

# HARRIS GOVERNMENT COMMUNICATIONS SYSTEMS DIVISION

## INTERNATIONAL COMMERCIAL TERMS AND

### CONDITIONS OF PURCHASE

#### 1. ACCEPTANCE

Agreement by Seller to furnish the goods hereby ordered or the furnishing of such goods by Seller in whole or in part shall constitute acceptance by Seller of this order. Any terms and conditions proposed by Seller inconsistent with or in addition to the terms of purchase contained herein shall be void and of no effect, unless specifically agreed to by Buyer.

#### 2. SHIPMENT

Unless otherwise specified on the face of the order, delivery of goods furnished hereunder is to be made FCA, but payment shall be made in accordance with Paragraph 9 hereof.

#### 3. DELIVERY

Time is of the essence of this order and Buyer may cancel this order for late delivery without cancellation charge.

#### 4. ASSIGNMENT

This order is not assignable without the prior written consent of Buyer and any attempted assignment without such consent shall be void.

#### 5. WARRANTY

Seller warrants the goods delivered on this order to be as represented by Seller, including any specific representation agreed to by Seller at Buyer's request, to be free from defects in workmanship, materials and design and to be in accordance with Buyers specifications, drawings and samples in all respects. All warranties shall survive acceptance and payment. Goods supplied hereunder can only be regarded as accepted by Buyer after final examination and approval by Buyer. In the event of the goods not being in conformity with the warranty contained herein, Buyer shall be entitled within reasonable time either to require replacement by Seller of nonconforming goods or to reject the order, in whole or in part. Goods so rejected shall be returned at Seller's expense, or, upon instruction by Seller, shall be scrapped by Buyer. Such rejection and return or scrapping shall be without prejudice to any other rights of Buyer.

#### 6. TAXES

The price(s) stated on the face hereof include all taxes except import duties.

#### 7. PACKING

Unless otherwise specified, all goods supplied by Seller to Buyer under this contract shall be suitably packed for the type of export shipment designated in the shipping instructions on the face hereof.

#### 8. INDEMNITY

Seller shall defend Buyer and hold Buyer harmless against all claims of infringement of the rights of others and against all claims of injury or damage arising out of any act or failure to act by Seller in connection with Buyer's purchase hereunder.

#### 9. PAYMENT

Unless otherwise specified on the face hereof, Buyer will, within thirty days after acceptance of goods at Buyer's place of business, effect payment in U.S. dollars.

#### 10. CHANGES

Buyer shall have the right by written order to make changes in the goods to be furnished by Seller hereunder. If such changes cause an increase or decrease in the cost of performance of this order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and this order shall be modified in writing accordingly. Any claim by Seller for adjustment under this paragraph must be asserted in writing within thirty (30) days of receipt of notice of change and must include the amount claimed and support cost figures.

#### 11. TERMINATION

Buyer may by written notice terminate this order in whole or in part. Seller shall thereupon adjust its own work and its orders to the extent required to comply with such notice. In the event of such termination Seller shall be entitled to reasonable cancellation charges unless he shall be in default of performance of this order. Cancellation charges shall be limited to the cost incurred in the performance of the work terminated and in the settlement of all claims arising out of such termination. The total cancellation charges shall in no event exceed the total purchase order price reduced by the purchase order price of the work not terminated. Seller will transfer to Buyer ownership of the property, the cost of which is reimbursed to the Buyer under this Paragraph 11. However, the fair value of any such property destroyed, lost, stolen or damaged shall be excluded from the cancellation charges. Nothing in this Paragraph 11 shall effect the right of the Buyer to cancel this order under the provisions of Paragraph 3 hereof.

#### 12. WAIVER

Buyer's failure to assert its rights under any provision of these terms shall not be deemed a waiver of such rights, nor shall any waiver be implied from the acceptance of or payment for any goods ordered hereunder. No waiver by Buyer shall be valid unless made in writing and signed by an authorized officer of Buyer.

#### 13. 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 or, if the parties are unable to agree on a 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 International Chamber of Commerce (ICC). If not thus resolved and if both parties agree to binding arbitration, the dispute will be referred to arbitration.
- b. Any resolution reached through mediation or award arising out of arbitration:
  - 1) Shall be limited to a holding for or against a party, and affording such monetary remedy as is deemed equitable, just and within the scope of this Purchase Order;
  - 2) May not include special, consequential or punitive damages;
  - 3) May, in appropriate circumstances, include injunctive relief; and
  - 4) May be entered in court in accordance with the Florida Arbitration Act.
- c. Arbitration shall not be deemed a waiver of any right of termination under this Purchase Order and the arbitrator is not empowered to act or make any award other than based solely on the rights and obligations of the parties prior to and including such termination.
- d. The arbitrator may not limit, expand or otherwise modify the terms of this Purchase Order.
- e. 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.
- f. Arbitration. All disputes not resolved in accordance with Paragraph a. of this clause shall be referred to and finally resolved by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Rules, which rules are deemed to be incorporated herein by reference. The appointing authority shall be the International Chamber of Commerce (ICC). There shall be a panel of three arbitrators who shall be appointed by agreement between the parties or failing such agreement in accordance with ICC rules. The parties will be entitled to conduct "discovery" pursuant to the Federal Rules of Civil Procedure and Evidence applicable in the USA. 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; and (b) conduct the arbitration in the English language according to the Federal Rules of Evidence applicable in the USA. The arbitration panel shall render its decision in the English language and 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. The arbitration panel shall not have authority to award punitive, special or consequential damages. Any monetary award of the panel shall be payable in U.S. Dollars free of any tax and reductions and shall include interest from the date of breach of this Agreement to the date when the award was paid in full at a rate determined by the arbitral panel.

- g. 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.

#### 14. 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 provision. 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 18<sup>th</sup> 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.**

#### 15. EXPORT REGULATIONS

The Buyer shall supply to the Seller on a timely basis all necessary information and documentation requested by the Seller in order to permit the Seller to export the Purchased Goods with respect to any sale or order solicited by the Buyer hereunder, in accordance with the terms of this order. The Seller shall at its own expense be responsible for obtaining all necessary export licenses and authorizations.

#### 16. RIGHT TO INDEPENDENT INSPECTION

The Buyer has the right, at its expense, to engage an independent inspection organization, to inspect and/or test the purchased goods prior to shipment. The Seller shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors in the performance of their duties. Based upon such inspection, the Buyer has the right to reject nonconforming or defective Purchased Goods and/or packaging or to require their correction.

#### 17. RIGHT TO INSPECT

Regardless of whether an inspection has taken place prior to shipment, the Buyer has the right to inspect the Purchased Goods upon delivery to the Buyer's place of business and, in addition to any other rights which it may have, the right to reject any defective Purchased Goods, which fail to conform to the descriptions and specifications set forth in this order. The Buyer will promptly notify the Seller in writing of all claimed defects and nonconformities, and such defective or nonconforming Purchased Goods will be held for the Seller's instruction and, if the Seller so directs, will be returned at the Seller's expense. The failure to inspect, either prior to shipment or upon delivery to the Buyer's warehouses, shall not be deemed a waiver of any of the rights of the Buyer under any provision of this Order.

#### 18. INSPECTION OF PRODUCTION FACILITIES AND SAMPLES

The Buyer, or an independent inspection organization of the Buyer's choosing, shall have the right to inspect at any time during normal business hours the production facilities where the Purchased Goods are being produced and to inspect the Purchased Goods during production. The Seller shall cooperate with such inspections. In addition, if so requested in writing by the Buyer, the Seller shall send to the Buyer at the Seller's expense, prior to, and at reasonable intervals during production of the Purchased Goods,

production samples of the Purchased Goods for the Buyer to test and approve.

In the event that the Buyer is not satisfied with either the Purchased Goods being produced at the time of such inspection or with the said production samples, the Buyer shall notify the Seller in writing of its dissatisfaction. The Seller shall immediately seek to cure any such dissatisfaction. In the event that corrections are not immediately made to the satisfaction of the Buyer, Buyer may, at its option, require that production and delivery be suspended pending timely corrections, and such action by the Buyer shall not excuse the Seller from any delays or failure to ship the Purchased Goods on time.

#### 19. FORCE MAJEURE

- a. **DEFINITION. Force Majeure shall mean any event or condition, not existing as of the date of acknowledgment of this Order, not reasonably foreseeable as of such date and not reasonably within the control of either Party, which prevents in whole or in material part the performance by the Parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure:** acts of State or governmental action, orders, legislation, regulations, restrictions, priorities or rationing, riots, disturbance, war (declared or undeclared), strikes, lockouts, slowdowns, prolonged shortage of energy supplies, interruption of transportation, embargo, prohibition of import or export of goods covered by this agreement, and epidemics, fire, flood, hurricane, typhoon, earthquake, lightning, and explosion. If by any of the above-mentioned causes, an allocation of supplies must be made, the Parties hereby agree that such allocation will be fairly made. It is in particular expressly agreed that any refusal or failure of any governmental authority to grant any export license legally required for the fulfillment by the Seller of its obligations hereunder shall constitute an event of Force Majeure, provided said refusal or failure is not due to the fault or negligence of the Seller.
- b. **NOTICE. Upon giving written notice to the other Party, a Party affected** by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Order, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, and its cause and possible consequences. The Party claiming Force Majeure shall promptly notify the other party in writing of the termination of such event.
- c. **CONFIRMATION. The Party invoking Force Majeure shall provide to the other Party confirmation of the existence of the circumstances constituting Force Majeure. Such evidence may consist of a statement or certificate of an appropriate governmental department or agency where available, or a statement describing in detail the facts claimed to constitute Force Majeure.**
- d. **SUSPENSION OF PERFORMANCE. During the period that the performance by one of the Parties of its obligations under this Order has been suspended by reason of an event of Force Majeure, the other Party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.**
- e. **TERMINATION. Should the period of Force Majeure continue for more than 90 consecutive days, either Party may terminate this Order without liability to the other Party, except for payments due to such date, upon giving written notice to the other Party.**

#### 20. EXPORT CONTROL COMPLIANCE

The Seller agrees to comply with all U.S. Government regulations, as found in 22 CFR 120-130, International Traffic in Arms Regulations (ITAR), and 15 CFR 730-774, Export Administration Regulations (EAR). Whenever granting access to equipment or technology to a foreign vendor/Subcontractor, or before assigning any Foreign Person (as defined in 22 CFR 120.16) to perform work under this Contract, the Seller also agrees to notify Harris in writing prior to assigning or granting access to a Foreign Person to any work, equipment, or technical data in performance of this Contract.

Failure to comply may be deemed a material failure to perform under this Contract or Purchase Order and shall subject Seller to termination in accordance with Article 11, Termination.

## 21. ENGLISH LANGUAGE

The Parties confirm that it is their wish that this Order, as well as any other documents or proceedings conducted hereunder or relating hereto including notices, have been and shall be drawn up and interpreted in English only.

## 22. 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.

## 23. FOREIGN PERSONS

The Seller acknowledges that the technical data, as defined by 22 CFR 120.10 and 15 CFR 772, obtained, needed, generated, or delivered in performance of this Purchase Order is controlled by the International Traffic in Arms Regulation (ITAR) (22 CFR 120-130) or the Export Administration Regulations (EAR) (15 CFR 730-774), and will require U.S. Government export authorization before assigning any Foreign Person (as defined in 22 CFR 120.16, which includes foreign governments, business entities, groups and international organizations) to perform work under this Purchase Order or before granting access to Foreign Persons to any technical data obtained, used, generated, or delivered in performance of this Purchase Order. Any request for export authorization must include the information required by applicable export laws and regulations (reference ITAR, EAR or Chapter 10 of the National Industrial Security Program Operating Manual).

## 24. COPYRIGHTS

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.

## 25. 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.
- d. "Seller" means Contractor or Subcontractor.
- e. "Buyer" or "Harris" means the Harris legal entity issuing this order.

## 26. 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.

## 27. 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 therefrom by reason of the manufacture, sale or the normal and intended use of the articles and services 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.

## 28. TITLE TO WORK PRODUCT

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.

## 29. 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, all 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 to 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.