alleged infringement of any patent, copyright

or trademark, arising out of the use or sale of the products purchased hereunder or arising from any alleged defect in the products, whether latent or patent, including allegedly improper construction and design, or from the failure of the products to comply with specifications or with any express or implied warranties of Supplier or arising out of the alleged violation of any statute, ordinance, administrative order, rule or regulation connected with the manufacture or sale of the products including but not limited to the Federal Occupational Safety and Health Act of 1970 as amended. If an injunction is issued as a result of any such infringement, Supplier agrees to refund to Kearfott the amount paid to Supplier pursuant to this Purchase Order. Supplier shall have no liability with respect to patent infringement for products as to which Kearfott furnished complete design specifications. The furnishing of performance specifications by Kearfott to Supplier shall not relieve Supplier of indemnifying and holding harmless Kearfott for any actual or alleged patent infringement. Supplier further agrees to obtain and maintain during the life of this Purchase Order at its expense, product liability insurance, with an endorsement in favor of Kearfott, in such form and amount and by such company as may be approved by Kearfott in writing. Satisfactory evidence of such insurance shall be submitted to Kearfott upon request.

## **19. Kearfott OR U.S. GOVERNMENT PROPERTY, MATERIALS, TOOLING OR TEST EQUIPMENT.**

(a) Title to and the right to immediate possession of all tooling, materials or equipment furnished by Kearfott or the Government under this Purchase Order shall remain in Kearfott or the Government, respectively, at all stages of use or storage by Supplier. All such items shall be used only for the purpose of fulfilling this Purchase Order, except with respect to items furnished by the Government where the Government has authorized the Supplier to use them for other purposes. Such items shall be kept in good condition and repair by Supplier at its expense. Supplier shall be liable for safekeeping and the preservation of all Kearfott or Government property. Kearfott does not guarantee the accuracy of any tooling or the quality or suitability of any material supplied by the U.S. Government or Kearfott. Supplier agrees to mark all Government property, whether furnished or acquired for account of the Government, with an identification number preceded by the letters "U.S.". Supplier further agrees to maintain adequate property control and records of Government property in accordance with the provisions of FAR 45.5. In the absence of any provision in this Purchase Order to the contrary, all Kearfott and Government property shall be returned to Kearfott in as good condition as when received by Supplier, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this Purchase Order. If this Purchase Order is for tooling, upon any payment therefor, title shall pass to either Kearfott or the Government in accordance with the provisions of this Purchase Order and applicable Government regulations.

(b) To the extent authorized by the U.S. Government in a contract with Supplier or a subcontract to which Supplier is a party for the manufacture of products for the Government, and to the extent that such use will not interfere with Supplier's performance of this or any other purchase order from Kearfott in effect at the time the Supplier enters into such contract or subcontract, and upon prior written notice to Kearfott of such Government authorization and contract number, the Supplier shall have the right to use items mentioned in subparagraph (a) which the Government owns or has the right to use or the right to authorize others to use.

**20. RESPONSIBILITY FOR SUPPLIES.** Supplier shall not reserve title or a security interest in products shipped to Kearfott. Except as otherwise provided in this Purchase Order, title to products purchased under this Purchase Order shall pass from Supplier to Kearfott, or the Government, as appropriate, at the F.O.B. point designated on the face of this Purchase Order, regardless of the place of inspection. However, regardless of the passage of title, loss or damage discovered after transfer of title determined to be the result of faulty packaging or handling by Supplier shall be Supplier's responsibility. Acceptance by Kearfott shall be final only after completion of inspection at Kearfott's plant. Supplier shall bear all risks for rejected products after notice of rejection. Nothing herein shall limit any of Kearfott's rights under the warranty clause of this Purchase Order.

## **21. WORK ON KEARFOTT'S OR ITS CUSTOMER'S PREMISES.**

(a) If Supplier's work under this Purchase Order involves operations by Supplier on the premises of Kearfott or one of its customers, Supplier shall take all necessary precautions to prevent

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the occurrence of any injury to persons or property during the progress of such work, and, except to the extent that any such injury is due solely and directly to Kearfott's or its customer's negligence, shall indemnify Kearfott and the customer against all loss which may result from any act or omission of Supplier, its agents, employees, or subcontractors. Supplier shall maintain and furnish Kearfott with copies of such public liability, property damage and employer's liability compensation insurance as will protect Kearfott and its customers from said risks and from any claim under any applicable Workers' Compensation and Occupational Disease Act.

(b) Supplier shall carry the following insurance during the period of this contract and shall furnish evidence of same as buyer may request:

1. Workman's compensation insurance.
2. Comprehensive general liability coverage with bodily injury limits of at least \$2,000,000.00 for each person.
3. Property damage of \$2,000,000.00 for each accident or occurrence.
4. Business auto of \$2,000,000.00 combined single limit liability.

(c) Supplier agrees to assume all risk of loss and to indemnify and hold the buyer and/or Kearfott and their officers, agents, and employees from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys and witnesses, fees and expenses incident thereto, for any and all injuries to persons (including death), and for the loss and damage to, or destruction of property (including property of the buyer and/or Kearfott) arising out of or in connection with this agreement unless caused by the gross negligence of the buyer and/or Kearfott, their officers, agents or employees.

(d) Supplier is required to furnish to Kearfott's security officer the names of all workmen assigned to the job who require access to Kearfott's facilities. The Supplier will be responsible for maintaining order in their area of operation, and shall limit access to the facility to those having right of entry.

(e) The following clauses in accordance with Code of Federal Regulation (29 CFR 1910.1200) Hazard Communication Standard, are hereby made an integral part of this order in the following way:

1. Supplier may be required to work in a facility that houses hazardous substances. The Supplier is hereby advised that 29 CFR 1910.1200 requires appropriate transmittal of information by Supplier to Supplier's employees. Buyer maintains workplace files consistent with 29 CFR 1910.2100. Supplier shall have the right to review these files upon request.
2. In accordance with 29 CFR 1910.2100, Buyer will provide Supplier access to its written Hazard Communication Program, location of Material Safety Data Sheets, and emergency contingency procedures. Contact the Safety Administrator, Kearfott Corporation, Motion Systems Division, Black Mountain, NC, at (828) 350-5417 or Kearfott Corporation, Guidance & Navigation Division, Little Falls, NJ, (973) 785-5309 for additional information.
3. Supplier shall provide Buyer with a list of chemicals and the associated Material Safety Data Sheets for any hazardous substances (as defined in 29 CFR 1910.1200) that the Supplier plans to deliver to the Buyer or work site.

**22. TAXES.** Except as otherwise specifically agreed or required by law, Supplier will pay or assume all taxes imposed upon or in connection with the sale or furnishing of the products, including all Federal, State or municipal excise and personal property taxes on any property in the possession of Supplier until title passes to Kearfott. Supplier agrees to take advantage of any tax exemptions to which it is entitled and Kearfott is entitled to a price reduction in the amount of any taxes for which Supplier could have obtained an exemption but failed to do so.

**23. AFFIRMATIVE ACTION COMPLIANCE.** The Supplier represents that it has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or that it has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**24. INDUSTRIAL LAWS.** Supplier agrees that neither Supplier nor any of the persons furnishing materials or performing work or services required by this Purchase Order are employees of Kearfott within the meaning or the application of any Federal or State Unemployment Insurance Law, Old Age Benefit Law, Social Security Law, Workers' Compensation Industrial Accident Law, or other Industrial or Labor Law. Supplier agrees at its own expense to comply with such laws and to assume all liability or obligations imposed by them.

**25. NEW PRODUCTS.** New and unused products only shall be furnished pursuant to this Purchase Order.

**26. PRIORITIES.** When a priority symbol (e.g., DO-A1) is included in this Purchase Order, the materials ordered are certified for National Defense use. Supplier is required to follow the provisions of DMS Reg. 1 or DPS Reg. 1 and of all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this Purchase Order.

**27. GOVERNMENT CONTRACTS.** If this Purchase Order contains a Government contract number, Supplier shall comply with all applicable Federal, State or local laws, rulings and regulations relating to Government procurement. Without limiting the foregoing, the following provisions of FAR and DFARS are incorporated herein by reference to the extent applicable and Supplier agrees to comply therewith. Except for Cost Accounting Standard clauses, the version of each FAR and DoD FAR Supplement in effect on the date of the Government prime contract under which this Purchase Order is issued, shall apply. Cost Accounting Standard clauses shall be effective as of the date of this Purchase Order. When necessary to make the context of the below-enumerated provisions applicable to this Purchase Order, the term "Contractor" shall mean Supplier, the term "Contract" shall mean this Purchase Order, and the terms "Government", "Contracting Officer" and equivalent phrases shall mean Kearfott. The term "Subcontractor" shall include all lower tier subcontractors. Copies of FAR and DoD FAR Supplements may be obtained from the Government Printing Office, Washington, D.C. 20402.

## FAR CLAUSES

### Clause No. Clause Title

- |           |   |
|-----------|---|
| 52.203-3  | Gratuities  |
| 52.203-5  | Covenant Against Contingent Fees  |
| 52.203-6  | Restrictions on Subcontractor Sales to the Government   |
| 52.203-7  | Anti-Kickback Procedure   |
| 52.203-11 | Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.                              |
| 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions  |
| 52.203-14 | Contractor Code of Business Ethics and Conduct  |
| 52.204-2  | Security Requirements   |
| 52.204-8  | Annual Representation and Certifications  |
| 52.204-10 | Reporting Executive Compensation and First Tier Subcontract Awards  |
| 52.208-8  | Required Sources for Helium and Helium Usage Data   |
| 52.209-6  | Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment |
| 52.209-10 | Prohibition on Contracting with Inverted Domestic Corporations  |
| 52.211-5  | Material Requirements   |
| 52.211-15 | Defense Priority and Allocation Requirements  |
| 52.214-26 | Audit and Records – Sealed Bids   |
| 52.214-27 | Price Reduction for Defective Cost or Pricing Data- Modifications-Sealed Bidding  |
| 52.214-28 | Subcontractor Cost or Pricing Data-Modifications-Sealed Bidding   |
| 52.215-2  | Audit and Records – Negotiations  |
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# KEARFOTT CORPORATION

# TERMS AND CONDITIONS

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252.234-7004	Cost and Software Data Reporting System
252.235-7003	Frequency Authorization
252.239-7016	Telecommunications Security Equipment, Devices, Techniques and Services
252.243-7001	Pricing of Contract Modification
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252.246-7003	Notification of Potential Safety Issues
252.247-7023	Transportation of Supplies by Sea
252.247-7024	Notification of Transportation of Supplies by Sea
252.249-7002	Notification of Anticipated Termination or Reduction

## 28. EXPORT AND IMPORT COMPLIANCE.

(a) The Supplier shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for suppliers to register with the Department of State in accordance with the ITAR. The supplier shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR. It is the Supplier's responsibility to comply with all applicable laws and regulations regarding export and import controlled items which exists independent of, and is not established or limited by, the information provided by this clause. Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to— The Export Administration Act of 1979, as amended (50 U.S.C. App.2401, *et seq.*); The Arms Export Control Act (22 U.S.C. 2751, *et seq.*); The International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*); The Export Administration Regulations (15 CFR Parts 730-774); The International Traffic in Arms Regulations (22 CFR Parts 120-130); and Executive Order 13222, as extended;

(b) Supplier is advised that its performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls as mentioned in subparagraph (a) under Arms Export Controls Act (22 U.S.C. 2751 – 2796), International Traffic in Arms Regulations (22 C.F.R. 120-130), Export Administration Act (50 U.S.C. 2401 – 2420), and Export Administration Regulations (15 C.F.R. 768 – 799) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Supplier represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) that it has disclosed to Kearfott's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Supplier shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(c) Foreign Personnel/Persons. Supplier shall not give any Foreign Person access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Contractor/Kearfott. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Kearfott may reasonably request. No consent granted by Kearfott in response to Supplier's request under this paragraph b. shall relieve Supplier of its obligations to comply with the provisions of paragraph a. of this Clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph a. hereinabove, nor constitute consent for Supplier to violate any provision of the Export Laws and Regulations.

(d) Indemnification. Supplier shall indemnify and hold harmless Kearfott from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys fees, arising out of claims, suit, allegations or charges of Supplier's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph a. Any failure of Supplier to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.

(e) Subcontracts. The supplier shall include the substance of this clause, including this paragraph (e), in all subcontracts.

## 29. COUNTERFEIT MATERIAL:

(a) Definitions for purposes of this paragraph, "Material" consists of those items delivered under this Order that are the lowest level which are separately identifiable. "Counterfeit Material" means Material that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method.

(b) Seller agrees and shall ensure that Counterfeit Material is not delivered to Kearfott.

(c) Seller shall only purchase products, which will be delivered to Kearfott, directly from Original Component Manufacturer (OCM)/ Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor. Material shall not be acquired from independent distributors or brokers.

(d) When requested by Kearfott, Seller shall provide OCM/OEM documentation that authenticates traceability. This includes providing OCM/OEM original documentation from authorized distributors, when used.

(e) Seller shall immediately notify Kearfott with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Material. In the event that Counterfeit Material is delivered under this Order, then Seller shall, at its own expense, promptly replace such Counterfeit Material with genuine Material conforming to the requirements of this order. Notwithstanding any other provision in this Order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Material, including without limitation Kearfott's costs of removing Counterfeit Material, and of, replacing, reworking, and retesting the genuine Material. When applicable, Seller shall be liable for any freight costs and Kearfott's customers costs associated with the return of fielded hardware.

(f) If suspect/counterfeit Material is furnished under this order and are found in any of the goods delivered hereunder, such items will be impounded by Kearfott. The Seller shall promptly replace such Material under the guidelines identified in part (e) of this paragraph, "Counterfeit Parts". Seller shall co-/cooperate fully with Kearfott and agrees that any suspect/counterfeit material shall be forwarded to an appropriate facility for further investigation. Seller also agrees that any Government or quasi-Government directive, such as a GIDEP alert or a directive from The Aerospace Corporation indicating that such parts are counterfeit, shall be deemed definitive evidence that Seller's Material contains counterfeit parts.

(g) This paragraph applies in addition to any quality provision, specification, statement of work or other provision included in the Order addressing the authenticity of Material. To the extent such provisions conflict with this paragraph, this paragraph prevails.

(h) Seller shall include this entire paragraph, Counterfeit Parts, in all lower tier subcontracts for the delivery of items that will be included in or furnished to Kearfott.