

**1. Acceptance of Purchase Order**

Agreement by Seller to furnish the materials 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 of purchase herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Buyer's purchasing representative. These terms and conditions together with any referenced exhibits, attachments, drawings and other documents, 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. Shipping Instructions**

Shipment shall be made in accordance with specific instructions from Buyer on the face hereof. In the absence of specific shipping instructions, shipment shall be routed via the most economical mode of commercially reasonable transportation available. Material will be classified so that the lowest commodity rate may be obtained. 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. Seller is obligated to suitably pack, mark and ship all goods to prevent damage and to conform to requirements of all carriers. Notwithstanding any shipping, FOB or other terms or rights of the Buyer included herein, Buyer shall have the right to return all freight damaged merchandise to Seller and receive full credit therefore, unless said damage has been caused by the negligence of Buyer.

Purchase Order number and Part Number(s) must appear on all correspondence, shipping labels and shipping documents including all packing sheets, bills of lading, airbills and invoices.

**3. Delivery; Notice of Delay**

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, or to defer payment on advance deliveries until scheduled delivery dates.

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 of or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies hereunder.

**4. Termination for Convenience**

Buyer may, by notice 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 this Purchase Order.

In the event of termination for convenience by Buyer, Seller may be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination if so noted that goods or services at time of order are non-cancelable/non-returnable in nature. Buyer may take immediate possession of all work so performed upon written notice of such termination to Seller. Seller's obligations, including but not limited to obligations under the warranty, proprietary rights, infringement, and indemnity against claims provisions of this Purchase Order, shall survive such termination.

**5. Termination for Default**

Buyer may, by notice in writing, terminate this Purchase Order in whole or in part at any time for breach of any one or more of its terms, for 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, Seller is not excused from performance of the non-terminated balance of work under this Purchase Order.

In the event of Seller's default hereunder, the Buyer may exercise any or all rights accruing to it, both at law, including without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity.

Seller's obligations, including but not limited to obligations under the warranty, proprietary rights, infringement, and indemnity against claims provisions of this Purchase Order, shall survive such termination.

**6. 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 either its sovereign or contractual capacity, 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 hereto, ("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.

**7. Remedies**

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 waiver of such rights or of any other rights and shall not be construed as waiver or relinquishment of any such provisions, rights or remedies, rather, the same shall remain in full force and effect.

**8. Release of Information**

Seller shall not publish, distribute or use any information developed under or about the existence of Purchase Order, or use the PRIMUS Technologies name or the name of any of its customers or affiliates or subsidiary thereof, logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a business reference, creating a website content or for product or service endorsement without prior written approval of Buyer.

**9. Disputes**

Any controversy or claim that may arise out of or in connection with this Purchase Order that after good faith negotiations cannot be resolved to both Parties mutual satisfaction may be resolved by submitting the claim to a Commonwealth of Pennsylvania court of competent jurisdiction.

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.

Irrespective of the place of performance, this Purchase Order will be construed and interpreted according to the laws of the state of Pennsylvania without resort to said State's Conflicts of Law Rules.

**10. Proprietary Rights**

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 otherwise required by the U.S. Government regulations referred to below or the Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.

Unless otherwise expressly agreed in writing to the contrary and subject to Section 10 all specifications, information, data, drawings, software and other items which are supplied to Seller by Buyer or obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer or its' customers shall be proprietary to Buyer, 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. All such items supplied by Buyer or obtained by Seller in performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order. Seller warrants that neither the goods furnished hereunder nor the sale or use thereof will infringe any US or Foreign Letters Patent, trademark, copyright or other proprietary or similar rights. Seller will, at its own expense, defend any suit that may arise with respect to any aforementioned infringement or allegation thereof; and Seller will indemnify and hold Buyer and/or its customers harmless from all loss and expense incurred on account of any alleged or actual infringement. The warranty provided here shall not apply to goods to the extent such goods comply with the specifications furnished by Buyer.

Applicable Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision of this Section 9 to the extent that such Regulations so require.

**11. Buyer's Property**

All drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer shall be and remain the property of Buyer; and Buyer and/or its customers shall have the right to enter Seller's premises and remove any such property at any time without being liable for trespass or damages of any sort.

All items shall be used only in the performance of work under this Purchase Order unless Buyer consents otherwise in writing. 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. 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.

**12. Order of Precedence**

The provisions of the Purchase Order shall govern over all conflicts that may arise from specifications, drawings, samples, 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 and incorporated into the Purchase Order.

**13. Warranty**

Seller warrants the materials delivered pursuant to this Purchase Order shall be new, free from defects in workmanship, materials and design and to be in accordance with all the requirement of the Purchase Order. Seller further warrants that the performance of work and services pursuant to the requirements of this purchase Order shall conform to high professional standards. No Material Review Board authority has been granted for repair and all material must be free from repair. These warranties shall survive final acceptance and payment.

The warranty entitlement shall inure to the benefit of both Buyer and Buyer's customers. As used in these terms and conditions and Purchase Order, Buyer's customers shall include its direct and indirect customers such as end-users, subcontractors and prime contractors such as US Government or its subsidiaries.

Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties. Remedies shall be at Buyer's election.

**14. Inspection**

All material and workmanship shall be subject to inspection and test at all reasonable times and places by Buyer or Buyer's customer or any regulatory/compliance/licensing agencies certifying the product before, during and after performance and 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 re-inspection by Buyer shall be at Seller's expense.

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 provide the tests and setup required by the inspectors of the Buyers, their customers or any regulatory /compliance or licensing agencies in the performance of their duty.

Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Purchase Order and/or drawings and/or specifications.

**15. Record Retention of Suppliers**

All suppliers must maintain an adequate system of retention of all quality records used in the production of this order. For any commercial parts, the period of retention is 7 years from date of shipment, for parts produced to a customer print or military specification that record retention period is 10 years from shipment. If unable to comply for this period of time, copies must be shipped under the PO for retention by PRIMUS.

**16. Changes**

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 15 must be asserted in writing within twenty (20) 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.

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. Infringement**

Seller 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 or Buyer's Customer's Design, shall be free from claims of infringement (including misappropriation) of third party intellectual property rights in that may use or sale of such items by Buyer or any of Buyer's customers shall be free from any claims of infringement. Seller shall indemnify and save Buyer, and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits or actions alleging such infringement, such claims, suits, or actions Seller, hereby agrees to defend, at Seller's expense, if requested to do so by Buyer. Seller may replace or modify infringing items with comparable goods acceptable to Buyer of substantially the same form, fit and function so as to remove the source of infringement and Seller's obligations under this Purchase Order including those contained in Section 13 and in this Section 16 shall apply to the replacement and modified items. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller at no expense to Buyer shall obtain for Buyer and its customers the right to use and sell said item.

**18. Taxes**

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 Orders 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 hold 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**

Seller may not assign any rights or delegate any of its obligations due or to become due under this Purchase Order with out 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 any affiliated company of PRIMUS Technologies, any successor in the interest of PRIMUS Technologies or Buyer's customer. Buyer shall have the right at anytime to set off any amount owing from Seller to Buyer or Buyer's subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries and/or affiliates pursuant to this Purchase Order or any other contractual agreement between Buyer and Seller or their respective subsidiaries and/or affiliates.

Seller shall promptly notify the Buyer in writing in advance of any organizational changes planned by Seller, including name or ownership changes, mergers or acquisitions.

**20. Transactions**

Payment will be in US Dollars unless otherwise agreed to by specific reference in the Purchase Order.

**21. 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.

**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, Employee's Liability, and Workers' Compensation Insurance, Professional Errors and Omission Insurance and Motor Vehicle Liability Insurance as are specified in this Purchase Order or in one 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.

In the event of a product recall or the Seller's understanding of a defective product shipping to Buyer, Seller shall be responsible for the timely providing of notification and to the extent possible the containment action or lot specific information. Seller shall provide analysis of defect and cause and Seller shall be responsible for the replacement and/or repair of such product. Seller is also responsible for notification to Buyer's customers and participation in the GIDEP (Government and Industry Data Exchange Program).

**23. Compliance with Law**

Seller warrants that the materials to be furnished and the services to be rendered under this Purchase Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances and regulations and in compliance with applicable international prohibitions on child labor. Seller certifies that with respect to the production of the articles and/or the performance of the services covered by this Purchase Order, it has fully complied with Sections 6, 7, 12 and 15 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the US Department of Labor under Section 14 thereof, if applicable.

Seller warrants that all equipment and materials delivered under this Purchase Order are in conformance with the latest OSHA requirements.

Seller warrants that in the performance of this Purchase Order, it will comply with all applicable US Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations; and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this warranty. The foregoing is in addition to and not in mitigation of any other requirements of this Purchase Order.

Seller 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 and 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.

Seller is to note that this Purchase Order may be in support of and charged to a US Government Prime Contract Subcontract there-under procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of Purchase Order are incorporated herein by reference. (The terms Government and Contractor shall be revised in the terms of this article to include Buyer and Seller respectively).

Walsh-Healy Public Contracts Act – 52.222-20

Utilization of Small Business Concerns-52.219-8

Equal Opportunity-52.222-26

Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans – 52.222-35

Defense Priority and Allocation Requirements-52.211-155

Affirmative Action for Workers with Disabilities-52.222-36

Subcontracts for Commercial Items-52.244-6

Preference for Privately Owned U.S. Flag Commercial Vessels-52.247-64

Preference for Domestic Specialty Metals-Alternate 1 (DOD Contracts) –252.225-7014

Subcontracts for Commercial Items & Commercial Components (DOD Cont.)-252.244-7000

Transportation of Supplies by Sea (DOD Cont.) – 252.247-7023

Notification of Transportation of Supplies by Sea (DOD Cont.) – 252.247-7024

In the event that this Purchase Order bears a government contract number and a DPAS rating applicable to this government contract number per FAR 52.211-155 and the Defense Priority and Allocation Requirements, Seller agrees to comply with all pertinent provisions, agreements and clauses of said contract and pertinent Presidential directives and executive orders to the extent that they apply to the subject matter of this order and all said pertinent provisions, agreements, clauses, directives and executive orders are herein incorporated by this reference.

Upon written request by Seller, Buyer will provide any copies of said contract or part thereof that Buyer deems applicable to this Purchase Order to Seller.

**24. Indemnity Against Claims**

Seller shall keep its work and all items supplied by it hereunder and Buyer premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Purchase Order by Seller or by any of its vendors or subcontractors. Seller may be required by Buyer to provide a satisfactory release of liens as a condition of final payment. Seller shall without limitation, indemnify and save Buyer and its customer(s) and their respective officers, directors, employees, and agents harmless from and against all claims and resulting costs, expenses and liability which arise from personal injury, death or property loss or damage attributed to, or caused by, the goods, services, or other items supplied by Seller pursuant to this Purchase Order except to the extent that such injury, death, loss or damage is caused solely and directly by the negligence of Buyer, and all claims by the employees of Seller or any of its subcontractors.

**25. Export/Import Controls**

If Seller is a US company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Seller hereby certifies that it has registered with the US Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with US export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by the Buyer in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of the Buyer and the Seller's obtaining of the appropriate export license, technical assistance agreement or other requisite documentation for ITAR-controlled technical data or items. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.

Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied party List of an agency of the US Government or its export privileges are denied, suspended or revoked.

