



WEMS ELECTRONICS STANDARD TERMS AND CONDITIONS

1. **ACCEPTANCE:** This Purchase Order constitutes Buyer's offer to Seller upon the Terms and Conditions stated herein and shall become a binding contract on the terms set forth herein when it is accepted either by acknowledgement or commencement of performance by Seller. An acknowledgement of the order by the Seller shall be regarded as an acceptance of these conditions irrespective of any conditions that might be laid down by Seller in conflict with these conditions, even when reference is made to Seller's conditions of sale in any confirmation of sale or acknowledgement of this order in any of the documents relative to Buyer's order unless said conditions are expressly accepted in writing by Buyer.

2. **SHIPPING:** Each container, and accompanying packing list, must show this order number. No charge shall be made for packaging, delivery, or similar costs, unless expressly authorized by this order. All items shall be suitably prepared for shipment to secure the lowest transportation and insurance rates, and to meet carrier's requirements.

3. **PAYMENT:** Invoices in duplicate shall be mailed to Buyer's Accounting Department when items are shipped. The time for payment of Seller's invoices shall commence with the date of actual receipt of items in complete accordance with the requirements of this order. Any adjustments in Seller's invoices due to shortage, late delivery, rejection or other failures to comply with the requirements of this order may be made by Buyer before payment. Errors on Invoices shall be considered just cause for withholding payment without prejudice to Buyer's right for discount. Payment shall not constitute acceptance.

4. **WARRANTIES AND INSPECTION:** Seller expressly warrants that all items will conform to applicable specifications, drawings, and samples, that they will be free from defects in material and workmanship and that they will be fit for their intended use. Said warrants, however, shall not be deemed to limit any warranties of additional scope given to Buyer by Seller. Unless otherwise specified, all items will be subject to final inspection and acceptance at Buyer's plant. Buyer may, at its option, either hold rejected items for Seller's instructions and its risk, or return them to Seller at Seller's expense, and Seller shall promptly reimburse Buyer for any and all damages sustained by the Buyer as a result of Seller's breach of warranty. No replacement of rejected items shall not discharge Seller from liability for breach of warranty. All warranties shall insure to the benefit of Seller, its successors, assigns and customers.

5. **CHANGES:** Buyer shall have the right at any time before completion of the order to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipments and packaging. If such changes cause and increase or decrease in prices or in the time required for performance, Seller shall submit written claim for adjustments within ten (10) days from date change is ordered and an equitable adjustment shall be made. Changes shall not be binding upon buyer unless evidenced by a purchase order change notice issued and signed by Buyer.

6. **TAXES:** Federal, State or local taxes of any nature which are billed to Buyer shall be stated separately in Seller's invoices. Any and all tax exemption certificates will be accepted by the Seller.

7. **PATENTS:** Seller shall, with respect to any device or composition of design submitted by Seller, or of Seller's manufacture indemnify and hold harmless Buyer, its customers and agents, from costs and damages as finally determined by any court for infringement of any United States Letters Patent, by reason of the sale or normal use of such device or composition, such allowance for cost to include reasonable Attorney's fees, provided the Seller is promptly notified of all such actual or potential infringement suits and is given an opportunity to participate in all defense thereof by Buyer.

8. **BUYER'S USE:** Buyer, its successors and assigns, may subject all items to further manufacture, may combine them with other articles, or sell or put them to any use whatsoever, and no claim for royalties or additional compensation may be made by Seller by reason of such manufacture, combination, sale or use.

9. **TITLE TO USE OF RESPONSIBILITY FOR PROPERTY:** All designs, tools, patterns, drawings, specifications, and any other information, materials or equipment furnished by Buyer or the Government to Seller for use in the manufacture of the items hereunder shall remain Buyer's or the Government's property, as the case may be, and Seller shall not use any such property in the production, manufacture or design of any other articles or materials, or for the production or manufacture of larger quantities than those specified herein, without first obtaining Buyer's written consent thereto. Seller shall be fully responsible for all property upon delivery to Seller and until redelivery thereof to Buyer, and shall promptly upon completion of the work deliver all such property and productions therefrom to Buyer, or if Buyer demands delivery to same prior to completion of the work, Seller shall deliver such property and productions to Buyer in accordance with the terms of said demand.

10. **TERMINATION:** (a) Buyer may, by written notice terminate this order and the performance of work hereunder in whole or from time to time in part, whatever for any reason Buyer deems such termination to be for its or the Government's best interests. Upon receipt of such notice, Seller shall terminate work when and to the extent specified in the notice, terminate all orders and subcontracts to the extent they relate to work terminated, continue work not terminated, and take necessary actions for the protection of property which is in Seller's possession, and in which Buyer or the Government has or may acquire interest. (b) Buyer and Seller may agree upon the balance of compensation due to Seller in the event of total or partial termination. If Buyer, and Seller fail to agree within 60 days from date of the termination notice, or within such further time as the parties mutually agreed upon in writing. Buyer, in addition to making payments of unpaid amounts due for completed items delivered or services rendered prior to the effective date of termination shall pay to Seller for the owing amounts, (without duplication):

(I) Actual costs incurred by Seller which are properly allowable under recognized accounting practices to the terminated portion of the order, and
(II) A reasonable profit on work actually performed by Seller prior to the effective date of termination, the rate of which shall not exceed that used in establishing the original purchase order price, and,
(III) Seller's reasonable costs actually incurred in protecting property in which Buyer or the Government has or may acquire any interest.

Provided, however, that the total payments due under this subparagraph (b), exclusive of payments due under subpart (III), shall not exceed the total price specified in this order less payments made.

Provided further, that if termination is occasioned by Seller's breach of any condition hereof, including breach of warranty, or by Seller's delay, except only delay due to causes beyond Seller's control and without Seller's fault or negligence, Seller shall not be entitled to payments of any said profit and shall be liable to Buyer for any damages incurred by Buyer as a result thereof, including reasonable attorney's fees.

11. **TIME:** Time shall be of the essence hereunder.

12. **CONFIDENTIAL:** Seller shall not, without first obtaining Buyer's written consent disseminate the fact that Seller has furnished or has contracted to furnish Buyer the items covered hereby, nor, except as is necessary for performance of this order, shall Seller disclose any of the details connected with this order to third parties.

13. **CONDITIONS APPLICABLE TO ORDERS PLACED UNDER U.S. GOVERNMENT CONTRACTS OR SUBCONTRACTS:** DEFINITION: As used in this order, the term ASPR means the Armed Services Procurement Regulation as in effect on the date of this order. Wherever in these clauses the words "Contracting Officer" and/or "Government" appear, they also shall be deemed to include in the disjunctive, the Buyer, and wherever the word "Contractor" appears, it shall mean the Seller.

The conditions of this Article 13 shall apply unless otherwise stated in addition to the other terms and conditions of this order of U.S. Government contract number noted on the face of this order:

(a) **Inspection and Audit:** Seller's books and records, and its plant or such parts thereof, as may be engaged in the performance of this order shall at all reasonable times, be subject to inspection and audit by an authorized representative of the Department of Defense and/or the Buyer.

(b) **Examination of Records:** Seller agrees that the Comptroller General of the United States, as may be engaged in the performance of this order shall, until the expiration of three years after final payments under this Purchase Order, have access to and the right to examine any directly pertinent books, documents, papers and records of Seller involving transactions related to the order.

(c) **Laws:** Seller agrees that the items will be manufactured or furnished in compliance with all applicable provisions of all laws and regulations, including but not by way of limitation the applicable provisions of the federal laws, as heretofore or hereafter amended, known as the Fair Labor Standards Act, Walsh-Healey Acts, Eight Hour Law, Buy America Act, Vinson-Trammel Act, Royal Adjustment Act, and the Espionage Act (and statutes relative thereto) and all applicable regulations, rulings and interpretations issued thereunder.

(d) **Non-discrimination:** In connection with the performance of this order, Seller shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin and Seller agrees to insert similar provisions in all orders or subcontracts placed hereunder. In connection with the performance of work under this contract, the Contractor agrees to comply with the provisions of Executive Order No. 10925, Part 3, Sub-Part A, Section 301, Paragraphs (1) through (6).

(e) **Renegotiation:** This purchase order is subject to the Renegotiation Act 1951, as amended, and to any subsequent act of Congress providing for the renegotiations of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this purchase order or any subcontract hereunder, which is not imposed by any Act of Congress heretofore, or hereafter inactive.

(f) **Data:** There are hereby incorporated herein by reference for the benefit of the Government and Buyer, the clauses set forth in Section 9-203.1 in 9-203.2 of ASPR. The data specified or described by reference in this order is hereby identified as required, notwithstanding that it may be proprietary, provided however, that such identification of required data is not deemed to be a determination that the data proprietary.

(g) **Additional Procurement Regulations:** The below indicated Armed Service Procurement Regulation clauses are hereby incorporated and made a part of the purchase order.

1. Termination-(ASPR 8-706)
2. The provisions of this clause shall not limit or affect the rights or remedies of Buyer stated in other clauses of this order, or provided by law in the event of default or breach of Seller.
3. Officials not to Benefit-(ASPR 1-703-19)
4. Notice to Government of Labor Dispute (ASPR 7-104.4)
5. Covenant Against Contingent Fees (ASPR 7-103.20)
6. Military Security (ASPR 7-104.12)
7. Small Business Subcontracting Program (ASPR 1-707.3 (b))
8. Utilization of Small Business Concerns (ASPR 1-703.3 (d))
9. Utilization of Concerns in Labor Surplus Areas (ASPR 1-805.3 (d))
9. Labor Surplus Subcontracting Program (ASPR 1-707.3 (b))

(h) **Patents:** Seller shall, prior to filing any patent application which discloses classified subject matter relating to this order, obtain permission from the Contracting Officer so to do. Seller shall be bound by all provisions in the Government contract referred to on the face hereof, relating to Subcontractors patent or license rights and obligations.

14. **WAIVER:** No waiver of a breach of any provision of this order shall constitute a waiver of any other breach or of such provision.

15. **ASSIGNMENT AND SUBCONTRACTS:** This order may not be assigned, nor may any assignment of monies due or to become hereunder be made by Seller, without the prior written consent of Buyer thereto. No subcontract shall be made by Seller for the furnishing of any of the work or items, without prior written approval of Buyer as to sources.

16. **VALIDITY:** The invalidity in whole or in part of any condition of this order shall not affect the validity of other conditions.

17. **PUBLICATION:** The Seller shall not without first obtaining the written consent of the Buyer in any manner advertise, announce or publish the fact that the Seller has contracted to furnish Buyer the articles herein mentioned and for failure to observe this provision in addition to all other remedies the Buyer shall have the specific right to cancel this contract without any further liability thereon.