

# HARRIS COMMERCIAL PROVISIONS—SERVICES (COMMERCIAL PROGRAMS)

## 1. DEFINITIONS

As used in this Purchase Order/Subcontract:

- a. "Prime Contract" means the Contract existing between Harris and the Harris Customer (if any).
- b. "This Purchase Order" or "this Contract" or "this Agreement" or "This Order" means the contractual instrument in which these General Provisions are incorporated.
- c. "Subcontract" means Purchase Orders and other similar instruments, including changes and modifications hereto.
- d. "Seller" means Contractor or Subcontractor.
- e. "Buyer" or "Harris" means the Harris legal entity issuing this Purchase Order.
- f. The terms "supplies," "materials," "items," "products," "articles," and "components" may be used interchangeably throughout these provisions and the Purchase Order to refer to products to be provided by the Seller.

## 2. ENTIRE AGREEMENT

This Purchase Order constitutes the entire agreement between the parties with respect to its subject matter and to all transactions related thereto and supersedes all proposals, oral or written, or negotiations, and all other communications, prior or contemporaneous thereto, between the parties with respect to such subject matter or such transactions including, without limitation, any prior or contemporaneous course of dealing, usage of trade or course of performance. The parties acknowledge and agree that entering into this transaction they have not relied upon any representations other than those explicitly set forth in this Purchase Order and each party acknowledges and agrees that the representatives or agents of the other party cannot make any warranties or representations not specifically included within the written provisions of this Purchase Order. Any term or condition which is, or may be, asserted as material by any party, and which is not expressly stated in this Purchase Order, shall not be within this Purchase Order or binding on the parties hereto. Each party waives all defenses with regard to any such term and condition and no amendment to this Purchase Order shall be valid and binding unless in writing and signed by each party hereto.

## 3. ACCEPTANCE—MODIFICATION OF TERMS

The Purchase Order may be accepted only by Seller's agreement to all of the terms and conditions which are incorporated or added as supplements or attachments thereto. Acceptance may be made by executing the acknowledgment copy attached hereto and returning it to Harris or by part performance hereunder, and any such acceptance shall constitute an unqualified agreement to the terms and conditions set forth herein unless otherwise modified in writing by the parties. No charges beyond the Contract price herein specified shall be allowed except with the written consent of Harris. No additional or differing terms and conditions proposed by the Seller in accepting this Purchase Order shall be binding upon Harris unless accepted in writing by Harris, and no other addition, alteration, or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Harris and Seller.

## 4. CHANGES

- a. Harris may, at any time, by written notice or Order:
  - 1) Make changes in the shipping and packing instructions;
  - 2) Increase or decrease the quantity of work or services ordered;
  - 3) Change the drawings, designs, statement of work, or specifications;
  - 4) Change the place of inspection, delivery, or acceptance;
  - 5) Change the amount of Harris furnished property;
  - 6) Change work or service schedules.
- b. If any change causes a variation in the cost of performance or the time required for performance, an equitable adjustment shall be made in this Purchase Order price and/or delivery schedule

and this Purchase Order shall be modified in writing accordingly. Any claim for adjustment under this clause must be asserted in writing within twenty-one (21) days from the date the change is ordered. However, if Harris decides the facts justify such action, it may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Pending such adjustment, Seller shall proceed in accordance with such change notice or Order. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes."

- c. Harris engineering and technical personnel may assist or give technical advice in an exchange of information with Seller's personnel concerning the articles to be furnished under this Purchase Order. Such exchange of information or advice shall not authorize the Seller to change any of the terms, conditions, or the provisions of this Purchase Order, nor shall such assistance or technical advice operate as a waiver or relinquishment of any rights reserved to Harris hereunder or at law. Except as otherwise provided in this Purchase Order, no changes shall be made unless such change is authorized in writing by Harris.

## 5. SUBCONTRACTS AND PURCHASE ORDERS

Seller shall not subcontract without the prior written authorization of Harris for the work or services ordered hereunder, and the Seller shall require a like agreement from immediate and lower-tier suppliers. This is not a restriction on use of authorized distributors or industrial suppliers for components. Harris must approve in advance any Subcontractors who will be providing some or all of the services if the Purchase Order is primarily for the provision of services. Harris' authorization to Subcontract 1) shall not constitute a determination of the acceptability of any Subcontract terms or conditions or the acceptability of any Subcontract price or any amounts paid under the Subcontract, and 2) shall not relieve Seller of any responsibility arising under the Purchase Order, regardless of whether certain work is performed directly by Seller or by a Subcontractor.

## 6. DEFAULT

- a. Time is of the essence in this Purchase Order.
- b. Harris may, by written notices of default to the Seller, terminate this Purchase Order or any part thereof if the Seller fails to perform any of the other provisions of this Purchase Order or to make progress so as to endanger performance of this Purchase Order in accordance with its terms and does not correct such failure within a period of ten (10) days (or such longer period as Harris may authorize in writing) after receipt of notice from Harris specifying such failure.
- c. If, after notice of default under the provisions of b. above, it is determined that Seller was not in default, said notice shall be deemed to have been issued pursuant to the clause hereof entitled "Termination," and the rights and obligations of the parties hereto shall be governed by that clause.
- d. Failure of Harris to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of Harris under this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.
- e. If the damages and cost of completing the work exceeds the unpaid balance of the Purchase Order price herein stated, Seller shall pay Harris such excess within a thirty (30) day period after submission of invoice to Seller.
- f. Should Seller default in any of the provisions of this Subcontract and should Harris employ an attorney to enforce any provision hereof or to collect damages for breach of the Purchase Order, Seller agrees to pay Harris such reasonable fees as the attorney expends. As against the obligations herein contained, Seller waives all rights of exemption.

## 7. TERMINATION

The performance of work under this Purchase Order may be terminated by the Buyer in accordance with this Clause in whole, or from time to time in part, whenever the Buyer shall determine that such termination is in the best interest of the Buyer. Any such termination shall be effected by delivery to the Seller of a Notice of Termination, providing at least 10 days notice, specifying the extent to which performance of work under the Purchase Order is terminated and the date upon which such termination becomes effective. Harris shall be liable only for payment in accordance with the payment provisions of this Purchase Order for services rendered prior to the effective date of termination.

## 8. USE OF INFORMATION

- a. Seller agrees to secure and keep confidential and not to disclose to any other person information related to this Purchase Order. Seller further agrees to use any such information only purposes necessary for performing this Purchase Order, except with the prior written consent of Harris.
- b. Seller may disclose such information to its Subcontractors as required for performance of this Purchase Order, provided that each such Subcontractor first assumes by written agreement the same confidentiality and non-disclosure obligations imposed on Seller under the Purchase Order related to such information.
- c. Harris does not grant the Seller any reproduction rights to supplies provided under this Purchase Order, or any rights to use designs, drawings, or other information belonging to or supplied by Harris in the manufacture or design of articles or materials for anyone other than Harris, except with Harris' prior written consent.

## 9. PAYMENT

- a. Invoices shall be submitted in duplicate and shall contain at least the following information: Purchase Order number, period during which services were performed, hours or days expended performing services by labor category, hourly or daily rate, extended totals, itemized listing of allowable direct costs other than services. Receipts are required for material costs which exceed \$100.00, and all travel expenses allowable under terms of the Purchase Order.
- b. The aggregate of the payments and reimbursements due the Seller shall not exceed the maximum amount allotted in the schedule of this agreement and the Seller is not authorized to exceed nor is Harris obligated to pay to the Seller any amount aggregating more than the amount allotted thereto. Any increase in the amount allotted shall be made by change order in accordance with Article 4. Payment does not constitute final acceptance.

## 10. TAXES

The price set forth in this Contract is hereby understood and agreed to include all applicable Federal, state, and local taxes, including any sales and use taxes. No liability shall accrue to Harris for any such taxes.

## 11. HOLD HARMLESS

Buyer and Seller agree to indemnify and hold harmless the other, its agents, and employees from and against all damages, claims, losses, expenses, and liabilities arising out of or in connection with presence on the other's premises pursuant to this Purchase Order; provided, however, that such damage and liability shall not have been caused by the negligence of the agents, servants, or employees of the indemnified parties. Buyer and Seller shall carry adequate insurance to cover such risks.

## 12. KEY PERSONNEL

Seller's personnel listed or identified as Key Personnel in this Purchase Order may not be removed from the work called out herein, and their contribution may not be reduced from the amount contemplated herein without the prior written consent of Harris. Substitutes for Key Personnel must be acceptable to Harris, and

the Seller must receive Harris prior written approval before making the substitution.

## 13. TERMINATION OF INDIVIDUALS

Upon determination by Harris at any time that the performance of the Seller, or any of its employees performing the work hereunder, does not meet Harris required standards, and upon notification to the Seller of such determination, such personnel shall be directed by Seller to quit said work immediately, and thereafter shall be denied access to said work by Harris.

## 14. STANDARDS OF CONDUCT

Harris conducts its business in strict compliance with applicable laws, rules and regulations with honesty and integrity and with a strong commitment to the highest standards of business conduct. Seller agrees that it will at all times adhere to Harris' published policies as they pertain to standards of conduct of Harris' employees, as well as any other customary standards of business conduct including conduct prescribed by law or regulation. Seller shall be particularly careful to comply with all rules, laws and regulations pertaining to entertainment or providing gratuities.

## 15. NOTICE TO HARRIS OF LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Harris. Seller shall include this paragraph in each lower-tier Subcontract under this Purchase Order.

## 16. TITLE TO WORK PRODUCT

- a. Seller agrees to and does hereby assign and grant to Harris the complete right, title, and interest to all copyrightable materials first produced or composed and delivered to Harris by the Seller under this Purchase Order. For data other than computer software identified as a deliverable under this Agreement, the Seller grants to Harris, and all others acting on its behalf, a paid-up, non-exclusive, irrevocable worldwide license, including a right to sublicense all such data including copyrighted data, to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of Harris for Harris' own use or in performance of Harris' obligations under a Prime Contract. For computer software identified as a deliverable under this Agreement, the Seller grants to Harris and others acting on its behalf, a paid-up, non-exclusive, irrevocable worldwide license, including a right to sublicense all such computer software, including copyrighted or patented software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of Harris for Harris' own use or in performance of Harris' obligations under a Prime Contract.
- b. Seller agrees that it will exert all reasonable effort to advise Harris, at the time of delivery of copyrightable or copyrighted work furnished under this Purchase Order, of any known adversely held copyrighted or copyrightable material incorporated in such work and any invasion of the right of privacy therein contained.
- c. Seller agrees to report to Harris, promptly and in reasonable detail, any notice or claim of copyright infringement received by the Seller with respect to any material delivered under this Purchase Order.
- d. Harris shall have the right at no additional charge to use and/or reproduce the Seller's applicable literature such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature. Seller agrees to advise Harris of any updated information relative to the foregoing literature and documentation with timely notifications in writing.
- e. All inventions (whether patentable or unpatentable), improvements, ideas, discoveries and creations, which Seller shall conceive or first reduce to practice alone or in conjunction with others in the course of performing work under this Purchase Order or with the use of facilities or materials of Harris, and all records relating thereto (in written, or machine

readable, or other form), shall be the property of Harris. Seller agrees to promptly make full written disclosure of all inventions it may conceive or first reduce to practice in the course of performing work under this Purchase Order or with the use of facilities or materials of Harris, and to submit such disclosures and related records to the proper designated representative of Harris. Further, on request of Harris at any time, Seller will, without charge but at Harris' expense, execute and deliver applications for patents in the United States or any foreign countries on such inventions, improvements, discoveries and creations, together with assignment to Harris of Seller's entire interest therein, and will give to Harris such reasonable assistance as may be requested in securing, enforcing and protecting such applications and patents.

#### 17. ASSIGNMENT AND SETOFF

Seller shall not assign this Purchase Order or any rights, claims, or obligations under this Order without the prior written consent of Harris, and any such attempted assignment shall be void. All claims for monies due or to become due from Harris shall be subject to deduction by Harris for any setoff or claims which Harris may have against Seller arising out of this or any other Harris Purchase Orders with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.

#### 18. STOP WORK ORDERS

- a. Harris may at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this Purchase Order for a period of up to ninety (90) days after the Stop Order is delivered to the Seller, and for any further period to which the parties may agree. Any such Order shall be specifically identified as a Stop Work Order issued pursuant to this article. Upon receipt of such an order, the Seller shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, Harris shall either:
  - 1) Cancel the Stop Work Order, or
  - 2) Terminate the work covered by such Order as provided in the Termination article of this Purchase Order.

#### 19. APPLICABLE LAW AND VENUE

- a. Both parties agree that, irrespective of the place of performance of this Purchase Order, it will be construed and interpreted according to the laws of the State of Florida exclusive of its conflict of laws provisions. Unless otherwise agreed to in writing by the parties, venue and jurisdiction for all legal proceedings of any kind or nature brought to enforce any provisions of this Purchase Order shall lie within the 18th Judicial Circuit of the State of Florida or the U.S. District Court for the Middle District of Florida (Orlando Division).
- b. **The parties further agree, to the extent permitted by law, to waive all rights to a trial by jury of any action relating to any dispute or interpretation of this Purchase Order. The parties specifically acknowledge that this waiver is made knowingly and voluntarily after an adequate opportunity to negotiate its terms.**

#### 20. ORDER OF PRECEDENCE

To the extent of Conflicts, if any, among the provisions of the printed terms and conditions herein and the typed provisions of this Purchase Order, or any other special required provisions attached hereto, or any specifications attached hereto, such conflicting provisions shall prevail in the following order of precedence:

- a. Typed Provisions of this Purchase Order
- b. Special Provisions
- c. These General Provisions
- d. Other Provisions of the Purchase Order when attached or incorporated by reference
- e. Specifications

#### 21. BANKRUPTCY

Harris may, without incurring any liability whatsoever except for services/items delivered and accepted, terminate this Purchase Order by notice in writing, in the event that:

- a. Seller makes an assignment for the benefit of creditors, or
  - b. Admits in writing inability to pay debts as they mature.
- Seller shall notify Harris immediately of any impending or threatened bankruptcy proceeding or filing whenever first known.

#### 22. CONTRACTOR NOTICE REGARDING LATE DELIVERY

- a. Time is of the essence in this Purchase Order.
- b. In the event the Seller encounters difficulty in meeting performance requirements, or when he anticipates difficulty in complying with the delivery schedule or date, he shall immediately notify Harris, in writing, giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by Harris of any delivery schedule or date or of any rights or remedies provided by law or under this Contract.

#### 23. INDUSTRIAL FACILITIES, SPECIAL TOOLING, AND TEST EQUIPMENT

- a. Unless specifically provided to the contrary in this Purchase Order, Seller warrants that the estimated cost set forth herein does not include as a direct charge to this Purchase Order the cost of any special tooling, test equipment, or industrial facilities. Any such special tooling, test equipment, or facilities to be charged to Harris shall be covered by a separate Purchase Order.
- b. The Seller represents that it now has or can readily procure without the assistance of Harris all facilities necessary for the performance of this Purchase Order.

#### 24. INSURANCE

- a. Seller shall at its expense keep all Harris materials and all tools and equipment, special or otherwise, in which Harris has any interest, insured against risk of loss or damage by fire or other unavoidable casualty for their fair market value at the time of receipt by the Seller, during such time as they remain in Seller's possession.
- b. Whenever performance requires work on a Harris Customer, or Harris installation, the Seller shall maintain at least the following minimum coverage with a waiver of subrogation on all of the coverages:
  - 1) Worker's Compensation Insurance: Statutory
  - 2) Employer's Liability: \$100,000 per occurrence
  - 3) Commercial General Liability Insurance: \$500,000 per occurrence
  - 4) Automobile Liability Insurance: \$500,000 combined single limit per occurrence

A certificate of insurance providing evidence of above insurance coverages shall be provided to Harris prior to performing any work on a customer or Harris installation. A 30-day advance written notification of any material changes or cancellation of coverages must be provided to Harris. Also, Seller agrees to add Harris as an additional insured on the Seller's commercial general liability and the automobile liability policies.

#### 25. EFFECT OF INVALIDITY

In the event that any provision of the Purchase Order conflicts with the law under which the Purchase Order is to be construed or if any such provision is held invalid by an arbitrator or a court of competent jurisdiction, such provision shall be deemed to be modified to reflect as nearly as possible the original intention of the parties in accordance with applicable law. The remainder of the Purchase Order shall remain in full force and effect.

#### 26. REMEDIES AND NONWAIVER

No waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such waiver or discharge is sought to be enforced. A waiver of any provision of the Purchase Order shall not be construed to be a waiver of any succeeding breach of that provision or of any other provision.

## 27. COMPLIANCE WITH LAWS

Seller agrees in the performance of this Purchase Order to comply with all applicable Federal, State, and local laws, regulations, rules and orders, including, but not limited to, the provisions of the Fair Labor Standards Act of 1938, as amended, and any applicable Executive Orders.

## 28. INDEMNIFICATION FOR VIOLATION OF LABOR LAWS AND REGULATIONS

Seller acknowledges that as an independent contractor, it is furnishing services to Harris which may be subject to certain local, state, and federal labor laws and regulations. Seller therefore agrees to indemnify and hold harmless Harris, its affiliates, subsidiaries, agents, directors, officers and employees, against all claims, damages, losses, causes of action, liabilities, penalties and expenses of any kind or nature, including reasonable attorney's fees, which arise out of or relate to Seller's failure to comply with all applicable local, state, and federal labor, employment, workman's compensation and wage and hour laws and regulations in the performance of Seller's obligations under this contract.

## 29. SELLER'S STATUS

It is understood and agreed that Seller, or its employees performing under this Purchase Order, is not an employee of Harris and is entitled to no Harris employee benefits or privileges or any payment from Harris and the Seller shall pay the salaries or expenses, applicable taxes, including Social Security and unemployment of said employees. Seller shall also pay any expenses normally paid by an employer in connection with its employees. The Seller is and shall be deemed to be an Independent Contractor at all times during its performance of the work specified in this Purchase Order.

## 30. DISPUTE RESOLUTION

- a. If a dispute arises out of or relates to this Purchase Order and cannot be resolved through good faith negotiations by the parties, the parties agree to submit the dispute to a sole mediator selected by the parties. If the parties are unable to agree to the sole mediator, the parties agree to submit the dispute to mediation under the Rules of the Supreme Court of the State of Florida or the Commercial Mediation rules of the American Arbitration Association ("AAA"). If not thus resolved and if both parties agree to binding arbitration, the dispute will be referred to arbitration.
- b. Arbitration—All disputes arising out of or in connection with this Purchase Order including its existence, validity or termination shall be administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules (including the Emergency Interim Relief Procedures) which rules are deemed to be incorporated herein by reference. There shall be a panel of three arbitrators who shall be appointed by agreement between the parties or failing such agreement in accordance with AAA rules. The parties will be entitled to conduct discovery pursuant to the Federal Rules of Civil Procedure and Evidence. The chairperson of the arbitration panel shall, among other things: (a) have authority to resolve discovery disputes and issue appropriate subpoenas and orders to facilitate discovery; (b) rule on dispositive motions; and (c) conduct the arbitration according to the Federal Rules of Evidence. The arbitration panel shall have authority to award injunctive and other emergency relief, which shall be enforceable by either the panel or any court with jurisdiction over the enjoined party or its assets. Either party may also, without waiving any remedy under this Agreement, seek from any court having jurisdiction over the parties or its assets any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral panel (or pending the arbitral panel's determination of the merits of the controversy). The arbitration panel shall not have authority to award punitive, special or consequential damages.
- c. Each party shall bear its own expenses incurred in any mediation or arbitration, but any expenses related to the

compensation and the costs of any mediator or arbitrator shall be borne equally by the parties.

- d. Pending any prosecution, appeal or final decision referred to in this Clause, or the settlement of any dispute arising under the agreement, the Seller shall proceed diligently as directed by Harris with performance of the Purchase Order.

## 31. DISCLOSURE OF INFORMATION

- a. The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this Contract or any program related to this Contract, unless:
  - 1) Harris has given prior written approval or
  - 2) The information is otherwise in the public domain before the date of release.
- b. Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to Harris at least 60 days before the proposed date for release.
- c. The Contractor agrees to include a similar requirement in each Subcontract under this Contract. Subcontractors shall submit requests for authorization to release through the Contractor to Harris.

## 32. COMPLIANCE WITH SPECIFICATIONS

Upon acceptance of this Purchase Order, Seller agrees to supply Harris all materials, products, or services, in the quantities listed, in conformance with all Purchase Order requirements, including applicable Harris Statement of Work, or other specifications or drawings, to the extent specified. The required test and/or inspection reports/data resulting from Seller's compliance with applicable Purchase Order requirements shall be kept on file at the Seller's facility and made available for review by Harris representatives at any reasonable time.

## 33. CERTIFICATE OF COMPLIANCE

If so specified on the front page of this Order but only if so specified, a Certificate of Compliance as follows is required:

- a. The Seller shall furnish a signed Certificate of Compliance to the requirements of this Purchase Order with each shipment made to Harris.
- b. To substantiate this Certificate of Compliance, the Seller shall maintain inspection or test records which may be audited by a Harris representative from time to time.

## 34. INSPECTION OF SERVICES

- a. Definitions  
"Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services hereunder.
- b. The Contractor shall provide and maintain an inspection system acceptable to Harris covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to Harris during Contract performance and for as long afterwards as the Contract requires.
- c. Harris has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. Harris shall perform inspections and tests in a manner that will not unduly delay the work.
- d. If Harris performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- e. If any of the services do not conform with Contract requirements, Harris may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in Contract amount. When the defects in services cannot be corrected by reperformance, Harris may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce

the Contract price to reflect the reduced value of the services performed.

- f. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, Harris may (1) by Contract or otherwise, perform the services and charge to the Contractor any cost incurred by Harris that is directly related to the performance of such service or (2) terminate the Contract for default. The foregoing remedies shall in no way preclude or prejudice the exercise of any other right or remedy that Harris may have at law or in equity.

### **35. WARRANTY OF SERVICES**

- a. Definitions  
"Acceptance," as used in this clause, means the act of an authorized representative of Harris by which Harris assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the Contract. "Correction," as used in this clause, means the elimination of a defect.
- b. Notwithstanding inspection and acceptance by Harris or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. Harris shall give written notice of any defect or nonconformance to the Contractor within thirty (30) days from the date of acceptance by Harris. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that Harris does not require correction or reperformance.
- c. If the Contractor is required to correct or reperform, it shall be at no cost to Harris, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails, refuses, or otherwise is unable in a timely manner to correct or reperform, Harris may, by Contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to Harris thereby, or make an equitable adjustment in the Contract price.
- d. If Harris does not require correction or reperformance, Harris shall make an equitable adjustment in the Contract price.

### **36. YEAR 2000 COMPLIANCE WARRANTY**

Seller warrants and represents that each hardware, software, and firmware product delivered under this Contract shall accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) prior to, during, and after the year 2000, including leap year calculations, when used in accordance with the product documentation provided by the Seller, to the extent that other information technology, when used in conjunction with the product being acquired under this Contract, properly exchanges date/time data with it. All such processing of date/time data shall be transparent to the user. If the Contract requires that multiple products must perform as a system, then this warranty shall apply to those products as a system and individually.

Information technology is defined to include any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term includes computers, ancillary equipment, embedded information technology, software, firmware and similar procedures, services (including support services), and related resources.

### **37. QUALITY SPECIFICATION**

The Seller's Quality system shall be compliant to the requirements of ISO 9001 unless otherwise specified in this Purchase Order. MRB delegation to the Seller is not authorized unless specifically stated in the Purchase Order. Calibration System for measuring, test and Process Control Equipment shall comply with ANSI/NCSLZ540-1 or ISO 10012-1.

### **38. ASSUMPTION OF RISK**

Each party hereto acknowledges (i) the risks of its undertakings hereunder, (ii) the uncertainty of the benefits and obligations hereunder, and (iii) its assumption of such risks and uncertainty. Each party has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such party's opinion shall be the basis of that party's decision to enter into this Purchase Order.

### **39. RELIANCE ON COUNSEL AND OTHER ADVISORS**

Each party has consulted such legal, financial, technical or other expert it deems necessary or desirable before entering into this Purchase Order. Each party represents and warrants that it has read, knows, understands and agrees with the terms and conditions of this Purchase Order. Neither party has relied upon any oral representation of the other party in entering into this Purchase Order. All discussions, estimates or projections developed by a party during the course of negotiating the terms and conditions of this Purchase Order are by way of illustration only, and, unless specifically contained in this Purchase Order or one of its Exhibits or Attachments, are not binding or enforceable against the other party in law or in equity.

### **40. NOTICES**

Any notice which by any provision of this Purchase Order is required or permitted to be given shall, unless otherwise provided, be deemed to have been sufficiently given when sent by registered or certified first class mail, postage pre-paid, or by telex or facsimile to the applicable party at its address set forth in this Purchase Order or such other address as the applicable party hereto shall have earlier designated by written notice.

### **41. GRATUITIES**

Harris employees are to refrain from soliciting or receiving any gift from a supplier or would-be supplier of products or services to the Corporation or from other organizations or individuals that have business relations with the company. Accordingly, Seller agrees not to offer or provide any gratuities to any employees of Harris. Harris may, by written notice to the Seller, terminate the right of the Seller to proceed under this Purchase Order if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of Harris with a view toward securing a Purchase Order or securing favorable treatment with respect to the awarding or the making of any determinations with respect to the performing of this Purchase Order. In the event this Purchase Order is terminated as provided herein, Harris shall be entitled to pursue the same remedies against the Seller as it could pursue in the event of a breach of contract by the Seller. The rights and remedies of Harris provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

### **42. INDEPENDENT CONTRACTOR**

Each party hereto is an independent contractor and nothing contained in this Contract shall be construed to be inconsistent with this relationship or status. Neither party owes a fiduciary duty to the other. Nothing in this Contract shall be in any way construed to constitute either party as the agent, employee or representative of the other. As an independent contractor, each party has relied on its own expertise or the expertise of its legal, financial, technical or other advisors.

### **43. INDEMNITY FOR INFRINGEMENT**

The Seller shall, at its expense, hold harmless and defend Harris, its customers, and all persons claiming under Harris, against any claim, demand, action or suit alleging or arising from the infringement of any patent, copyright, or trademark or any misappropriation of trade secrets, and shall indemnify the aforesaid parties against all damages, costs, and expenses, including all legal expenses, arising there from by reason of the manufacture, sale, or the normal and intended use of the articles covered by this Purchase Order. Seller shall be given adequate notice of such claims and will assume full and exclusive control in the defense

thereof. Harris will provide reasonable cooperation to Seller by supplying relevant documents and making Harris employees available for consultation and testimony. Seller will compensate Harris for such cooperation.

#### **44. SUPPLEMENTAL TERMS**

In addition to the General Provisions set forth above, certain special clauses may be applicable to this Purchase Order. These special clauses shall be included either by reference in the Order or by attachment to the General Provisions, or both, and will include any applicable patent and/or additional data rights clauses.