

TERMS AND CONDITIONS

Manufactured Items and Services

For Commercial Off the Shelf (COTS) Items on Government Contract

1. **Entire Agreement/Acceptance:** These terms, the terms on the face of this Purchase Order and the Battelle's ("Buyer") supplemental terms and conditions attached hereto (if any) constitute the entire agreement between the parties, and no other additional or conflicting terms submitted by Seller shall be deemed a part hereof unless accepted in writing by Buyer's Purchasing Agent. Seller's commencement of performance shall constitute acceptance of these terms and conditions without modification. Any change, amendment or modification must be in writing and executed by Buyer's authorized Purchasing Agent.
2. **Definitions.** As used throughout this supplement, the term "Buyer" shall mean Battelle Memorial Institute and "Seller" shall mean the supplier whose name appears on the attached Purchase Order. The term "Purchase Order" shall mean the attached Purchase Order as well as this Supplement.
3. **Independent Contractor.**
 - a. It is agreed that in the conduct of the work under this Purchase Order, the Seller is acting in the capacity of an independent contractor and not as an agent or employee of the Buyer.
 - b. Seller shall immediately notify Buyer's Procurement Representative if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
 - c. Seller shall immediately notify Buyer's Procurement Representative if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
4. **Assignment.** This Purchase Order may not be assigned, in whole or in part, nor may any assignment of any money, due or to become due, be made by Seller, without, in each case, the prior written consent of Buyer.
5. **Order Acknowledgment/Delivery Confirmation:** Upon receipt of an order from Battelle with an assigned due date, the supplier shall provide written acknowledgement of receipt of the order. The Seller shall also provide confirmation of its acceptance of the delivery date or provide Battelle with the best possible delivery date that can be expected to be valid.
6. **Defense Priorities Allocation System (DPAS) orders:** This order is DPAS rated as indicated on the face of the Purchase Order. This is a rated order certified for national defense, emergency preparedness, and/or energy program use, and you shall follow all of the requirements of the Defense Priorities and Allocations System regulation (DPAS)(15 CFR 700). You must either accept or reject this order. Acceptance or rejection of this order must be provided either in writing or electronically to the Purchasing Agent whose name appears in the signature block for this order within ten (10) working days of your receipt of this order if it is a DX rated order or within fifteen (15) working days if it is a DO rated order. If you reject this order, your rejection must explain the reasons for your rejection.
7. **Purchase Order Changes:**
 - a. Buyer may, at any time, by a written order and without notice to the sureties, if any, make changes within the general scope of this Purchase Order.

- b. Only Buyer's Procurement Representative has authority on behalf of Buyer to make changes to this Purchase Order. All amendments must be identified in writing and executed by the parties.
- c. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Purchase Order, whether changed or not changed by any such order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Seller of a written notification of change from the Buyer. Buyer may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Where the cost of property made obsolete or excess as a result of a change is included in the Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.
- d. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Purchase Order.
- e. Nothing in this clause shall excuse the Seller from proceeding with the Purchase Order as changed.

8. Termination:

- a. Unless Buyer has signed a Non-Cancelable/Non-Returnable (NCNR) agreement, Buyer may at any time, by written notice to the Seller, terminate this Purchase Order in whole or in part either for the convenience of Buyer.
 - i. In the event of termination for convenience:
 - 1. Seller shall immediately stop all Work hereunder and shall immediately cause all of its employees, agents, and subcontractors to stop work.
 - 2. Buyer shall be liable for payments to Seller only for cost for performance rendered up to the effective date of termination.
 - 3. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided by Seller.
 - 4. In no event will payments be made for anticipatory profits or consequential damages as a result of a termination of this Agreement.
- b. Buyer may terminate this Purchase Order in whole or in part for default if:
 - i. Seller fails to deliver goods or services conforming to the requirements of this order, or
 - ii. In the event of the suspension, or debarment of Seller from participation in Federal or state procurement(s).
 - iii. In the event that this order is terminated for default, Seller shall be liable to pay to Buyer all amounts incurred for re-procurement of items or services provided for in this Purchase Order, in addition to any other remedies provided by law or this Agreement

9. Delivery:

- a. Schedule:
 - i. Purchase Orders – Delivery schedules will be provided on the face of the contract.
 - ii. Purchase Contracts - Delivery shall be specified by a Purchase Order Release referencing the purchase contract number. All prices, terms and conditions are governed by the content of the contract; release shall only specify the delivery requirements.
- b. Shipping:
 - i. Unless otherwise specified on the PO, all Work is to be packed in accordance with commercially reasonable standards.
 - ii. Special Handling Instructions:
 - 1. Items requiring special handling must be identified with specific industry standard markings on each package.
 - 2. **Electrostatic Discharge (ESD) Protection.** Components and assemblies, which are susceptible to electrostatic discharge damage, shall be handled and

packaged to prevent ESD damage utilizing MIL-STD-1686, ANSI/ESD S20.20, or EIA/JEDEC JESD625 as a guideline or Buyer-acceptable equivalent. ESD protective containers shall be marked as containing ESD sensitive devices.

- iii. All deliveries shall be "F.O.B. Origin – Freight Collect" unless specified otherwise on the face of the purchase order.
 - iv. **Do not ship via parcel post, certified mail or unregistered mail if shipment has value in excess of \$500.00 or via registered mail if in excess of \$5000.00. Send bill of lading, express receipt, packing list or shipping memorandum for each shipment. Show PO/PO release number on all packages, invoices, shipping bills, etc.**
 - v. **Insurance – No insurance charges which increase shipping cost shall be allowed.**
 - vi. Each shipment shall be accompanied by the appropriate shipping documentation such as Bill of Lading, Express receipt, Packing List, or Shipping Memorandum and such documentation shall include the Buyer's corresponding PO number.
 - vii. Seller shall mark containers or packages with appropriate lifting, loading, and shipping information including the Buyer's PO number.
 - viii. Before shipping hazardous materials to Buyer, Seller agrees to furnish Buyer with sufficient advance written notice (including appropriate labels on goods, containers, and packaging) of any special handling instructions needed to advise carriers, Buyer, and their respective employees of the standard care required to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers, and packaging.
- c. **On-Time Delivery:** On-Time Delivery is considered as no more than seven (7) days early and zero (0) days late. Deliveries made more than seven (7) working days prior to the designated delivery date will be considered early and may be returned at the Seller's expense for delivery on the designated delivery date. Early delivery may also affect timely payment of any related invoice(s). Any request for extension of time of delivery from that confirmed by the Seller on the original order must be approved by Battelle with such extension applying only to the particular item or shipment affected.
- d. **Late Deliveries:**
- i. When applicable, delivery must be made as ordered or as directed by Battelle and confirmed by the Seller when not in conflict with the original order. The decisions of Battelle as to reasonable compliance with delivery terms shall be final. The burden of proof of delay in receipt of goods by Battelle shall rest with the Seller.
 - ii. Seller must provide Battelle immediate notice with a minimum of 48 hours notice when it is determined that any delivery is expected to be a late delivery.
 - iii. Suppliers with a delivery late to the confirmed delivery date will assume any additional freight or premium cost incurred in the effort to improve a late delivery in addition to any and all other rights and remedies under this agreement

10. Certificate of Conformance: If a Certificate of Conformance is indicated as required on the purchase document, the COC must contain at a minimum the Seller's name, manufacturer (if other than Seller), Battelle PO#, Battelle Item Identification (Part) Number with revision level (if applicable), Manufacturer's part number with revision level (if applicable), serial numbers (if applicable), batch identification of the item such as date code, lot, etc.; quantity of items covered on COC, signature of Seller's representative, and date of certification.

11. Material Safety Data Sheet: Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder or its State approved counterpart.

12. Packing Slips: All packing slips must reference the purchase order number, line number, schedule number, Battelle's part number (item ID number), item description, quantity ordered, quantity shipped, name of Seller

and any additionally required paperwork. Packing slips for all parts must also reference, the Manufacturer's part number and revision or change level identifier.

13. Invoices –

- a. Submit in duplicate to “**Attention: Accounts Payable**” or email to **accountspayable@battelle.org**.
- b. Purchase order number is required on the invoice. Failure to include PO number on invoice may delay payment.
- c. Invoice number is required on all invoices.
- d. Seller is to provide a separate invoice for each purchase order.
- e. All applicable federal, state, and local taxes, duties, and similar fees imposed by any government shall be separately itemized on Seller's invoice. Buyer is currently exempt from sales tax on tangible items delivered to or taxable service performed in CO, CT, FL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, RI, TN, TX, UT, VT, WV and WI. In UT, Buyer is cannot issue an exemption certificate unless the total invoice exceeds USD 1,000. In NM and VA, Buyer is currently exempt only for purchases of tangible property and not purchases of services. Invoices for PO's subject to the aforementioned exemptions shall not contain sales tax. Any sales tax included in the invoice will not be paid by Buyer. Buyer will provide an exemption certificate upon Seller's request.

14. Tax Liability: Payments made to the Seller for the Work performed under this Contract may be subject to tax withholding requirements of an applicable jurisdiction. Seller shall cooperate with Buyer by completing any required tax withholding forms. If required by an applicable jurisdiction, Buyer will withhold from Seller's payment the applicable tax withholding amount.

15. Returns: Parts received at Battelle that do not meet the required specifications will be rejected and returned in accordance with the Battelle RTV process in coordination with the Seller's return process. The freight costs associated with the return and replacement of wrong or defective parts shall be the burden of the Seller.

16. Export Control:

- a. Seller agrees that it shall comply with all US laws and regulations applicable to export of products, materials, items and/or technical data, and shall not export or transmit any such products, materials, items, technical data, or the direct product of technical data received from Buyer outside the US or to a Foreign Person unless Seller has obtained in advance all required licenses, Contracts, or other authorizations from the US Government. Exports of technical data include, without limitation, disclosing technical data to a Foreign Person whether in the US or abroad.
- b. Any documents provided by Battelle may contain technical data whose export is restricted by U.S. law. Violators of export control laws may be subject to severe legal penalties. These documents may not be disseminated outside the United States or the contents disclosed to non-U.S. persons except in accordance with applicable laws and regulation and after obtaining any required authorizations.
- c. Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations.
- d. If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishings defense services, Seller represents that it is registered with the Office of Defense Trade Controls as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- e. Where Seller is a signatory under a Buyer export license or export Contract (e.g., TAA, MLA), Seller shall provide prompt notification to the Buyer's Procurement Representative in the event of changed circumstances which may include, but are not limited to, ineligibility, violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect Seller's performance under this Contract.

- f. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

17. Product Changes:

- a. The Seller must provide Battelle notice of intended changes or planned End-of-Life as soon as they are known for any components being purchased by Battelle in order to allow Battelle sufficient time to place a Last-Time-Buy to meet future requirements of the component.
- b. Seller must include the requirements of this paragraph in any lower-tier purchase order issued by the Seller to support product being sold to Battelle.

18. Original Equipment Manufacturer (OEM) Sources:

- a. Unless Battelle provides written pre-authorization approving the use of third-party parts and/or components, Seller may only utilize parts and/or components sold individually or as part of a larger assembly from the OEM or the OEM's franchised distributor, in parts sold to Battelle. Sale of third-party parts or use of third-party parts in products being sold to Battelle is not authorized without prior written authorization from Battelle. "Third-party" as used here refers to any non-OEM or non-franchised source.
- b. Unless the Seller is the OEM or an OEM franchised distributor, the Seller must obtain Certificates of Conformance (COC) for all Electronic, Electrical, and Electro-mechanical (EEE) parts/components procured by the Seller for sale to Battelle or for use in the Seller's product sold to Battelle. The Seller must retain all COCs and all documents tracing the purchase back to the OEM or the OEM's franchised distributor for the EEE part/component. must be retained for each EEE component. The COC's and traceability documents must be maintained on file and be available for audit by Battelle per the record retention requirements. Should the Seller be unable to obtain the COC from their supplier, they must notify Battelle immediately for further guidance.
- c. In order to obtain authorization from Battelle for the use of third-party parts, the Seller must contact Battelle, identify the components being procured from a third-party, and provide specific details of the procedures and/or processes to be used by the Seller to determine the authenticity, functionality, and condition of the components.
- d. In the event that Work delivered under this Contract constitutes or includes components from unauthorized sources, Seller shall, at its expense, promptly replace such unauthorized components with components from authorized sources conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to the removal and replacement of the unauthorized components, including without limitation Buyer's costs of removing the unauthorized components, of reinserting replacement components and of any testing necessitated by the reinstallation of components after the unauthorized components have been exchanged. The remedies in the paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this contract.
- e. This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- f. The Seller shall flow the substance of this clause, including this sentence, in all sub-tier contracts for work performed under this procurement document.

19. Shelf-Life and Date Coded Items:

- a. Unless otherwise specified in this Contract, any goods delivered under this Contract shall consist of new materials. Used, reconditioned or remanufactured goods will not be delivered to the Buyer unless the Buyer expressly agrees in writing to accept such goods prior to delivery.
- b. Items with shelf-life recommendations must have a minimum of $\frac{3}{4}$ of the useable life span remaining at the time of receipt at Battelle. For non-shelf-life items that are date coded, they must be in new (unused) condition and are not to exceed 2-years from the date of manufacture.

Battelle will not accept materials in violation of the shelf-life and date code requirements without prior written approval from Battelle.

20. Substitutions: Substitutions/alternates for commercial items are not authorized without prior approval.

21. Nonconforming Product:

- a. The Seller shall not use dispositions of Use-As-Is or Repair except as outlined below if-
 - i. The product is produced to Battelle design, or
 - ii. The nonconformity results in a departure from the contract requirements.
- b. For unshipped product, The SELLER and sub-tier suppliers are delegated authority to rework minor nonconformities provided the reworked material or product is verified to be in full conformance with the material or product requirements. Any major nonconformance to a drawing or specification requirement must be submitted to Battelle's Quality Organization for Buyer material review and disposition. Copies of all Material Review actions processed as Use-As-Is or Repair for a given unit shall be provided with the Acceptance Test report and/or final documentation of the product. Shipment of nonconforming material or product is not allowed until Battelle and Seller material review actions have been completed and written approval has been provided by Battelle.
- c. Acceptance of any non-conforming Work shall not bind Battelle to accept future shipments of non-conforming Work, nor deprive it of the right to return non-conforming Work already accepted. Non-conforming work, if rejected, may be returned to Seller at Seller's expense for transportation both ways, and no substitution or replacement shall be made unless authorized by Buyer.
- d. For shipped product, Seller and sub-tier suppliers are required to notify Battelle immediately on all known nonconforming product which has already shipped to Battelle and/or Battelle's customers. Notification shall be in writing and shall include a clear description of the nonconformity, parts affected, customer and/or Seller part numbers, quantity, and date(s) delivered.

22. Cost Recovery: Seller shall be responsible for reasonable costs associated with the replacement and/or repair of defective and/or nonconforming items or unapproved substitutions. These costs may include but are not limited to the following: The stop and re-start of production, shipping fees, labor costs that may include overtime premium, expedited material costs, and re-inspection costs associated with the replacement and/or repair of defective and/or non-conforming items. Aforementioned costs will be imposed for quality issues determined to be caused by the supplier's process or workmanship. The aforementioned costs will be imposed for quality issues determined to be caused by the Supplier's process or workmanship. Upon receipt of a detailed cost invoice from Battelle, Seller shall promptly remit payment to Battelle.

23. Consignment Program: Battelle reserves the right to discuss with the seller the requirements necessary to enter into an inventory consignment agreement before or after the award of any contract. Consignment would mean that the seller would hold inventory within the Battelle facility at an agreed upon quantity with an agreed upon liability for finished goods, WIP, and raw material for the duration of the contract.

24. Quality Management System:

- b. The supplier shall implement and maintain a Quality Management System (QMS) which shall address all products and services covered by this contract that complies with or is equivalent to the quality requirements specified in ISO 9001, ISO 13485, AS9100 or 21 CFR Part 820. Equivalents to these standards requires written pre-approval from Battelle
- c. The supplier shall demonstrate compliance with a QMS by either maintaining an independent registration with an accredited registrar or submitting to semiannual quality management system audits by Battelle or its designated representative. The supplier must notify Battelle within 30 days of any change in their certification status.

- d. The supplier shall demonstrate compliance with this section by providing, upon request, a copy of their current registration certificate or the results of any audit performed in order to maintain their quality system certification.
- e. Deviation from this requirement may be granted on a case by case basis. However, Supplier must notify Battelle in writing immediately of any deviation from this requirement. Approval from Battelle must be granted in writing.

- 25. Warranty and Inspection:** (a) Goods. In addition to the warranties provided for under the Uniform Commercial Code, Seller warrants that all goods furnished under this Agreement will be free from defects, will conform with all requirements of this Order and will be free from defects in design. Any goods corrected or replaced will be covered by this warranty. Seller agrees to notify Buyer immediately upon becoming aware of a potential problem with goods previously delivered to Buyer. (b) Services. Seller warrants that all services will be performed with the highest standard of professional service, be free from defects, conform to the requirements of this Purchase Order, and be performed in strict compliance with any specified regulatory or international standards. Any services corrected or re-performed will be covered by this warranty. Buyer's rights regarding Inspection and acceptance of services under this agreement shall be equivalent to those provided for inspection of goods under the Uniform Commercial Code. Nonconforming goods or services will be replaced, corrected or re-performed at Seller's expense.
- 26. Insurance and Indemnity:** Seller shall maintain workers' compensation (statutory minimum) and comprehensive general liability insurance in form and amount(s) reasonable and customary for the industry in which Seller is engaged. Seller's insurance shall not be deemed to limit Seller's liability. Seller agrees to indemnify, defend and hold harmless Buyer, its officers, trustees, agents and employees, from any and all damages, liabilities, claims, suits, demands, and all expenses and costs including reasonable attorney's fees and costs, arising out of the Seller's performance hereunder that are caused, in whole or in part, by the negligent or wrongful acts or omissions of Seller or anyone employed by Seller for whose acts Seller may be liable.
- 27. Patent Indemnity.** Seller warrants that the work performed or delivered under this Purchase Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless Battelle and Battelle's Client from and against any such claims.
- 28. Compliance with Laws:** Seller shall comply with all applicable federal, state and local laws, regulations and ordinances. Seller will indemnify and hold Buyer and its directors, officers, employees and representatives harmless from and against any claims, demands, suits, losses, damages, costs and expenses arising out of any non-compliance, violation or alleged non-compliance or violation by Seller of any such laws, regulations and/or ordinances. Seller specifically acknowledges the importance of strict adherence to those laws and professional standards related to doing business for the Federal government, adhering to ethical business practices, complying with anti-fraud requirements and assuring scientific integrity.
- 29. Disputes.** All disputes under this Purchase Order which are not resolved by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Purchase Order as directed by Buyer. Any such dispute must be raised within one (1) year of its accrual.
- 30. Buyer Rights and Remedies:** The rights and remedies of Buyer set forth herein are cumulative and in addition to any other rights or remedies that Buyer may have at law and/or in equity.
- 31. Applicable Laws:** The agreement shall be construed in accordance with the laws of and enforced within the jurisdiction of the State of Ohio, without regard to its principles of conflicts of laws.

- 32. Gratuities:** Seller shall not offer or give any bribe, gratuity, or kickback of any type or nature to any person or entity for the purpose of obtaining or rewarding favorable treatment as Buyer's supplier.
- 33. Access:** If Seller is granted access to Buyer facilities, Seller agrees to execute a Buyer access agreement and shall comply with all Buyer rules and policies regarding conduct, security, and safety.
- 34. Public Releases:** No public releases including those for news, advertising, information, technical or scientific purposes relating to this Purchase Order shall be issued by Seller or by any second or lower tier contractor. Buyer does not endorse products or services. Accordingly, Seller shall not use or imply Buyer's or its client's name, or use Buyer's or its client's information or reports, for advertising, promotional purposes, raising of capital, recommending investments, sale of securities or in any way that implies endorsement by Buyer.
- 35. Compliance:** Failure to comply with any of these terms and conditions shall be considered sufficient reason for refusal to accept delivery of the goods.