



**Standard Terms and Conditions TC-001**  
**Revision 7e – 03/20/2017**

**1. Acceptance of Purchase Order**

Agreement by Seller to furnish the materials, products, or services hereby ordered, or its commencement of such performance, or acceptance of any payment, shall constitute acceptance by Seller of this Purchase Order subject to these terms and conditions. In the event that this Purchase Order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. These Standard Terms and Conditions, together with any referenced exhibits, attachments or other documents appended hereto, constitute the entire agreement between the parties with respect to the subject matter of this Purchase Order and supersede any prior or contemporaneous written or oral agreements pertaining thereto.

**2. Definitions**

Words, as employed in the Purchase Order, shall have their normally accepted meanings. The following terms shall have the described meaning:

(a) "Buyer" shall mean Millennium Space Systems, Inc. in this Purchase Order.

(b) "Seller" shall mean the party identified as the Seller in this Purchase Order.

(c) "Purchase Order" shall mean the Purchase Order, Subcontract or Contract, these Standard Terms and Conditions, and any special conditions appended hereto or documents incorporated herein.

(d) "Work" shall mean that Work identified and defined in the Purchase Order, which may be changed, from time to time by the mutual written agreement of the parties.

(e) "Customer" shall mean Buyer's customer(s) and shall include Buyer's direct and indirect customers such as direct sale end-users, higher-tier subcontractors, prime contractors and the ultimate user under relevant prime contract(s).

**3. Shipping Instructions**

(a) Seller shall be responsible for ensuring the proper packaging of materials hereunder. No charges will be allowed for packing, crating, freight, local cartage and/or any other services unless so specified in the Purchase Order. A packing list shall accompany each shipment of goods.

(b) Seller shall at all times comply with Buyer's written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. Seller shall submit all required shipping papers to Buyer prior to final payment.

(c) For material purchased FOB origin (to mean "F.O.B. the place of shipment" pursuant to UCC §2-319(1)(a)), Seller shall bear the expense of and risk of loss of, or damage to, the goods until the goods are put into the possession of the carrier designated by Buyer. Seller shall not insure and not declare a value except when transportation rates are based on "released value," in which instance the Seller shall annotate on the bill of lading the lowest released value provided in applicable tariffs.

(d) For material purchased FOB destination (to mean "F.O.B. the place of destination" pursuant to UCC §2-319(1)(b)), Seller shall bear the expense of transport of, and risk of loss or damage to, the goods to the named destination.

(e) Purchase Order number(s) must appear on all correspondence, shipping labels and shipping documents, including all packing sheets, bills of lading, airbills and invoices. In addition, Seller will include the name of the transportation company, the tracking receipt number and the transportation company's website for tracking purposes. Further, Seller shall provide a named point of contact to Seller who is available 24 hours per day in the event of shipping and/or receiving issues, including without limitation an email address, cell phone number, home phone number and pager number.

**4. Delivery; Notice of Delay**

(a) Time is of the essence and failure to deliver in accordance with the delivery schedule under this Purchase Order, if unexcused, shall be considered a material breach of this Purchase Order. No acts of Buyer, including without limitation modifications of this Purchase Order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's orders or in advance of required schedules, and/or to defer payment on advance deliveries until scheduled delivery dates.

(b) Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies hereunder.

**5. Termination for Convenience**

(a) Buyer may, by notice to Seller in writing, terminate this Purchase Order or Work under this Purchase Order for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial

termination, Seller is not excused from performance of the non-terminated balance of Work under the Purchase Order.

(b) In the event of termination for convenience by Buyer, Seller shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit for Work performed to date of termination. In no event shall Buyer be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Purchase Order. Any termination settlement proposal shall be submitted to Buyer promptly, but no later than ninety (90) days from the effective date of the termination. In no event shall the amount of any settlement be in excess of the Purchase Order value. Buyer may take immediate possession of all Work so performed upon written notice of termination to Seller.

**6. Termination for Default**

(a) Buyer may, by notice to Seller in writing, terminate this Purchase Order in whole or in part at any time for Seller's breach of any one or more of its terms hereunder, failure to make progress so as to endanger performance of this Purchase Order or failure to provide adequate assurance of future performance. In the event of partial termination under this Section 6, Seller is not excused from performance of the non-terminated balance of Work under the Purchase Order.

(b) In the event of Seller's default under this Section 6, Buyer may exercise any or all rights accruing to it, both at law and in equity, including without limitation the immediate transfer of title and delivery to Buyer of any partial goods and raw material, parts, tools, information and the like, which Seller has produced or acquired under the terms of this Purchase Order, including the assignment to Buyer of Seller's subcontracts. In addition, Seller hereby grants to Buyer a perpetual, worldwide, unconditional, transferable, fully paid up, royalty-free license to use and exploit all of Seller's intellectual property that is necessary for the performance of the terminated portion of this Purchase Order, solely to make, or have made, use, maintain and sell the Work to be performed hereunder.

(c) In the event of Seller's default under this Section 6., Seller is liable to Buyer for any excess repurchase costs incurred in acquiring goods and/or services similar to those terminated for default, and for any other damages, whether or not repurchase is affected.

**7. Force Majeure**

Except for defaults of Seller's subcontractors at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity (including without limitation curfews mandated by local, state or federal entities), fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In the event that performance of this Purchase Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the party whose performance is so affected shall so notify the other party's authorized representative in writing and, at Buyer's option, this Purchase Order shall be completed with such adjustments as are reasonably required by the existence of Force Majeure or this Purchase Order may be terminated for convenience.

**8. Disputes**

(a) Pending resolution or settlement of any dispute arising under this Purchase Order, Seller will proceed diligently as directed by Buyer with the performance of this Purchase Order.

(b) This Purchase Order shall be construed and enforced in accordance with the internal law of the State of California applicable to contracts negotiated, executed and wholly performed within said State, regardless of where this Purchase Order is negotiated, executed and/or performed. Seller: (i) consents to the jurisdiction of the courts of the State of California and the courts of the United States located in the State of California, in connection with any lawsuit, action or proceeding arising out of or relating to this Purchase Order; (ii) waives any objection that it might now or hereafter have to the venue of any such lawsuit, action or proceeding; (iii) irrevocably submits to the jurisdiction of any such court in any such lawsuit, action or proceeding; and (iv) waives any claim or defense of inconvenient forum.

(c) Buyer and Seller shall each bear its own costs of processing any dispute hereunder. In no event shall Seller acquire any direct claim or direct course of action against the U.S. Government. The rights and remedies of Buyer are cumulative and in addition to any other rights and remedies provided by law or in equity.

**9. Remedies; No Waiver**

Except as otherwise provided herein, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.



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Notwithstanding anything to the contrary hereunder, in the event Buyer brings an action or asserts a counterclaim for enforcement of the terms and conditions of this Purchase Order, Seller agrees that Buyer shall be entitled to an award of its reasonable attorneys' fees and court costs associated with any such enforcement or counterclaim proceedings.

**10. Confidentiality**

Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer ("Proprietary Information"), shall be used only for purposes of providing goods or services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. Seller shall exercise the same degree of care over any Proprietary Information that Seller uses for its own confidential information, but no less than reasonable care. Further, Seller shall not reverse engineer, decompile or disassemble Proprietary Information, nor remove or alter any copyright or confidentiality markings, nor file a patent application using them. All Proprietary Information shall be promptly provided to Buyer on request or upon completion of this Purchase Order. Notwithstanding the above, Seller may disclose Proprietary Information to the extent required by applicable law or regulation, provided that Seller shall (unless prohibited by law) give Buyer prompt written notice and sufficient opportunity to object to such disclosure, or to request confidential treatment. Seller may provide Proprietary Information to its subcontractors as required in connection with this Purchase Order, provided each such subcontractor first agrees in writing to substantially the same obligations imposed upon Seller under this Section 10. Seller's nonuse and nondisclosure obligations do not apply to Proprietary Information that Seller can establish by written records to have been: (i) public knowledge at the time of such disclosure by Buyer to Seller, and not as a result of wrongful acts attributable to Seller; (ii) rightfully known by Seller prior to disclosure by Buyer; (iii) disclosed to Seller on an unrestricted basis from a third party not under a duty of confidentiality to Buyer; or (iv) independently developed by Seller's employees or agents without access to or use of Proprietary Information.

**11. Buyer's Property**

(a) All drawings, tools, jigs, dies, fixtures, materials and other property supplied or paid for by Buyer shall be and remain the property of Buyer. In the event Seller fails to return such property upon Buyer's demand, Buyer shall follow normal legal process to reclaim property.

(b) All such items shall be used only in the performance of Work under this Purchase Order unless Buyer consents otherwise in writing.

(c) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.

(d) Seller shall keep adequate records of all Buyer's property in its control, which shall be made available to Buyer upon request. Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be responsible for all loss or damage to said property except for normal wear and tear. For Work performed pursuant to U.S. Government contracts, Seller's responsibility for loss or damage to Government-provided property shall be determined in accordance with FAR Part 52.245-1, Part 52.245-1 Alternate I or Part 52.245-1 Alternate II, as applicable.

(e) At the completion or termination of this Purchase Order, Seller shall request disposition instructions for all such property and shall make such property available to Buyer per Buyer's request, including preparation, packaging and shipping as directed. Expense for preparation for shipment shall be for Seller's account and shipment shall be made FOB origin. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of Seller.

**12. Release of Information**

Seller shall not publish, distribute, or use any information developed under or about the existence of this Purchase Order, or use the Millennium Space Systems, Inc. company name (or the name of any division, affiliate or subsidiary thereof), logo, trademark, service mark or trade dress for the purpose of advertising, making a news release, creating a business reference, creating website content or for products or service endorsements without prior written approval of Buyer.

**13. Order of Precedence**

(a) Any inconsistency among the Purchase Order components shall be resolved by giving precedence in descending order:

- i. The International Traffic In Arms Regulations (ITAR) or any other applicable law;
- ii. The Federal Acquisition Regulations (FAR) (or any agency regulation that implements or supplements the FAR);
- iii. The principal Subcontract or Contract, as amended (excluding any attachments);

iv. These Standard Terms and Conditions, as amended;

v. Any other attachments to the Purchase Order not identified herein (the order of precedence among such attachments, if any, shall be set forth in the principal Subcontract or Contract).

Further, any modification to a provision or provisions of the Purchase Order as required by this Section 13 shall be to the extent (but only to the extent) necessary to remove any such conflict and permit compliance with such laws, terms and restrictions, and as so modified this Purchase Order shall continue in full force and effect.

(b) In the event of conflict among specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer, and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Purchase Order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final.

**14. Warranty**

(a) Seller warrants the materials delivered pursuant to this Purchase Order shall (i) be new, (ii) be free from defects in workmanship, materials and design, and (iii) be in accordance with all the requirements of this Purchase Order. However, in the event that this Subsection 14(a) should conflict with the provisions of any patent rights or data rights clause of this Purchase Order, the latter shall prevail. Seller further warrants that the performance of the Work and any services pursuant to the requirements of this Purchase Order shall conform to professional standards. All warranties shall survive inspection test and acceptance of, and payment for, the Work. The warranty shall extend for a period of one (1) year after Buyer's final acceptance unless a different period is set forth elsewhere in this Purchase Order. If any nonconformity of the Work appears within that time, Seller shall promptly repair, replace or re-perform the Work, at Buyer's option. All costs associated with the above shall be at Seller's expense. Work required to be corrected or replaced shall be subject to this Section 14. in the same manner and to the same extent as Work originally delivered under this Purchase Order. If repair, replacement or re-performance of Work is not timely, Buyer may elect to return the nonconforming Work or repair, replace the Work or re-procure the Work at Seller's expense.

(b) Seller further warrants that none of the Work supplied by Seller hereunder is counterfeit. Seller's warranty against counterfeit items shall survive any termination or expiration of this Purchase Order. All parts used in the Work shall be purchased directly from the original equipment manufacturer (OEM) or original component manufacturer (OCM), or through the OEM/OCM franchised distributor. Documentation must be available that authenticates traceability to the applicable OEM/OCM. Independent distributors (brokers) shall not be used without written consent from Buyer. A "counterfeit" item is an item, or any component thereof, produced, altered or otherwise misrepresented to resemble another item, or any part thereof, without authority or right to do so, including without limitation any item that is produced or altered to result in Buyer being misled or defrauded through the presentation to Buyer of such item as original, new genuine or otherwise from a source other than the actual source of such item. Counterfeit items also include items that have been re-worked, re-marked, re-labeled, repaired refurbished or otherwise modified from the original equipment manufacturer (OEM) design but are represented as OEM authentic or as new or any parts that are designated as suspect by the U.S. Government. Documentation must be available that authenticates traceability to the applicable OEM including but not limited to Certificates of Conformance and/or Material Certifications that provide the manufacturer's name, part number, date codes, lot codes, serializations, and/or any other batch identifications. For further guidance in regards to counterfeit avoidance, reference SAE Standard AS5553A (<http://standards.sae.org/as5553a/>), and the Aerospace Industries Association (AIA) Special Report Counterfeit Parts: Increasing Awareness and Developing Countermeasures, March 2011 (<http://www.aia-aerospace.org/assets/counterfeit-web11.pdf>). If Buyer, in its sole discretion, determines that any items components received from Seller are, or may be, counterfeit ("Suspected Counterfeit Parts"), Buyer shall notify Seller in writing of such determination. Seller agrees that within ten (10) days after Seller's receipt of such notice, Seller shall remit to Buyer all payments previously made to Seller for such Suspected Counterfeit Parts. Alternatively, Buyer may elect to have Seller offer a replacement item in lieu of remitting all previous payments associated with Suspected Counterfeit Parts.

(c) Seller further warrants that all work, materials, services, equipment, parts and other items provided by Seller pursuant to this Purchase Order, which are not of Buyer's design, shall be free from claims of infringement (including misappropriation) of third-party intellectual property rights and that any use or sale of such items by Buyer or any of Buyer's Customers shall be free from any claims of infringement. Any Work produced under this Purchase Order is to be deemed a work-for-hire to the extent permitted by law, and, to the extent not so permitted, shall be assigned to, and shall be, the exclusive property of the Buyer.

(d) This warranty entitlement shall inure to the benefit of Buyer, and its successors, assigns and Customers.

## 15. Inspection

(a) All material and workmanship shall be subject to inspection and test at mutually agreed-to dates and times during the course of this Purchase Order by Buyer or Buyer's Customer before, during and up to sixty (60) days after delivery. The Buyer may require Seller to repair, replace or reimburse the purchase price of rejected material or Buyer may accept any materials and upon discovery of nonconformance, may reject or keep and rework any such materials not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging and/or reinspection by Buyer shall be at Seller's expense. Buyer's acceptance of work and services shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud or misrepresentation on the part of Seller exists.

(b) If inspection and test are made on the premises of Seller or Seller's lower-tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Section 15 are supplementary to and not in lieu of the provisions of Section 14(a) above.

(c) Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Purchase Order.

(d) Seller and its suppliers shall establish and maintain a quality control and inspection program that complies with all requirements under this Purchase Order (the "Quality Control Program"). Buyer shall have the right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the Work is being performed. Seller shall flow this requirement down to its sub-tier supply chain suppliers as a condition of this Purchase Order. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities and assistance for the safety and convenience of Buyer in the performance of its duties.

(e) Seller shall keep and maintain inspection, test and related records (including without limitation calibration records of any test and measurement equipment used in the performance of the Purchase Order), which shall be available to Buyer. All records related to the above shall be retained for a period of seven (7) years following the final payment on the subject Purchase Order unless otherwise notified in writing by Buyer.

## 16. Changes

(a) Buyer shall have the right by written order to suspend work or to make changes from time to time in the services to be rendered or the materials to be furnished by Seller hereunder or the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of this Purchase Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Section 16(a) must be asserted in writing within twenty (20) business days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse the Seller from proceeding with this Purchase Order as changed pending resolution of the claim.

(b) Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's purchasing representative and which states it constitutes an amendment or change to this Purchase Order.

## 17. Conflict of Interest

To the best of Seller's knowledge and belief, there is no actual or potential conflict of interest with respect to the performance of Work under this Purchase Order; or, Seller has notified Buyer in writing of such a conflict of interest and received written authorization from Buyer to continue performance under the Purchase Order. If in the performance under the Purchase Order Seller becomes aware of an actual or potential conflict of interest, Seller will immediately notify Buyer in writing.

## 18. Payments; Taxes

(a) Unless otherwise provided, terms of payment shall be Net 30 (thirty) business days after receipt of payment from Buyer's Prime Contractor (Seller's proper invoice required).

(b) Payment will be made in United States dollars unless otherwise agreed to by specific reference in this Purchase Order.

(c) Seller is, and shall remain, an independent contractor during the performance of this Purchase Order.

(d) Unless this Purchase Order specifies otherwise, the price of this Purchase Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Purchase Order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption

certificate or other evidence of exemption. To the extent that Buyer is required to do so under applicable United States law or tax regulations, Buyer may deduct from any payments due to Seller pursuant to this Purchase Order such taxes as Buyer is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that Buyer provides Seller with relevant tax receipts or other suitable documentation evidencing the payment of such taxes promptly after such taxes are paid.

## 19. Assignments and Organizational Changes

(a) Seller may not assign any rights or delegate any of its obligations due or to become due under this Purchase Order without the prior written consent of Buyer. Any purported assignment or delegation by Seller without such consent shall be void. Buyer may assign this Purchase Order to (i) any affiliated company, (ii) any successor in interest or (iii) Buyer's Customer.

(b) Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name or ownership changes, mergers or acquisitions. Seller shall provide Buyer with a novation agreement setting forth the terms of the organizational changes and signed by the parties to the changes.

## 20. Compliance with Law

(a) This Purchase Order shall be governed by and subject to the laws of the State of California without reference to the conflicts of law principles thereof. The exclusive venue regarding any dispute or litigation arising out of this Purchase Order or the subject matter herein shall be a court of competent jurisdiction in Los Angeles, California. Notwithstanding the foregoing, in the event any provision of this Purchase Order is incorporated in full text or by reference from the FAR, or from any agency regulation that implements or supplements the FAR, or that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals and quasi-judicial agencies of the federal Government.

(b) Seller warrants that the materials to be furnished and the Work and/or services to be rendered under this Purchase Order shall be manufactured, sold, used and rendered in full compliance with all relevant federal, state, local law, orders, rules, ordinances and regulations. Seller shall procure all licenses/permits, pay all fees and other required charges in performance of this Purchase Order. Seller further warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

(c) Seller represents and warrants that each chemical substance constituting or contained in products sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. §2601 et seq.) as amended.

## 21. Government Contracts

(a) For each lower-tier subcontract awarded in support of and charged to a U.S. Government Prime Contract, Buyer shall provide Seller the appropriate flow-down clauses as an attachment to this Purchase Order to include a list or lists of clauses of the Federal Acquisition Regulation (FAR) and/or any agency regulation that implements or supplements the FAR, identified, if applicable, in the Subcontract or Contract.

(b) For orders placed in support of and charged to a U.S. Government Prime Contract or subcontract thereunder procuring an item meeting the definition of a Commercial item as contained in FAR 2.101, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of said Prime Contract are incorporated herein by reference. In all clauses listed herein the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this Purchase Order. The Seller shall include the terms of this Section 21, including this Section 21(b) in all purchase orders or subcontracts awarded under this Purchase Order.

1. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity 52.203-8
2. Price or Fee Adjustment for Illegal or Improper Activity 52.203-10
3. Contract Terms and Conditions Required to Implement Statutes of Executive Orders—Commercial Items 52.212-5
4. Small Business Subcontracting Plan 52.219-9 (\$700,000 threshold)
5. Service Contract Act Labor Standards 52.222-41 (if applies to Prime Contract)
6. Employment Eligibility Verification 52.222-54 (not applicable to contracts for COTS items)
7. Stop-Work Order 52.242-15 (use Alt I for cost-reimbursement contracts)
8. Government Delay of Work 52.242-17

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9. Changes—Fixed-Priced 52.243-1 (for fixed-price supply contracts; Alt I for services contracts w/no supplies; Alt II for services contracts w/supplies; Alt V for research and development contracts)
10. Changes—Cost-Reimbursement 52.243-2 (for cost-reimbursement supply contracts; Alt I for services contracts w/no supplies; Alt II for services contracts w/supplies; Alt V for research and development contracts)
11. Changes—Time-and-Materials or Labor-Hours 52.243-3 (for time-and-materials or labor-hour contracts)
12. Subcontracts for Commercial Items 52.244-6
13. Preference for Domestic Commodities (DoD Contracts) 252.225-7012
14. Notification of Potential Safety Issues 252.246-7003
15. Transportation of Supplies by Sea (DoD Contracts) 252.247-7023
16. Notification of Transportation of Supplies by Sea (DoD Contracts) 252.247-7024

## 22. Responsibility and Insurance

Seller shall be responsible for the actions and failure to act of all parties retained by, through or under Seller in connection with the performance of this Purchase Order. Seller shall also maintain and cause its subcontractors to maintain such General Liability, Property Damage, Employer's Liability, and Workers' Compensation Insurance, and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this Purchase Order or, if none are specified, such amount as will protect Seller (and its subcontractors) and Buyer from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes. Seller shall provide Buyer with certificates evidencing required insurance upon Buyer's request. Seller shall name Buyer as an additional insured for the duration of this Purchase Order. Insurance maintained pursuant to this Section 22 shall be considered primary as respects the interest of Buyer and is not contributory with any insurance that Buyer may carry. If Seller fails to purchase or maintain liability insurance required under this Purchase Order, Buyer may, but is not obligated to, purchase such insurance on Seller's behalf and shall be entitled to be repaid for any premiums paid therefor by Buyer.

## 23. Indemnification

(a) Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, Customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Work and/or goods and services provided under this Purchase Order, including, without limitation: (i) the breach of any warranty contained herein; (ii) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs; (iii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; (iv) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, subcontractors, employees or anyone acting on behalf of Seller; (v) any claim based on any Suspected Counterfeit Parts; and, (vi) any claim by a third party against Buyer alleging that the Work and/or goods and services provided under this Purchase Order, the results of such Work and/or good and services, or any other products or processes provided under this Purchase Order, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees.

(b) Should Buyer's use, or use by its distributors, subcontractors or Customers, of any Work and/or goods and services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either: (i) substitute fully equivalent non-infringing Work and/or goods and services; (ii) modify the Work and/or goods and services so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for Buyer, its distributors, subcontractors or Customers the right to continue using the Work and/or goods and services; or, (iv) if none of the foregoing is possible, refund all amounts paid for the infringing Work and/or goods and services.

(c) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Workers' Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

(d) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all Workers' Compensation or Occupational Disease laws claims for Bodily injury including death to employees of Seller brought forth by the Seller's employees and/or their families arising out of or in connection with this Purchase Order.

## 24. International Transactions

(a) Payment will be in United States dollars unless otherwise agreed to by specific reference in the Purchase Order. All reports, correspondence, drawings, notices, marking and other communications shall be in the English language.

(b) Seller agrees that Buyer, its subsidiaries, affiliates or its designees may exclusively use the value of the Purchase Order to satisfy any international offset obligations that Buyer may have with Seller's country, subject to the offset qualifying laws, rules and regulations of that country.

## 25. Export Compliance

(a) Seller is advised that its performance under this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 U.S.C. 2751-2796 (Arms Export Control Act) and 22 CFR 120-130 (International Traffic in Arms Regulations [ITAR]) or 50 U.S.C. 2401-2420 (Export Administration Act) and 15 CFR 768-799 (Export Administration Regulations [EAR]) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either (i) a U.S. person as that term is defined in the Export Laws and Regulations, or (ii) that it has disclosed to Buyer in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses (including attorneys' fees) that may be imposed on or incurred by Buyer in connection with any violations by Seller of Export Laws and Regulations, and any license(s) issued thereunder.

(c) Buyer's obligations under this Purchase Order are subject to and shall be modified if and to the extent required to conform to applicable Export Laws and Regulations, and any license(s) issued thereunder.

## 26. Severability

If any provision of this Purchase Order or application thereof is found invalid, illegal or unenforceable by law, the remainder of this Purchase Order will remain valid, enforceable and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.

## 27. Standards of Business Ethics and Conduct

By the acceptance of this Purchase Order, Seller represents that it has not participated in any conduct in connection with this Purchase Order that violates Buyer's Subcontractor Code of Ethics and Business Conduct (available at [http://www.millennium-space.com/assets/mss\\_coe\\_26-05-2015.pdf](http://www.millennium-space.com/assets/mss_coe_26-05-2015.pdf)). If, at any time, Buyer determines Seller is in violation of the Code of Ethics and Business Conduct, Buyer may cancel this Purchase Order upon written notice to Seller and Buyer shall have no further obligation to Seller.

## 28. Survivability

All of the provisions of the Purchase Order shall survive the termination (whether for convenience or default), suspension or completion of this Purchase Order unless they are clearly intended to apply only during the Term of this Subcontract.

## 29. Travel

Any travel authorized and undertaken in the performance of this Purchase Order shall be pursuant to and in compliance with Buyer's Travel Reimbursement Rules (available at [http://www.millennium-space.com/assets/mss\\_trr\\_28-11-2016.pdf](http://www.millennium-space.com/assets/mss_trr_28-11-2016.pdf)).

## 30. Intellectual Property Rights and Ownership

(a) Any work, writing, idea, discovery, improvement, invention (whether patentable or not), trade secret, technical data, computer programs (including source code and object code) or other intellectual property (collectively, "Intellectual Property") developed by Seller independent of this Purchase Order and made available by Seller under this Purchase Order ("Seller's Preexisting IP") shall remain the property of Seller. All Intellectual Property developed by Buyer independent of this Purchase Order and made available by Buyer under this Purchase Order ("Buyer's Preexisting IP") shall remain the property of Buyer. In the event this Purchase Order is placed under a U.S. Government contract or subcontract, ownership of any and all Intellectual Property conceived, made or developed under this Purchase Order shall be the exclusive property of Buyer to the extent allowed by law. In the event Seller retains any right in said Intellectual Property, Seller hereby grants to Buyer a perpetual, exclusive, paid-up worldwide license to exploit said Intellectual Property in any manner now known or hereafter devised.

(b) In the event a third party's proprietary information or data ("Third-Party Proprietary Information") is used in providing the goods and/or services hereunder, said Third-Party Proprietary Information shall be clearly marked as such and Seller shall give Buyer prior notice for its use and must have prior written authorization from Buyer to use



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Third-Party Proprietary Information in performance of the Work. Third-Party Proprietary Information shall remain the property of said third party.

(c) Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless (i) otherwise required by the U.S. Government Regulations referred to below in Subsection 30(d), or (ii) the Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.

(d) Applicable U.S. Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision of this Section 30 to the extent that such Regulations so require. The rights in subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights that Seller may have previously granted to Buyer pursuant to prior agreements between Buyer and Seller.

(e) Seller hereby grants to Buyer, and to Buyer's subcontractors and Customers, an irrevocable, non-exclusive, paid-up worldwide license to make, have made, use, have used, sell, have sold, offer for sale, import, reproduce, distribute copies of, perform publicly, display publically or make derivative works from Seller's Preexisting IP (whether domestic or foreign) included in or provided with Work performed under this Purchase Order as reasonably required by Buyer or Buyer's subcontractors and Customers to test and/or make use of the Work.

(f) If this Purchase Order is not placed under a U.S. Government contract or subcontract, Buyer shall have full ownership and rights, including patent rights, to all inventions, data, designs, computer software and information ("Inventions") conceived, made or developed under this Purchase Order. Seller shall disclose to Buyer in writing any such Inventions and cooperate, at Buyer's expense, in obtaining patent or other intellectual property protection on such Inventions. Seller further agrees to execute assignments to Buyer of any associated patents or patent applications. With respect to copyrightable works developed under this Purchase Order, Buyer and Seller agree that any such works that qualify as commissioned works under the Copyright Act are considered "works made for hire" with copyright ownership in Buyer; otherwise, Seller agrees to assign copyright ownership of works to Buyer. Seller shall not, unless otherwise authorized in writing by Buyer, disclose to anyone other than Buyer any Inventions or other data developed under this Purchase Order or any data disclosed to Seller by Buyer and shall not use such Inventions or data for any purpose other than in connection with the Work and performance of this Purchase Order.

END OF STANDARD TERMS AND CONDITIONS