

ULTRA ELECTRONICS ADVANCED TACTICAL SYSTEMS

GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

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SECTION I: GENERAL TERMS AND CONDITIONS

1 DEFINITIONS:

- a) "Items" means products, goods, supplies, materials, articles, parts, components, or assemblies described in the Order.
- b) "Order" means the instrument of contracting, including all of its documents, exhibits, and attachments referenced.
- c) "SELLER" means the party with whom ULTRA ELECTRONICS ADVANCED TACTICAL SYSTEMS ("ULTRA") is contracting and includes any reference to "vendor," "subcontractor," "contractor," "licensor," "consultant," or "supplier."
- d) "Services" means the Subcontractor's professional, engineering, scientific, technical, testing, educational, training or other efforts and conduct rendered by Subcontractor for the benefit of ULTRA other than the delivery of Items.
- e) "Ultra Procurement Representative" means a person authorized by ULTRA's procurement organization to administer and/or execute this Order.

2 COMPLETE AGREEMENT:

- a) This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with Exhibits, Attachments and any Task Order(s) issued hereunder, constitutes the entire agreement between the parties.
- b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this contract.
- c) **Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by ULTRA and have no effect unless expressly accepted in writing by ULTRA.**

3 INVOICE AND PAYMENT:

- a) ULTRA's Order number, including any amendment designation or controlling blanket agreement number, must appear on all invoices, packing lists, bills of lading, packages, containers, or correspondence processed under this Order.
- b) Unless otherwise specified, a separate invoice will be issued for each shipment or services rendered. Federal, state, and local taxes applicable to the invoiced amount (if any) shall be so identified on the face of the invoice. SELLER's right to payment is contingent upon ULTRA's approval and acceptance of Items delivered or Services rendered in accordance with the terms and specifications called for by this Order, but payment of the stipulated price is not evidence of ULTRA's final acceptance of the Items or Services called for in the Order. Discount terms of this Order (if any) and payment of the invoices will be based upon the date specified on this Order for delivery of Items or Services or the actual delivery date of such Items or Services, whichever is later.
- c) Unless freight and other charges are itemized, any discount will be taken on the full amount of the invoice. If no discount is offered, payment of the invoices will be made within forty-five (45) days after receipt and acceptance of Items or completion and acceptance of Services, or forty-five (45) days after receipt of an acceptable invoice, whichever is later.
- d) SELLER agrees that ULTRA shall have the right to set-off against any amounts which may become payable by ULTRA to SELLER under this Order any amounts which SELLER may owe to ULTRA, whether arising under this Order or others.
- e) SELLER warrants that the prices specified in this Order do not exceed the selling price for the same or substantially similar Items or Services to any other purchaser, taking into account the quantity and schedule under similar conditions of purchase; and that such prices include all applicable federal, state, local, and other taxes in effect on the date of this Order.

4 COMPLIANCE WITH AND APPLICABILITY OF LAWS:

- a) SELLER warrants that in the performance of this Order, it shall comply with all applicable federal, state and local laws including, specifically, all applicable occupational health and safety regulations. On its invoice or in other form satisfactory to ULTRA, SELLER shall certify that the Items and/or Services covered by this Order were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219), as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof and under FAR Section 22.
- b) ULTRA is an "Equal Opportunity" employer and SELLER shall, therefore, comply with the provisions of the President's Executive Order 11246 as supplemented and all related regulations of the U.S. Department of Labor. The SELLER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. SELLER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship. The SELLER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- c) Utilization of Small/Small Disadvantaged/ Women-Owned Small Business and Labor Surplus Area Concerns: Consistent with the efficient performance of the Order, SELLER agrees to accomplish a maximum amount of subcontracting and purchasing to Small/Small Disadvantaged/ Women-Owned Small Business Concerns, and to use its best efforts to place subcontracts hereunder with subcontractors who will perform subcontracts substantially in or near eligible labor surplus areas when it can be done at prices no higher than are obtainable elsewhere.
- d) SELLER agrees and covenants that none of its employees or employees of its subcontractors who provide Items or Services to ULTRA pursuant to this Order are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986.

SELLER agrees to indemnify and hold ULTRA harmless from any liability ULTRA may suffer as a result of SELLER's violation of this Act.

5 ASSIGNMENT:

Any assignment of SELLER's rights or delegation of SELLER's duties under this Order shall be void, unless prior written consent is given by ULTRA. SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if ULTRA is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of ULTRA against SELLER. ULTRA shall have the right to make settlements and/or adjustments in price without notice to any assignee.

6 SUBCONTRACTING:

No Items or Services to be delivered under this Order (with the exception of standard commercial supplies or raw material) shall be procured by SELLER from a third party without ULTRA's prior written consent unless this purchase is being made from SELLER in its capacity as a retailer, jobber or distributor. No purchase or subcontract placed by SELLER under this Order shall be on a cost-plus-a-percentage-of-cost basis. SELLER shall select subcontractors on a competitive basis to the maximum practical extent possible.

7 PACKING AND SHIPPING:

Unless otherwise provided on the face of this Order, the following provisions shall apply to all shipments. SELLER shall: (a) prepare all Items for shipment to prevent damage or deterioration, secure lowest lawful transportation rates, and comply with carrier classifications and tariffs; (b) defray all direct charges for preparation, packing, crating, or cartage unless separately stated in the Order, (c) consolidate into one shipment all Items to be forwarded on each day by the same means of transportation; (d) number and mark each container consecutively with applicable Order and part number; (e) indicate the container and Order numbers on the applicable bill of lading; (1) place inside the No. 1 container one copy of the packing sheet showing Order number(s), and attach, also, one copy to the outside of the container; (g) forward freight collect when Items are sold F.O.B. place of shipment, except for Parcel Post, Federal Express (or equivalent), or United Parcel Service; (h) request that Shipper include on Shipper's invoice to ULTRA the appropriate Order number(s); and (i) delete any declaration concerning value of the shipment except when tariff rating is dependent upon the released or declared value, in which event, value shall be released or declared at the maximum value for the lowest rating or rate. SELLER agrees to bear the cost of insurance regardless of F.O.B. point.

8 DELIVERY: TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS ORDER:

Deliveries shall be strictly in accordance with the quantities and schedule specified in the Order. If at any time it appears SELLER may not meet such schedule, SELLER shall immediately, by verbal means (to be confirmed in writing), notify ULTRA of the reasons for and estimated duration of the delay. At ULTRA's request, SELLER shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and shipping via air or other means of fast transportation. Any additional cost caused by these requirements shall be borne by SELLER, unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of SELLER or its suppliers or subcontractors. These requirements are in addition to all of ULTRA's other rights and remedies as may be provided by law or this Order.

9 INSPECTION, ACCEPTANCE, AND REJECTION:

- a) All Items or Services are subject to (a) inspection and test during work progress regardless of location; (b) inspection and test prior to completion regardless of location; and (c) final inspection, test, and acceptance at destination, regardless of the F.O.B. point or any payment or prior inspection at source. Final inspection will be made at a reasonable time after receipt of the Items or Services. Final inspection shall be conclusive except as regards latent defects, fraud and such gross mistakes as amount to fraud. SELLER shall furnish to ULTRA, if requested, all information and data as may be reasonable by ULTRA in order to perform inspection and acceptance. Final inspection does not relieve SELLER of its obligation under any Warranties herein or as may be provided by law.
- b) In case any Item is defective in material or workmanship, or otherwise not in strict conformity with the requirements of this Order, ULTRA shall have the right either to reject it, require its correction, or accept the Item with an equitable adjustment in price. Any Item which has been rejected or required to be corrected may be returned to and shall be replaced or corrected by and at the expense of SELLER, including transportation charges as well as including any costs incurred by ULTRA and/or any costs incurred by a third party under the control or direction of ULTRA for effort that may be required to enable SELLER to re-perform in strict conformity with the requirements of this contract, promptly after notice. If after being

requested by ULTRA, SELLER fails to promptly replace or correct any defective Item within the contractual delivery schedule, ULTRA may (i) by contract or otherwise, replace or correct such Item and charge to SELLER the cost occasioned ULTRA thereby; (ii) without further notice terminate this Order for default, in accordance with Paragraph 13(b) of this Order, entitled "Cancellation- Default"; or (iii) require a reduction in price which is equitable under the circumstances.

- c) If any Services performed hereunder are not in conformity with the requirements of this Order, ULTRA shall have the right to require SELLER to perform the Services again in conformity with the requirements of the Order, at no additional increase in total Order price. SELLER shall also be responsible for any costs incurred by ULTRA and/or any costs incurred by a third party under the control or direction of ULTRA for effort that may be required to enable SELLER to re-perform in strict conformity with the requirements of this contract. When the Services to be performed are of such a nature that the defect cannot be corrected by re-performance of the Services, ULTRA shall have the right to (i) require SELLER to immediately take all necessary steps to ensure future performance of the Services in conformity with the requirements of the Order; and (ii) reduce the Order price to reflect the reduced value of the Services performed. In the event SELLER fails promptly to perform the Services again or to take necessary steps to insure future performance of the Services in conformity with the requirements of the Order, ULTRA shall have the right to either (i) by contract or otherwise have the Services performed in conformity with the Order requirements and charge to SELLER any cost occasioned to ULTRA that is directly related to the performance of such Services; or (ii) terminate this Order for default as provided in Paragraph 13(b) of this Order, entitled "Termination/Cancellation."
- d) Rejected Items or Services may not be re-tendered to ULTRA by SELLER without the prior written notice and approval of ULTRA. SELLER shall provide and maintain an inspection system in accordance with sound business practice and as otherwise provided in this Order. Records of all inspection work by SELLER shall be kept complete and available to ULTRA during the performance of this Order and for three (3) years after final payment, and in such manner as may be specified elsewhere in this Order.

10 QUALITY CONTROL:

In accordance with the specific requirements of this Order, SELLER shall provide and maintain a quality control system acceptable to ULTRA covering the Items and Services hereunder. Records of all inspection work by SELLER shall be kept complete and available to ULTRA during the performance of this Order and for such longer period as SELLER may be specified elsewhere in this Order. Authorized purchasing, technical, and quality assurance representative(s) of ULTRA shall be entitled to enter the plant of SELLER at all reasonable times for the purpose of maintaining liaison between the quality control system and the program, to review SELLER's manufacturing and processing plans and records, to conduct preliminary inspection and tests of the work in process or to otherwise observe the Services of SELLER. A like provision giving ULTRA the right to enter the plants of SELLER's subcontractors, consultants and suppliers shall be included by SELLER in its subcontracts, consulting agreements, and Orders.

11 CHANGES:

- a) The ULTRA Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Order in anyone or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.
- b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Order, ULTRA shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- c) SELLER must assert its right to an equitable adjustment under this paragraph within thirty (30) days from the date of receipt of the written change order. If the SELLER's proposal includes the cost of property made obsolete or excess by the change, ULTRA shall have the right to prescribe the manner of disposition of the property.
- d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" paragraph of this Order. However, nothing contained in this "Changes" paragraph shall excuse SELLER from proceeding without delay in the performance of this Order as changed.

12 SPECIAL TOOLS AND SPECIAL TEST EQUIPMENT

- a) Special tools, dies, jigs, fixtures and patterns (collectively referred to as "special tooling") and special test equipment used in the manufacture and testing of Items or in the furnishing of Services shall be furnished by and at the expense of SELLER, shall be kept in good condition, and when necessary shall be replaced by SELLER without expense to ULTRA. ULTRA may at any time reimburse SELLER for the cost of any of the special tooling and special test equipment used exclusively under this Order and become the owner and entitled to the possession of same.

- b) If the Order price includes the cost of any special tooling or special test equipment fabricated or required by SELLER for the purpose of filling this Order, such special tooling and test equipment and any related process sheets shall become ULTRA's property, and, to the extent feasible, shall be so identified by SELLER. SELLER shall, at its own expense, maintain such special tooling and test equipment in proper working condition. SELLER shall use the tooling and test equipment only for the production of Items and/or Services for ULTRA and shall follow its normal industrial practice to maintain property control records on such special tooling and test equipment. When this Order has been completed, such tooling and test equipment shall be disposed of as ULTRA directs. SELLER shall include the substance of this paragraph in all subcontracts, consulting agreements, and orders issued by it hereunder.

13 TERMINATION/CANCELLATION

- a) Termination-Convenience. Regardless of whether this is a Government or Commercial Order, the performance of work under this Order may be terminated, in whole or in part, by ULTRA for ULTRA's convenience in accordance with the "Termination for Convenience of the Government" clause in FAR 52.249-2 or "Termination (Cost-Reimbursement)" clause in 52.249-6, as applicable, incorporated herein by reference. "ULTRA" shall be substituted for the terms "Government" and "Contracting Officer" throughout the clause, "180 days" shall be substituted for "1 year" in paragraph (d), and paragraph (i) of the clause shall be deleted in its entirety.
- b) Cancellation-Default. ULTRA may, by written notice of default to SELLER, terminate the whole or any part of this Order if SELLER fails to (i) make delivery of any Items or to perform any Services within the time specified herein, or any extension thereof by change order or amendment; or (ii) replace or correct defective Items or re-perform Services in accordance with the provisions of subparagraphs (b) and (c) of the paragraph hereof entitled "INSPECTION, ACCEPTANCE, AND REJECTION"; or (iii) perform any of the other provisions of the Order or so fails to make progress as to endanger performance of this Order in accordance with its terms and, in either of the circumstances specified in subparagraph (c), does not cure such failure within a period of ten (10) days (or such longer period as ULTRA may authorize in writing) after receipt of notice from ULTRA specifying such failure. In the event of termination pursuant to this clause, ULTRA may procure upon such terms and in such manner as ULTRA may deem appropriate, Items or Services similar to those so terminated and SELLER shall be liable to ULTRA thereby; provided, that SELLER shall continue the performance of this Order to the extent not terminated under the provisions of this clause. If after termination under this subparagraph (b), it is determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.
- c) Other: By written notice to SELLER, ULTRA may cancel the whole or part of this Order in the event of suspension of SELLER's business, insolvency of SELLER, institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against SELLER, appointment of a trustee or receiver for SELLER's property or business, any assignment by SELLER for the benefit of creditors or for any failure by SELLER to provide adequate assurances (as provided for in Uniform Commercial Code, section 2-609) of its ability or willingness to perform its obligations under this Order. Such cancellation shall be deemed "for default" in accordance with subparagraph (b) of this "Termination/ Cancellation" paragraph.

14 STOP WORK ORDER

- a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from ULTRA, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b) Within such period, ULTRA shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" paragraph shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

15 DISPUTES:

Either party may only litigate any dispute arising under or relating to this Order before any court of competent jurisdiction in the State of Texas and SELLER consents to this jurisdiction. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance. SELLER's performance shall be in accordance with ULTRA's written instructions.

16 RECORD RETENTION/AUDIT:

- a) SELLER agrees to maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred by SELLER and, where relevant to method of payment, to make such material available at its office at reasonable times during the contract period, and for three (3) years from the date of final payment under the Order for inspection by ULTRA or its authorized representative.
- b) If ULTRA deems an audit of SELLER's books and records is needed to review cost or pricing data, to price changes, terminations, or otherwise, an audit may be conducted by an independent certified public accounting firm chosen by ULTRA. SELLER agrees that the amount of any sustained audit exceptions resulting from any subsequent audit (so authorized by the Order) made after final payment will be refunded to ULTRA.

17 INDEMNITY:

SELLER hereby indemnifies and shall defend and hold harmless ULTRA, and its officers, employees, authorized representatives, ULTRA's customers, and any subsequent seller or user of the Items or Services from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature asserted by employees of SELLER or any other third party (including employees of ULTRA) arising out of the death or injury to any person, property damage or loss, or economic injury during, or after completion of the work hereunder and in any matter directly or indirectly caused, occasioned by, or claimed to be caused, occasioned by reason of any negligent act, omission, or fault whether active or passive of SELLER, its subcontractors, vendors, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Order; except that SELLER's aforesaid indemnity and hold harmless requirements shall not be applicable to any liability caused by the negligence or willful misconduct of ULTRA. In case a claim should be brought or an action filed with respect to the subject hold harmless and indemnity herein, SELLER agrees that ULTRA shall have the right to approve attorneys employed by SELLER in the defense of any claim or action filed with respect to the subject hold harmless and indemnity herein. ULTRA agrees, that such approval will not be unreasonably withheld. SELLER further agrees that ULTRA may employ attorneys of its own selection to appear and assist in the defense of the claim or action on behalf of ULTRA. SELLER agrees to cooperate with such attorneys employed by ULTRA. In the event of such a defense by the SELLER, ULTRA shall have the right to approve any compromise or settlement of any claims or actions against ULTRA; such approval shall not be unreasonably withheld.

18 PROPRIETARY INFORMATION:

SELLER agrees not to disclose to any person outside of its employ, and not to use for any purpose other than to fulfill its obligations under this Order, any information received from ULTRA pursuant to this Order which has been disclosed to SELLER by ULTRA in confidence, and which is not otherwise publicly available. Upon termination of the Order, SELLER agrees to return to ULTRA upon request all drawings, blueprints, descriptions or other material received from ULTRA and all materials containing said proprietary information. The obligation of SELLER concerning confidentiality shall survive any termination, including expiration, of this Order. Upon completion or termination of this Order, SELLER shall, at its own expense, dispose all such information, and items as may be subsequently directed by ULTRA.

19 INTELLECTUAL PROPERTY:

- a) ULTRA is hereby given exclusive ownership of all Data generated under this Order subject to the rights of ULTRA's contract with its client (if any).
- b) "Data," as used in paragraphs 19 and 20 of this Order, means any knowledge, information, drawings, designs, technical information, computer programs or computer software documentation that SELLER discloses to ULTRA in connection with Order.
- c) All intellectual property rights, including copyrights, trademarks, and other publication rights, in the reports and other documents prepared by SELLER in connection with this Order shall vest in ULTRA. SELLER shall not publish any of the results of the work provided for hereunder without the express written consent of ULTRA.
- d) Patentable discoveries, inventions, or copyrights resulting from the work performed by SELLER under this Order are hereby transferred to and, all of SELLER's rights accruing from such discoveries, inventions, or copyrights are hereby transferred to and shall solely vest in ULTRA as its property subject to the provisions of Ultra's contract with its customer.

20 SELLER'S DATA:

- a) For Commercial Orders: Any Data which SELLER may disclose to ULTRA shall not be deemed to be confidential or proprietary information and shall be acquired by ULTRA free from any restrictions to use or disclosure thereof.
- b) For Government Orders: Data SELLER has not pre-determined to be proprietary with the prior written approval of ULTRA pursuant to DFARS 252.227-7013 or FAR 52.227-14 (or other applicable Government procurement regulations) and has not marked with a Limited or Restricted Rights legend, in accordance with DFARS 252.227-7013 or FAR 52.227-14 (or other applicable Government procurement regulations), shall not be considered as proprietary to SELLER nor in any way restrict ULTRA's or the Government's use of such Data.

21 PATENT, COPYRIGHT, TRADE SECRET, AND TRADEMARK INDEMNITY:

SELLER hereby indemnifies and shall defend and hold harmless ULTRA, and its officers, employees, authorized representative, ULTRA's customers, and any subsequent seller or user of the Items or Services from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, liabilities, interest, attorney's fees, costs, and expenses of whatsoever kind or nature incurred by ULTRA as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any United States or foreign patent, copyright, trade secret, or trademark and arising out of the use of the Items or Services furnished under the Order by SELLER, or out of the processes or actions employed by, or used on behalf of SELLER in connection with the performance of the Order, provided SELLER is reasonably notified of such claims or proceedings. SELLER's obligation shall not apply to Items manufactured pursuant to detailed designs developed and furnished by ULTRA nor to any infringement arising from the use or sale of Items in combination with items not delivered by SELLER if such infringement would not have occurred from the use or sale of such Items solely for the purpose for which they were designed or sold to ULTRA. SELLER's obligation shall extend to the U.S. Government only if and to the extent ULTRA or its customers and subsequent sellers/users have agreed or are required to indemnify the U.S. Government. The same defenses of ULTRA provisions set out in the last three sentences of Paragraph 17, "INDEMNITY," also apply to this Paragraph 21, "PATENT, COPYRIGHT, TRADE SECRET AND TRADEMARK INDEMNITY"

22 WARRANTY:

SELLER will perform the work in accordance with reasonable and customary engineering practices prevailing at the time and at the place where performed. If, during the ninety (90) day period immediately following completion of performance of the Order, it is determined that there is a substantial and material error in SELLER's performance as a result of reasonable and customary engineering practices not having been met, SELLER shall take such corrective action as may reasonably be necessary, within the applicable Statement of Work, to substantially remedy the error.

23 PRICE WARRANTY:

SELLER warrants that the prices specified in this Order do not exceed the selling price for the same or substantially similar Items or Services to any other purchaser, taking into account the quantity and schedule under similar conditions of purchase; and that such prices include all applicable federal, state, local, and other taxes in effect on the date of this Order.

24 TITLE AND RISK OF LOSS:

- a) Unless otherwise specified, title to and risk of any loss of or damage to the Items shall pass from SELLER to ULTRA F.O.B. ULTRA's plant. Passing of title upon such delivery shall not constitute acceptance of the Items by ULTRA or relieve SELLER of any of its obligations. SELLER shall be responsible for and shall bear any and all risk of loss or damage to all materials furnished, loaned, or rented by ULTRA to SELLER until completion and final acceptance of this Order.
- b) Risk of loss for property, inventory, goods, work-in-process, tooling, etc., in SELLER's custody or control shall be assumed.

25 INSURANCE REQUIREMENTS:

- a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of ULTRA or its customers for any reason in connection with this Order, then SELLER and its subcontractors shall procure and maintain for the performance of this Order worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as ULTRA may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall provide ULTRA thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER's of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name ULTRA as an additional insured for the duration of this Oder. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of ULTRA and is not contributory with any insurance, which

ULTRA may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Order.

- b) **SELLER shall indemnify and hold harmless ULTRA, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors.**

26 CONFLICT OF INTEREST:

- a) SELLER warrants that, to the best of his knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest as defined in FAR Subpart 9.5 and as stated herein. An "organizational conflict of interest" exists when the nature of the work to be performed under this Order may, without some restriction on future activities, (a) result in an unfair competitive advantage to the SELLER or (b) impair SELLER's objectivity in performing the work under this Order.
- b) SELLER agrees that if an actual or potential organizational conflict of interest is discovered, he will make full disclosure in writing to the ULTRA Procurement Representative. This disclosure shall include a description of actions which SELLER has taken or proposed to take, after consultation with the Ultra Procurement Representative, to avoid, mitigate, or neutralize the actual or potential conflict.
- c) Remedies - ULTRA may terminate this Order for convenience, in whole or in part, if it deems necessary to avoid an organizational conflict of interest. If SELLER was aware of a potential organizational conflict of interest before award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to ULTRA, ULTRA may terminate the Order for default, or pursue such other remedies as may be permitted by law or this Order.
- d) SELLER further agrees to insert in any subcontract, order, or consultant agreement hereunder, provisions which shall conform substantially to the language of this clause, including this subparagraph (d).

27 STATUS - INDEPENDENT CONTRACTOR:

During the term of this Order, SELLER shall furnish Items and Services as an independent contractor and SELLER shall not, without express written authority, act for or bind ULTRA in any manner. SELLER shall not under any circumstances be considered an employee of ULTRA. ULTRA shall not have any right to direct or control SELLER in the method of performance or means of accomplishing the desired result except to the extent that a particular method is specified or any specifications and requirements which are made a part hereof. SELLER shall, however be responsible for the quality of the work done and materials used, and warrants that the Services and materials will be first class in every respect. All contracts, agreements, or negotiations completed without ULTRA's express written consent shall be subject to ULTRA's written approval.

28 NOTIFICATION OF DEBARMENT/SUSPENSION STATUS:

SELLER shall provide immediate notice to ULTRA in the event of being suspended, debarred or declared ineligible by any Local, State or U.S. Government Agency, or upon receipt of a notice of proposed debarment or suspension. SELLER shall not subcontract with or purchase from firms so suspended or debarred.

29 NOTICE 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 Order, SELLER shall immediately give written notice thereof, including all relevant information with respect thereto to ULTRA. SELLER agrees to insert the substance of this clause in any subcontract or Order hereunder.

30 LIENS:

If a lien is filed against the Items by any entity which has supplied material or services at the request of SELLER, its subcontractors, or suppliers, SELLER shall at its expense, take all necessary action to cause such lien to be released or discharged immediately. Upon request of ULTRA, SELLER shall furnish affidavits, releases or other evidence ULTRA may require to satisfy ULTRA that all claims, liens, demands, liabilities, costs, expenses, losses, and damages, have been paid and discharged. SELLER's failure to comply with the requirements of this clause shall be construed as authorization for ULTRA to act on SELLER's behalf to facilitate compliance. SELLER agrees that any and all costs incurred by ULTRA while acting on SELLER's behalf will be the sole responsibility of SELLER and will be paid upon demand.

31 TAXES:

SELLER shall pay all taxes, levies, duties, and assessments of every nature including any sales, use or other taxes payable at source and due in connection with any work under the Order and hereby indemnifies and holds harmless ULTRA from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

32 OVERSHIPMENTS:

SELLER is instructed to ship only the quantity(ies) specified in this Order. However, any deviation caused by conditions of loading, shipping, packing, or allowances in manufacturing processes may be accepted by ULTRA according to the overshipment allowance indicated on the face of the Order. If no allowance is shown, it shall be zero percent. ULTRA reserves the right to return any over shipment in excess of the allowance at SELLER's expense.

33 PRICE ADJUSTMENT:

ULTRA will not accept shipment at any increase in price above that indicated on this order. Any general price decrease announced by SELLER in classification of equipment/materials and/or services similar to the Items or Services described on this Order shall automatically reduce the price thereof by a comparable percentage.

34 FLOW-DOWN:

SELLER agrees that the pertinent and applicable clauses contained in this Order shall be passed to SELLER's subcontractors and vendors under this Order.

35 GOVERNING LAW:

The order shall be interpreted, construed and governed under the laws of the state of Texas as if executed and performed wholly within the state of Texas, exclusive of its choice of law provisions. Where not modified by the terms herein, the provisions of the Texas enactment of Article 2 of the Uniform Commercial Code shall apply to this transaction. To the extent that the federal common law of government contracts is dispositive under Government Contracts, this Order will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government.

36 INCIDENTAL AND CONSEQUENTIAL DAMAGES:

ULTRA shall not be liable to SELLER for any incidental and/or consequential damages arising out of or related to the performance of this Order.

37 SELLER OWNERSHIP CHANGE:

SELLER is required to submit in writing to ULTRA notification on the following change conditions:

- i. Acquisition by or merger with any foreign interest;
- ii. Majority or controlling interest obtained by a foreign interest.

38 SAFETY AND ACCIDENT PREVENTION:

In performing any work under this Order on premises which are under the control of ULTRA or the U.S. Government, the SELLER shall conform to all safety rules and requirements prescribed by ULTRA or the Government. SELLER agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of SELLER, ULTRA, and Government personnel performing or in any way coming in contact with the performance of this Order. Any violation of such rules and requirements, unless promptly corrected, as directed by ULTRA shall be grounds for termination of the Order in accordance with the default provisions hereof.

39 NON-WAIVER:

Any failure at any time of either party to enforce any provisions of this Order shall not constitute a waiver of such provision or prejudice such party's right to enforce such provision at any subsequent time.

40 SEVERABILITY:

The invalidity or unenforceability of any provision of this Order shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Order to the extent of its invalidity or unenforceability, and this Order shall be construed and enforced as if the Order did not contain that particular provision to the extent of its invalidity or unenforceability.

41 SURVIVABILITY:

All covenants, indemnities, guarantees, and warranties by SELLER shall survive the termination or expiration of this Order.

42 RESTRICTION ON HIRING PERSONNEL:

SELLER understands that ULTRA has incurred the expense of recruitment, selection, and training of its personnel as well as other expenses. Therefore, SELLER agrees not to interfere with the employment relationship between ULTRA and any of their personnel who direct the work under this Order and will not employ such personnel for a period of at least one year from the termination, completion, or final payment of this Order, whichever is later.

43 EXPORT CONTROL:

- a) SELLER agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2778, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of a U.S. export license, export agreement (e.g., TAA, MLA), or an applicable exemption or exception.
- b) SELLER agrees to notify ULTRA if any deliverable under this Contract is restricted by export control laws or regulations.
- c) SELLER shall immediately notify the ULTRA 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.
- d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing 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 an ULTRA export license or export agreement SELLER shall provide prompt notification to the ULTRA Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the 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.**

44 PRIORITY RATING

If this Order is identified as a "rated order," certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulations (15 C.F.R. Part 700).

45 SUSPECT COUNTERFEIT PARTS

1). "Suspect/Counterfeit Parts" are parts that may be of new manufacture but labeled to represent a different class of parts or used and/or refurbished parts with false labeling representing them as new parts or a manufacturer other than the actual manufacturer. Examples of suspect/counterfeit parts that have been prominent include: (a). Fasteners, including bolts and nuts, made of carbon steel (designated as grade five or grade eight) or stainless steel, with head marks or stamps shown on the head mark list prepared by the United States Customs Service (see latest revision)(b).electrical or electronic parts and components that are falsely identified and/or labeled, or properly identified, but passed as acceptable product when it is known to be nonconforming to specified OEM requirements(c). Piping, valves and flanges bearing labels that falsely indicate that the items meet recognized ASME, ASTM, or other consensus standards, or falsely bear independent testing laboratory markings; and,(d). Used or refurbished molded-case electrical circuit breakers or similar type switch gear

2). Supplies furnished to ULTRA under this contract shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this contract whether on or off the facility site.

3). If suspect/counterfeit parts are furnished under this purchase order and are found in any of the goods delivered hereunder, such items will be impounded by appropriate ULTRA personnel. The Seller shall promptly replace such suspect/counterfeit

parts with parts acceptable to the Buyer and the Seller shall be liable for any and all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged. Seller shall be fully liable for all such costs, even if such cost might be considered indirect, special or consequential damages. Seller's liability for suspect/counterfeit parts shall not expire until the product is found to be in satisfactory operation after delivery for its implied warranty only if the product is used for non-space application (e.g., ground or airborne). At Buyer's request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its Government customer for further investigation. Seller agrees that any Government or quasi-Government directive, such as a GIDEP alert, DOE, or a directive from ULTRA indicating that such parts are counterfeit, shall be deemed definitive evidence that Seller's parts contain counterfeit parts and such reports may be referred to the Department of Justice.

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES:

1. The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Order. Any reference to a "Disputes" clause shall mean the "Disputes" paragraph of this Order.
2. The date of any referenced FAR or DFARS clause (or other Government procurement clause) is the most recent version of the clause in effect at the time of award of this Order. However, if the prime contract between ULTRA and the government incorporates a preceding version of any such clause, that version shall apply to this Order. ULTRA will provide the applicable dates upon receipt of a written request from SELLER.

B. GOVERNMENT SUBCONTRACT:

This Order is entered into by the parties in support of a U.S. Government contract.

As used in the FAR clauses referenced below and otherwise in this Order:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Order.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for ULTRA's government prime contract under which this Order is entered.
4. "Prime Contract" means the contract between ULTRA and the U.S. Government or between ULTRA and its higher-tier contractor who has a contract with the U.S. Government.
5. "Subcontract" means the immediate first tier subcontractor to ULTRA.

C. NOTES FOR INCORPORATED CLAUSES:

1. Substitute "ULTRA" for "Government" or "United States" throughout this clause.
2. Substitute "ULTRA Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and ULTRA" after "Government" throughout this clause.
4. Insert "or ULTRA" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through ULTRA.
6. Insert "and ULTRA" after "Contracting Officer", throughout the clause.
7. Insert "or ULTRA PROCUREMENT REPRESENTATIVE" after "Contracting Officer", throughout the clause.

D. AMENDMENTS REQUIRED BY PRIME CONTRACT:

SELLER agrees that upon the request of ULTRA it will negotiate in good faith with ULTRA relative to amendments to this Order to incorporate additional provisions herein or to change provisions hereof, as ULTRA may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract and amendments. If any such amendment to this Order causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Order, an equitable adjustment shall be made pursuant to the "Changes" paragraph of this Order.

E. PRESERVATION OF THE GOVERNMENT'S RIGHTS:

If ULTRA furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Government Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that ULTRA, acting on its own behalf, may modify or limit any rights the Government may have to authorize SELLER's use of such Government Furnished Items in support of other U. S. Government prime contracts.

F. FAR FLOWDOWN CLAUSES:

1. The following FAR clauses apply to this Contract:

- (a) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies);
- (b) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997);
- (c) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004);
- (d) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999);
- (e) 52.222-26 EQUAL OPPORTUNITY (APR 2002) (Only paragraphs (b)(1)-(II) apply);
- (f) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006);
- (g) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2006);
- (h) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006).

2. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$10,000:

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

3. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$25,000:

52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

- 4. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$500,000:**
52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) (Applicable if SELLER is not a small business. Note 2 is applicable to paragraph (c) only. SELLER's subcontracting plan is incorporated herein by reference.)
- 5. The following FAR clauses apply to this Order as indicated:**
- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Except subparagraph (c)) (Applicable if the Work requires access to classified information.);
 - (b) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAR 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.);
 - (c) 52.225-1 BUY AMERICAN ACT-SUPPLIES (JUN 2003) (Applicable if the Work contains other than domestic components.);
 - (d) 52.225-5 TRADE AGREEMENTS (JAN 2006) (Applicable if the Work contains other than U.S. made, designated country, Caribbean or NAFTA country end products.);
 - (e) 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987) (Applicable only if existing computer software is to be delivered under this Order.);
 - (f) 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (MAY 2004)
(Applicable if Government property is furnished in the performance of this Contract. Except for paragraphs (i) and (j), Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. The following is added as paragraph (m) "Seller shall provide to ULTRA immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of property control system." Disposition of property under paragraphs (i) and (j) shall be coordinated with ULTRA.).

a) CERTIFICATIONS AND REPRESENTATIONS

- 1. This clause contains certifications and representations that are material representations of fact upon which ULTRA will rely in making awards to SELLER. By submitting its written offer, or providing oral offers/quotations at the request of ULTRA, or accepting any Order, SELLER certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any subcontract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by ULTRA. SELLER shall immediately notify ULTRA of any change of status with regard to these certifications and representations.**
- (a) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**
 - 1. SELLER certifies that, to the best of its knowledge and belief, that SELLER and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
 - 2. SELLER shall provide immediate written notice to ULTRA if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - (b) FAR 52.222-22 Previous Contracts and Compliance Reports.** SELLER represents that if SELLER has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26):
 - (i) SELLER has filed all required compliance reports, and (ii) representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
 - (c) FAR 52.222-25 Affirmative Action Compliance.** SELLER represents: (i) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (ii) that in the event such a program does not presently exist, SELLER will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Order.