

**AVX Aircraft Company
PURCHASE ORDER TERMS AND CONDITIONS**

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1. DEFINITIONS

- A. BUYER means AVX Aircraft Company as identified on the face of the Order.
- B. BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer's cognizant procurement organization to administer and/or execute the Order.
- C. DATA means all designs, dimensions, specifications, drawings, patterns, know how, or other information concerning methods, manufacturing processes, equipment, gauges and tools used in the design and manufacture of Products. Data may be recorded in a written or printed document, computer or electronic file, electromagnetic tape or disc, software, or any other tangible form of expression.
- D. ORDER means the instrument of contracting including this Purchase Order and all referenced documents.
- E. PARTIES means Buyer and Seller collectively.
- F. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by the U.S. Government for the acquisition of Products.
- G. PROPRIETARY INFORMATION means all Data that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the Data as proprietary to the party disclosing the information, and includes any information marked with a restrictive legend as prescribed in DFARS 252.227-7013 or 252.227-7014 or in FAR 52.227-14.
- H. SELLER means the party with whom Buyer is contracting.
- I. SERVICE means Seller's time and effort, including any goods, supplies, materials, articles, items, parts, components, or assemblies (Products) incidental to the performance of the Service.

2. ACCEPTANCE

This Order is Buyer's offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and signed by Buyer's authorized purchasing representative. Seller's acknowledgement, acceptance of payment, or commencement of performance, shall conclusively evidence acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in Seller's acceptance.

3. ORDER OF PRECEDENCE

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

- A. Change Order Document
- B. Purchase Order Document
- C. Purchase Order Terms and Conditions.
- D. Statement of Work.
- E. Specification/Drawing

- F. Supplier Quality Assurance Requirements (SQAR)
- G. Supplier Data Requirements List (SDRL)/Data Item Description (DID).
- H. Other Referenced Documents.

4. PAYMENT

- A. Buyer shall pay Seller the price set forth in this Order for the Services and Products specified. Price includes all profit, wages, salaries, overhead, taxes, and other costs and expenses. No overtime, expedite charges, or other premium rates will be paid unless authorized by Buyer, in writing.
- B. Unless otherwise specified, Seller shall submit an invoice in duplicate to Buyer's procurement representative at the location identified on the face of this Order and shall include: Purchase Order number, Purchase Order type, item number, part number (if applicable), and a brief description of the Service or Product. Seller shall also provide such evidence as Buyer may reasonably require in support of the invoice. No invoice shall be issued prior to completion of Services or shipment of Products. Payment due dates, including discount periods, will be calculated from the date of acceptance of Service or Product, or receipt of correct invoice, whichever is later. Payment of invoice shall not constitute approval or acceptance of Services or Products rendered. At any time prior to final payment under this Order, Buyer may have invoices audited as to validity. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced.
- C. Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this Order.

5. EXCUSABLE DELAY

- A. A delay in the performance by the Seller of any obligations under the Order that is caused by an event which:
 - a. is an act of God, act of Government, fire, riot, war, terrorism or any other event which constitutes a superior force and is beyond the reasonable control of the Seller; and without any fault on the part of the Seller and interferes with the performance of Seller's obligations; and
 - b. the effects of which could not reasonably have been avoided by the Seller will, subject to the provisions of this Clause, constitute and Excusable Delay.
- B. In addition to the events described in paragraph (a), a delay caused by the default of a subcontractor of the Seller may constitute an Excusable Delay if the event causing the default of such subcontractor is an event that meets the criteria set out in paragraph (A) and such delay has not been contributed to by the Seller, unless the subcontracted supplies or services were obtainable

from other sources in sufficient time for the Seller to meet the required delivery schedule.

- C. Except as otherwise provided herein, the following will not be considered as events beyond the reasonable control of the Seller;
 - a. lack of financial resources of the Seller or its subcontractors; or
 - b. any labor disturbances including strikes/lock-outs experienced by the Seller or its subcontractors;
- D. To claim an Excusable Delay, the Seller must, by written notice to the Buyer, describe in detail any excusable delay and provide the Buyer with an acceptable "work-around" plan within ten (10) calendar days of such facts coming to the attention of Seller. The Buyer may accept or reject such "work-around" plan in writing and, if accepted, the Seller must promptly implement such "work-around" plan at Seller's expense.
- E. In the event of an Excusable Delay, any affected delivery date will be postponed for such period as is reasonably necessary to offset the effects of the Excusable Delay. In no event will the delivery date be extended by a time period longer than the time period in that the Excusable Delay was in effect. No adjustment will be made to the Order price; adjustment to the delivery schedule is the exclusive remedy of the Seller in the case of an Excusable Delay.
- F. Notwithstanding the above, after an Excusable Delay has continued for a period of thirty (30) calendar days in the aggregate the Buyer may, in the Buyer's absolute discretion, terminate the Order. In the event of such termination, the rights and obligations of Buyer and Seller shall be determined in accordance with the provisions of the Termination for Convenience clause herein.

6. WARRANTY

Notwithstanding inspection and acceptance by Buyer, Seller warrants that all Services performed under this Order will be performed in accordance with the standards of care and diligence normally exercised by persons performing such Services in the industry, be free from defects in workmanship, and conform to the requirements of the Order. Seller shall correct or re-perform any defective or non-conforming Services at no cost to the Buyer. If Buyer does not require correction or re-performance, Buyer shall be entitled to an equitable adjustment.

7. CHANGES

- A. Buyer's authorized representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order in (1) description of Services, (2) time of performance ((2) time of performance (i.e., hours of the day, days of the week, etc.), and (3) place of performance of the Services.
- B. If the change causes an increase or decrease in the cost or time required to perform this Order,

whether or not changed by the Change Order or Purchase Order Change Notice, an equitable adjustment shall be made in the purchase price and/or delivery schedule and the Order shall be modified in writing accordingly.

- C. Any claim for adjustment shall be unconditionally waived unless: (i) asserted in writing and delivered to Buyer within 15 days of the date of the written change order; and (ii) a fully supported proposal is delivered to Buyer's authorized representative within 45 days after Seller's receipt of such direction.
- D. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.
- E. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause hereof. However, Seller shall not be excused from proceeding with the Order as changed.

8. BUYER AUTHORIZATION

- A. The Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of the Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order.
- B. Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Product hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment.

9. DISPUTES

- A. Any dispute that may arise under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties up to the Senior Executive of the Materiel or Procurement organization placing the Order, and Seller's equivalent executive level.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon, in writing, either Party may only bring suit in federal or state court in the state from which this Order is issued. Seller consents to personal jurisdiction for this purpose in the forum state from which this Order is issued.
- C. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, Seller shall proceed diligently, as directed by Buyer, with performance of the Order.
- D. To the maximum extent permitted by law, the

parties waive any right to a jury trial and agree that such dispute shall be decided by a judge only.

10. TERMINATION FOR CONVENIENCE

- A. Notwithstanding any other provisions of the Order, the Buyer may by written notice terminate for its convenience the whole or any part of the Order which would be on or subsequent to the date of the notice.
- B. Buyer's only obligation shall be to pay Seller a percentage of the price reflecting the percentage of the work performed prior to the notice of termination. Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- C. In no event shall Buyer be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or any amount of excess of the total Order price or greater than the reflected Maximum Cumulative Cost and Termination Liability Schedule included in the Purchaser Order as of the effective date of the termination. If termination is undertaken, the subcontractor will be entitled to actual and reasonable costs incurred under the subcontract, reasonable termination expenses and profit
- D. Seller shall continue all work not terminated.
- E. In the event Seller has a claim for adjustment, it must notify Buyer in writing of its intent to file a claim within twenty-one (21) calendar days from the effective date of termination. Seller's final termination claim must be submitted to Buyer within ninety (90) calendar days from the date that Seller's intent to file a claim was submitted to Buyer. Seller s

11. TERMINATION FOR DEFAULT

- A. If the Seller fails to comply with any of the terms of the Order, fails to make progress so as to endanger performance of the Order, fails to provide adequate assurance of future performance, files or has filed against it a petition in bankruptcy or becomes insolvent or suffers a material adverse change in financial conditions, the Buyer shall, prior to termination of the whole or part of the Order, give the Seller notice of default. The Seller shall have ten (10) calendar days (or more if authorized in writing from the Buyer) from the date of receipt of such notice in which to cure the default or to satisfy the Buyer that such default shall be cured within a period of time acceptable to the Buyer. Upon failure to cure the default, Buyer may give the Seller written notice of Termination for Default.
- B. Upon termination, the Seller will have no claim for further payment other than as provided in this Clause, but will be liable to the Buyer for all direct losses and direct damages which may be suffered by the Buyer by reason of the default, including any increase in the costs incurred by the Buyer by reason of the default, including any increases in the

costs incurred by the Buyer in procuring the Articles/Services from another source. Nothing in this Clause affects any obligation of the Buyer under the law to mitigate damages and Seller must proceed with the portion of the Order not terminated under the provisions of this Clause.

- C. If the Order is terminated for default, the Buyer may require the Seller to transfer the title and deliver, as directed by the Buyer any (i) completed Articles, and (ii) Manufacturing Materials that the Seller and its subcontractors have specifically produced or acquired for the portion of the Order under notice of Termination for Default. Upon direction of the Buyer, the Seller shall also protect and preserve property in its possession in which the Buyer has an interest.
- D. The Buyer shall pay the Order price for completed Articles delivered and accepted. The Seller and Buyer will agree on the amount of payment for Manufacturing Materials delivered and accepted. Failure to agree will be a dispute under the Disputes clause. The Buyer may withhold from these amounts any sum the Buyer determines to be necessary to protect the Buyer against loss because of outstanding liens or claims of former lien holders and Buyer's estimate of re-procurement cost due Buyer.
- E. If, after termination, it is determined that the Seller was not in default, or that the default was excusable, as defined in the Excusable Delay clause, the rights and obligations of the parties will be the same as if termination had been issued for the convenience of the Buyer and the provisions of the Termination for Convenience clause, will apply.
- F. The rights and remedies of the Buyer in this clause or in any other clause of the Order are in addition to any other rights and remedies provided to Buyer by the law or under these Terms and Conditions.

12. BUYER'S PROPERTY

- A. Seller shall be responsible for all Buyer-furnished property (e.g. dies, molds, jigs, tools, materials, etc.)
- B. Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage to Buyer's property while in Seller's possession or control. Seller shall, at its sole cost, maintain insurance covering any loss or damage to Buyer materials, tools, and/or equipment for the full replacement value, and protecting against all perils normally covered in an "all-risk" policy including but not limited to fire, windstorm, hurricane, tornado sandstorm, explosion, riot, civil commotion, aircraft, earthquake, floor or other acts of nature during such time as they remain in Sellers possession..
- C. If Seller cannot locate Buyer-furnished property, Seller has five (5) business days to find the misplaced item. After such period, the property

shall be deemed "lost" and Seller must reimburse Buyer for its full replacement cost. The search period begins either:

- a. Upon Seller's notification to Buyer of a misplaced item (where the reimbursement shall take place on the 6th business day the item is lost), OR
- b. Five (5) business days after Property Transfer Authorization issuance date (i.e. ten (10) business days total) where the reimbursement shall take place on the 11th business day the item is lost.

13. GOVERNMENT PROPERTY

- A. Seller shall be responsible for all Government furnished property.
- B. If, in performing this Order, any government property is furnished to Seller, Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage to government property while in Seller's possession or control except to the extent that this purchase order provides otherwise. Seller shall return all Government property in a condition as good as when received except for reasonable wear and tear. Seller shall establish and maintain a system for control of Government property in accordance with FAR 52.245-1. Seller shall notify AVX Aircraft if the Government determines that its system is inadequate.
- C. If Seller cannot locate Buyer-furnished property, Seller has 5 business days to find the misplaced item. After such period, the property shall be deemed "lost" and Seller must reimburse Buyer for the full replacement cost of the item. The search period begins either:
 - a. Upon Seller's notification to Buyer of a misplaced item (where the reimbursement shall take place on the sixth 6th business day the item is lost), OR
 - b. Five 5 business days after Property Transfer Authorization issuance date (i.e. 10 business days total) where the reimbursement shall take place on the 11th business day the item is lost

14. NOTIFICATION OF STATUS CHANGES

By accepting this Order, Seller certifies that all representations and certifications applicable to this Order remain valid. If Seller's status under any of the applicable representations and certifications has changed, Seller must notify Buyer.

15. TAXES

The price of this Order includes all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Sales or Use taxes for which Buyer has furnished a valid exemption certificate or a direct pay permit shall not be included.

16. ASSIGNMENT

- A. Seller shall not assign any of its rights under this Order without Buyer's prior, written consent, except as specifically stated in this clause. Seller may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:
 - a. The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and setoff or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller;
 - b. Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.
- B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.
- C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document or any of Buyer's Proprietary information (including this Order) until and unless authorized to do so by Buyer's authorized representative.

17. SUBCONTRACTING

- A. Seller shall not subcontract without the prior written authorization of Buyer for the design or procurement of the whole or any major component of any Product ordered hereunder, and Seller shall require a like agreement from immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.
- B. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

18. INFORMATION OF BUYER AND SELLER

- A. Unless expressly stated otherwise herein, the exchange of information under this Order shall be governed by this Order and, in particular this Clause 23, which supersedes any prior agreement between Buyer and Seller to protect information relating to the purpose of this Order.
- B. Seller shall keep confidential all information, drawings, specifications, or data and return, upon request, all documents furnished by Buyer and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient

performance of this Order, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall make no use, either directly or indirectly, of any such data or any information derived therefrom, except in performing this Order, without obtaining Buyer's written consent.

- C. Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller in connection with the placing or performance of this Order is furnished or disclosed as a part of the consideration for this Order; that such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary; and that Seller shall assert no claims (other than for patent infringement) by reason of the use or disclosure of such information by Buyer, its assigns, or its customers and Seller shall not place any restrictive markings on such information. Any agreement purporting to provide for the confidential treatment of, or limiting the use of or disclosure of, information so furnished or disclosed, must be in writing and signed by Buyer.
- D. If this Order is issued under a U.S. Government contract, subsections B. and C. above shall be deemed deleted and this clause D. shall apply. Each Party agrees to keep confidential and not to disclose to any other person (unless permitted below or elsewhere in this Order) any Proprietary Information received from the other Party in connection with this Order. Proprietary Information shall be all information exchanged under this Order in written or other permanent form which is clearly and conspicuously marked as being proprietary using an appropriate legend. Proprietary Information shall also include information originally disclosed in some other form (e.g., orally or visually) to the extent that the disclosing Party:
 1. Identifies the information as proprietary at the time of original disclosure;
 2. Summarizes the Proprietary Information in writing;
 3. Marks the writing clearly and conspicuously with an appropriate proprietary legend; and
 4. Delivers the writing to the receiving party within thirty (30) days of the original disclosure.The foregoing limitation on disclosure and use shall not apply to data or information which (i) was in the rightful possession of a receiving Party without restriction, prior to the first receipt from the disclosing Party; or (ii) now or hereafter, through no act or failure to act on the part of a receiving Party, becomes generally known and available to the public without restriction; or (iii) is hereafter disclosed and made available to a receiving Party without restriction by others having the right to make such disclosure.
- E. If this Order is issued under a U.S. Government contract, Seller agrees to use Buyer's Proprietary Information only for purposes necessary for

performing this Order, without first obtaining Buyer's written authorization. Seller further hereby grants to Buyer a non-exclusive, irrevocable, worldwide, right and license to copy, modify, use and disclose to the U.S. Government or any higher tier contractor, any information received from Seller, including Proprietary Information, for the performance of this Order and any higher tier contract from which this Subcontract is issued.

- F. All documents and other tangible media (excluding Products) transferred in connection with this Subcontract, together with any copies thereof, are and remain the property of Buyer.
- G. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information shall be construed as granting expressly, by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by Buyer or Buyer's customer, except as specifically set forth herein.
- H. Seller's obligations with respect to information or data disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.

19. SUBCONTRACT DELIVERABLES

Seller agrees and acknowledges that all deliverables, or portions thereof, under this Order ("Deliverable Materials") may be incorporated into deliverables under the next higher tier or prime contract. Seller hereby grants Buyer the right to deliver the Deliverable Materials or any portion thereof under the next higher tier or prime contract. Seller further hereby agrees to deliver the Deliverable Materials under this Order with the appropriate markings required by the government regulations incorporated into this Order

20. INSURANCE

- A. During the entire Order period Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation against Buyer. Seller shall also maintain, at their sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.
- B. Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:
 - a. Commercial General Liability (CGL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.

- b. Automobile Liability (AL) – Combined Single Limit (CSL) \$2,000,000 bodily injury hired and non-owned vehicles.
- C. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- D. General Liability and Automobile Liability insurance coverage shall provide that Buyer is named as an additional insured and if requested by Buyer, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates.
- E. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- F. Buyer and Seller agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negligence of the agents, subcontractors or employees of the indemnified parties.
- G. Additional insurance types and/or limits will be necessary if the work involves extra hazardous operations. The extra hazardous operations include dispensing of medical care, operations involving the nuclear hazard, providing professional engineering advice, large construction projects (above \$5,000,000) hazardous waste, food service, crane operation, work above ground, work below ground, and operations involving demolition or explosives.

21. LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer including all relevant information including, but not limited to, nature of dispute, labor organizations involved, estimated impact on Seller's performance of Buyer's order and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

22. COMPLIANCE WITH LAWS

- A. Seller shall comply with all applicable Federal, State and local laws, statutes, rulings, ordinances, orders, and regulations in effect on the date of this Order.
- B. Seller certifies that the Products called for by this Order have been or will be produced in full compliance with Sections 6, 7, 12, and 15 of the

Fair Labor Standards Act of 1938 (29 U.S. Code 201-219), as amended, and of regulations and under Section 14 thereof.

23. CHOICE OF LAW

Both Parties agree that, irrespective of the place of performance of this Order, this Order will be construed and interpreted according to the law of the state from which this Order is issued, as identified in the Order, excepting that state's laws on conflict of law.

24. EXPORT AND IMPORT COMPLIANCE

- A. Export Compliance. Seller 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 under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller 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 Buyer'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 U.S. immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.
- B. Foreign Personnel/Persons. Seller 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/Buyer. 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 Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph b. shall relieve Seller 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 Seller to violate any provision of the Export Laws and Regulations.
- C. Indemnification. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney's fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph a. Any failure of Seller to comply with the requirements or

any breach of the warranty contained in this Clause shall be a material breach of this Order incorporated into any lower-tier subcontract or purchase order entered into by the Seller for the performance of any part of the work under this Order.

25. RELIANCE

Seller represents and warrants that Seller is an expert fully competent in all phases of the work involved in producing and supporting all Products and performing all services purchased under this Order.

26. RELEASE OF INFORMATION AND ADVERTISING

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use the name "AVX Aircraft" or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

27. HEADINGS

The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.

28. PARTIAL INVALIDITY

If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

29. NONWAIVER

A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

30. COMPLETE AGREEMENT

This Order is the Parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between the Parties, whether such understandings, proposal, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order.

31. RESPONSIBILITY FOR CLAIMS/INDEMNITY

Seller shall, at its own expense, defend, indemnify and hold harmless Buyer from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of Seller, its subcontractors, agents, or employees in the performance of this Order. If Seller fails to defend, hold harmless, and indemnify Buyer as provided in this clause, then Seller shall pay for any damages,

attorney's fees, and any other fees, costs, and expenses that may be incurred by Buyer in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.

32. RELATIONSHIP OF THE PARTIES

The relationship of Seller to Buyer shall be that of an independent contractor and nothing herein contained shall be construed as creating any employer/employee, agency, or other relationship of any kind. Seller's employees, agents or representatives (hereinafter "Employees") performing Services under this Order shall at all times be under Seller's direction and control. Seller shall pay all wages, salaries, and other amounts due its Employees in connection with this Order and shall be responsible for all reports and obligations for its Employees, including, but not limited to, social security and income tax withholdings, unemployment compensation, worker's compensation, and equal employment opportunity reporting.

33. SELLER'S EMPLOYEES

- A. All personnel assigned by Seller to perform the Services to be furnished hereunder shall be capable, skilled, qualified and competent to perform such Services.
- B. At all times Seller shall use suitable safety precautions including, as a minimum, those safety precautions issued in instructions and directions by Buyer or Buyer's customer. Such safety precautions shall include, but not be limited to, the use of proper materials, tools, equipment and other safeguards, as appropriate.
- C. Seller and Seller's personnel shall also comply with all applicable rules, regulations and orders of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 29 USC 651-678), as amended, and all applicable safety laws, rules, regulations and orders of the United States and the State wherein this Order is being performed. Seller agrees to defend, hold harmless, and indemnify Buyer from and against any noncompliance by Seller with any of the above laws, rules, regulations and orders as may be applicable.
- D. If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, at times to be specified by Buyer, at Seller's expense (unless otherwise herein specified), for attendance at a training session or sessions concerning Buyer's or its customer's standards and procedures relating to on-site rules of behavior, work schedule, security procedures and any other standards and procedures adhered to by Buyer's or customer's employees.

34. CITIZENSHIP ELIGIBILITY REQUIREMENTS

- A. Employees of Seller who perform Services under this Order shall be citizens of the United States of America (U.S.), its possessions or territories, or

lawful permanent residents as defined by 8 United States Code (U.S.C.) 1101(a)(20), or protected individuals as defined by 8 U.S.C. 1324b(a)(3).

- B. Upon the request of Buyer, Seller shall submit verification of citizenship, lawful permanent resident status, protected individual status, or employment eligibility status to Buyer for each employee who will perform Services under this Order. Examples of documents that may be considered satisfactory are state birth certificates, U.S. passports, U.S. naturalization papers, and "green" cards (I-551) issued by the U.S. Department of Immigration and Naturalization. Consistent with IRCA, the order of presentment of such documents shall be the sole prerogative of Seller's employees. If these documents are not available, a compilation of other evidence may suffice.
- C. Employees of Seller not listed on the Certification of Employees or providing individual proof of U.S. citizenship, or other status as described in subparagraph B. above, may be denied access to Buyer's premises.

35. BADGES AND PLANT SECURITY

If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, at times to be specified by Buyer, so that Buyer may provide said personnel with identification badges, which will permit such personnel to enter and leave the premises where the work is to be performed. Seller further agrees that said badges shall be worn by said personnel, in a conspicuous place upon the person of each of its personnel, when such personnel are in, on, or about the premises. Seller further agrees to abide by and comply with, and require its Employees to abide by and comply with, such rules and regulations pertaining to plant security as may be prescribed by Buyer and/or the Buyer's Customer.

36. CONFLICT OF INTEREST

Seller warrants that no conflict of interest exists between the Services and Products to be provided under this Order and Seller's other activities. Seller shall immediately advise Buyer of any such conflict of interest or potential conflict of interest which arises during performance of this Order.

37. RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DFARS 252.222-7006).

(Applicable to all subcontracts, task orders and Purchase Orders at every tier that utilize funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act or subsequent DoD appropriations acts for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of \$1 million except for commercial items and commercially available off-the-shelf items.)

- A. Seller agrees not to –

- a. Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or
- b. Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

- B. Seller agrees to flow down, this provision in all subcontracts, task orders and Purchase Orders at every tier that will be funded with in excess of \$1 million of Fiscal Year 2010 funds, except for those for commercial items, including commercially available off-the-shelf items.
- C. Failure to comply with this provision will be considered a material breach and, at the sole discretion of the Buyer, may result in termination for default or cause.

38. INFRINGEMENT INDEMNIFICATION

- A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will defend, indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under this Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.
- B. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.
- C. If the use or sale of the Product is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer and extend this indemnification thereto.
- D. Seller's obligation shall not apply to Products

manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order, which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with Products not delivered by Seller if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.

- E. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

39. INDEMNITY FOR DEFECTIVE COST OR PRICING DATA

Seller hereby indemnifies and agrees to hold Buyer harmless from all price or cost reductions made pursuant to the FAR 52.215-10 "Price Reduction for Defective Cost or Pricing Data" clause or the FAR

52.215-11 "Price Reduction for Defective Cost or Pricing Data – Modifications" clause, or any other provisions of the prime contract or higher-tier subcontract under which this Order is issued, and from and against any and all cost disallowances or non-recognitions of costs under such prime contract or subcontract, if such price or cost reduction, cost disallowance or non-recognition of costs arises or results directly or indirectly because:

- A. Seller, or any Seller subcontractor at any tier or prospective subcontractor hereunder, furnished cost or pricing data that were not complete, accurate and current as certified in Seller's Certificate of Current Cost or Pricing Data; or
- B. Seller, or any Seller subcontractor or prospective subcontractor at any tier hereunder, furnished data of any description that were not accurate.

Accordingly, without limitation of the foregoing, the price of this Order shall be reduced and the Order shall be modified in writing as necessary to reflect the full amount of any and all such price or cost reductions and any and all such cost disallowances or non-recognitions of costs. The rights and remedies of Buyer under or additional to any other or further rights and remedies provided under this Order or at law or in equity.

40. FAR/DFARS PROVISIONS/CLAUSES

- A. The FAR and DFARS clauses cited in paragraph C. below are incorporated herein by reference at the effective version found in Buyer's Prime Contract, or higher-tier subcontract under which this Order is a subcontract. The listed FAR and DFARS clauses are incorporated herein as if set forth in full text unless made inapplicable by its corresponding note, if any. Whenever said clauses include a requirement for the resolution of disputes between the parties in accordance with the

"Disputes" clause herein, the dispute shall be disposed of in accordance with the clause entitled "Disputes" in these Terms and Conditions

- B. Where necessary to derive proper meaning in a subcontract situation from these clauses, "Contractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative (2) when title to property is to be transferred directly to the Government, and (3) in FAR 52.227-1, 52.227-2, and DFARS 252.227-7013 and 252.227-7014. To implement the increase in the simplified acquisition threshold from \$100,000 to \$150,000 for orders under prime contracts issued on or after October 1, 2010, all references to the "simplified acquisition threshold" or the amount of \$100,000, shall mean the new threshold of \$150,000, except in FAR 52.222-35. Seller shall be responsible for confirming with Buyer whether new orders are under prime contracts issued on or after October 1,2010.

C. FAR and DFAR clauses:

Clause	FAR Reference
Gratuities Note: As used in this clause, "Government" means "Buyer" (except "Government" means "Buyer or Government" in the phrase "to any officer or employee of the Government"), "hearing" means opportunity to be heard, and "in any competent court", means "pursuant to the Disputes clause contained herein."	52.203-3
Restrictions on Subcontractor Sales to the Government NOTE: Applicable to any Order greater than \$100,000.	52.203-6
Anti-Kickback Procedures NOTE: The substance of this clause, except subparagraph (c)(1), is applicable to any Order and all lower-tier subcontracts which exceed \$100,000. Seller shall immediately notify Buyer of any alleged violations involving any of Buyer's or Seller's employees.	52.203-7
Limitation on Payments to Influence Certain Federal Transactions NOTE: Applicable to any Order greater than \$100,000.	52.203-12
Contractor Code of Business Ethics and Conduct NOTE: Applicable to any Order greater than \$5,000,000 and period of performance greater than 120 days (commercial items exempt). NOTE: Notwithstanding any alterations to this clause to	52.203-13

Clause	FAR Reference
reflect the relationship between Buyer and Seller, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the Office of the Inspector General of the agency issuing the prime contract under which this subcontract is being issued with a copy to the Contracting Officer of the prime contract.	
Display of DoD Hotline Poster	52.203-14
NOTE: Applicable to any Order greater than \$5,000,000 and period of performance greater than 120 days (commercial items exempt).	
Security Requirements	52.204-2
NOTE: Delete paragraph (c.) NOTE: Applicable if the Order involves access to classified information.	
Personal Identity Verification of Contractor Personnel	52.204-9
Material Requirements	52.211-5
Defense Priority and Allocation Requirements	52.211-15
Audit and Records – Negotiation	52.215-2
NOTE: Applicable to any Order greater than \$100,000	
Price Reduction for Defective Cost or Pricing Data	52.215-10
NOTE: Applicable to any Order when cost or pricing data are required.	
Price Reduction for Defective Cost or Pricing Data – Modifications	52.215-11
NOTE: Applicable if FAR 52.215-10 is not applicable to this Order.	
Subcontractor Cost or Pricing Data	52.215-12
NOTE: Applicable to any Order when cost or pricing data are required.	
Subcontractor Cost or Pricing Data – Modifications	52.215-13
NOTE: Applicable if FAR 52.215-12 is not applicable to this Order.	
Integrity of Unit Prices	52.215-14
NOTE: Delete paragraph (b) NOTE: Applicable to any Order greater than \$100,000.	
Pension Adjustments and Asset Reversions	52.215-15
NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	
Facilities Capital Cost of Money	52.215-16
NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and the Seller proposed Facilities Capital Cost of Money in its offer.	
Waiver of Facilities Capital Cost of Money	52.215-17
NOTE: Applicable only if this Order is subject to the Cost	

Clause	FAR Reference
Principles at FAR Subpart 31.2 and the Seller did not propose Facilities Capital Cost of Money in its offer.	
Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	52.215-18
NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	
Notification of Ownership Changes	52.215-19
NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2.	
Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications	52.215-21
Limitation on Pass-Through Charges	52.215-23
NOTE: Applicable to any Order when the total estimated Order value exceeds the threshold for obtaining cost or pricing data in FAR 15.403-4 and the contemplated contract type is expected to be any contract type except those contract types listed in FAR 15.408(n)(2)(i)(B)(2). Seller shall notify Buyer in writing if: (1) Seller changes the amount of subcontract effort after award such that it exceeds 70% of the total cost of work to be performed under this Order. The notification shall identify the revised cost of the subcontract effort and shall include verification that Seller will provide added value; or; (2) Any subcontractor changes the amount of lower-tier subcontractor effort such that it exceeds 70% of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).	
Incentive Price Revision – Firm Target	52.216-16
NOTE: Applicable to any FPIF Order or line item.	
Incentive Price Revision – Successive Targets	52.216-17
NOTE: Applicable to any FPIS Order or line item.	
Utilization of Small Business Concerns	52.219-8
Small Business Subcontracting Plan	52.219-9
NOTE: Applicable to any Order greater than \$650,000 or lower threshold if effective under older higher-tier contract.	
Notice to the Government of Labor Disputes	52.222-1
Contract Work Hours and Safety Standards Act – Overtime Compensation	52.222-4
NOTE: Applicable to all subcontracts at any tier	
Walsh-Healey Public Contracts Act	52.222-20
NOTE: Applicable to any Order greater than \$15,000.	

Clause	FAR Reference
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-35
NOTE: Applicable to any Order of \$100,000 or more.	
Affirmative Action for Workers With Disabilities	52.222-36
NOTE: Applicable to any Order greater than \$15,000.	
Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-37
NOTE: Applicable to any Order of \$100,000 or more.	
Notification of Employee Rights Under the National Labor Relations Act	52.222-40
Combating Trafficking in Persons	52.222-50
Employment Eligibility Verification	52.222-54
NOTE: Applicable to any Order greater than \$3,000 with a period of performance of 120 days or greater.	
Hazardous Material Identification and Material Safety Data	52.223-3
Notice of Radioactive Materials	52.223-7
Ozone-Depleting Substances	52.223-11
Toxic Chemical Release Reporting	52.223-14
Encouraging Contractor Policies to Ban Text Messaging While Driving	52.223-18
Privacy Act	52.224-2
Buy American Act – Supplies	52.225-1
Duty-Free Entry	52.225-8
Restrictions on Certain Foreign Purchases	52.225-13
Utilization of Indian Organizations and Indian-Owned Economic Enterprises	52.226-1
Authorization and Consent	52.227-1
NOTE: Applicable only if contained in the controlling prime contract and to any Order greater than \$100,000.	
Notice and Assistance Regarding Patent and Copyright Infringement	52.227-2
NOTE: Applicable to any order of \$100,000 or more except when both complete performance and delivery are outside the United States.	
Refund of Royalties	52.227-9
Filing of Patent Applications – Classified Subject Matter	52.227-10
Patent Rights – Ownership by the Contractor	52.227-11
Insurance – Work on a Government Installation	52.228-5
NOTE: Applicable on any Order that requires work on a	

Clause	FAR Reference
Government installation.	
Interest	52.232-17
Industrial Resources Developed Under Defense Production Act Title III	52.234-1
Accident Prevention	52.236-13
Protection of Government Buildings, Equipment, and Vegetation	52.237-2
Bankruptcy	52.242-13
Stop Work Order	52.242-15
NOTE: The 90-day period in the first and fourth sentences of paragraph (a) is changed to 120 days.	
Competition in Subcontracting	52.244-5
Subcontracts for Commercial Items	52.244-6
Government Property and Alternate I	52.245-1
NOTE: Applicable to any Order if Government property is furnished to Seller.	
NOTE: In the phrases "Government Property", "Government-furnished property", and in references to title to property, "Government" shall not mean "Buyer". The following is added as paragraph (n): "Contractor shall provide Buyer immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system."	
Inspection of Services – Fixed-Price	52.246-4
Preference for U.S. Flag Air Carriers	52.247-63
NOTE: Applicable to any Order and lower-tier subcontracts that involve international air transportation.	
Preference for Privately Owned U.S.-Flag Commercial Vessels	52.247-64
Value Engineering	52.248-1
NOTE: Applicable to any Order of \$100,000 or more except as specified in FAR 48.201(a).	
NOTE: Substitute "Buyer" for "Contracting Officer" and "Government" throughout, except where used in the term "Government costs" and in paragraph (m) where "Government" shall mean "Government and/or Buyer".	