



# Terms and Conditions

## Applicable to All Purchase Orders

### GENERAL STATEMENTS.

- A. Immediate return of signed acknowledgement copy is required.
- B. A certificate of compliance (COC) must accompany every shipment
- C. No deviation in price, quantity or delivery schedule is permitted without the written approval of the purchasing department.
- D. If this order lists a government contract number, such contract number must appear on all copies of the invoice.
- E. The general terms and conditions listed below are a part of the order to which the vendor/SELLER agrees by acceptance of the order, all of which shall be deemed fully incorporated and made a part of the order.
- F. If this order is issued under a U.S. Government prime or subcontract the clauses (as appropriate) contained in Marvin Test Solutions, Inc. FAR/DFAR Supplement apply.
- G. Certified for national defense under DMS reg. No. 1. If a priority rating symbol is indicated, the vendor/SELLER is required to follow the provisions of reg. 1 and of all other applicable regulations and orders of BDSA in obtaining controlled materials and other products and materials needed to fill this order

### CLAUSES

#### 1. DEFINITIONS.

- A. **BUYER:** Marvin Test Solutions, Inc.
- B. **BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE:** The person authorized by BUYER's procurement organization to administer and/or execute the Order.
- C. **DATA:** All financial/business information, designs, dimensions, specifications, drawings, patterns, know how, or other information concerning methods, manufacturing processes, equipment, gauges and tools used in the design and manufacture of Products. Data may be recorded in a written or printed document, computer or electronically stored, software, or any other tangible form of expression.
- D. **DFARS:** Defense Federal Acquisition Regulation Supplement
- E. **FAR:** Federal Acquisition Regulation
- F. **ORDER:** The Purchase Order and all referenced documents.
- G. **PARTIES:** BUYER and SELLER collectively.
- H. **PRIME CONTRACT:** Contracting issued to BUYER or BUYER's higher tier customer by the U.S. Government for the acquisition of Products.
- I. **PRODUCTS:** Those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any incidental services described in the Order.
- J. **PROPRIETARY INFORMATION:** Data or other information that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the Data as Proprietary to the party disclosing the information, and includes any information marked with a restrictive legend as prescribed in DFARS 252.227-7013 or 252.227-7014 or in FAR 52.227-14.
- K. **SELLER:** The party with whom BUYER is contracting.
- L. **WORK:** Means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

2. **ACCEPTANCE.** This Order is BUYER's offer to SELLER. The order becomes a binding contract subject to these terms and conditions when accepted by either acknowledgement by SELLER or commenced of performance. Commencement of performance is an unconditional acceptance of these terms and conditions. No change, modification or revision of this order shall be valid unless in writing and signed by BUYER' Purchasing Agent. In case of any conflicts between the terms specified in the Purchase Order and the terms and conditions set forth below, the terms listed in the Purchase Order shall control. The paragraph headings used in the Contract are inserted for convenience of the parties and shall not define, limit, or describe the scope or intent of the provisions of this Contract.

3. **ORDER OF PRECEDENCE.** In the event of any inconsistency or conflict between or among the provisions of this Purchase Order, the inconsistency shall be resolved by giving precedence in the following order: a) Change Order Document, b) Purchase Order Document, c) Purchase Order Terms and Conditions, d) FAR/DFARS Clauses, e) Statement of WORK, f) Specification/Drawing, g) Product Assurance Provisions, h) Other Referenced Documents.

#### 4. TITLE.

- A. For build-to-print and build-to-specification transactions title to Products, whether work-in-progress or finished, shall always belong to BUYER.
- B. For all other products, title shall pass to BUYER upon acceptance at BUYER's facility (except as otherwise specified within this Order).

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### 5. DELIVERY AND RISK OF LOSS.

- A. Timely performance is a major condition of this order and the Parties expressly agree that time is and shall remain a material element of this Order. All deliveries shall be strictly in accordance with the quantities and schedules set forth in this Order.
- B. All deliveries, unless otherwise specified in the Order, shall be FOB Destination (DAP Incoterms 2010) to BUYER's facility located at 1770 Kettering, Irvine, CA, 92614 USA. Titled and risk of loss shall remain with SELLER until receipt at BUYER's facility
- C. If samples are required by this order that have been processed or fabricated by means of the production quantity tooling and process methods, SELLER shall not forward quantity shipments until BUYER has approved, in writing, SELLER's.
- D. BUYER reserves the right to return over shipments and/or early shipments at SELLER's expense. SELLER shall be liable for all storage/handling charges incurred as a result of over shipments and/or early shipments.
- E. No acts of BUYER, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision
- F. If SELLER cannot meet the delivery schedule, SELLER shall immediately notify BUYER of the reason and estimated length of the delay. SELLER shall make every effort to avoid or minimize the delay including the use of premium time and the most expeditious transportation. Any additional cost caused by these requirements shall be borne by SELLER.
- G. If SELLER is delinquent in deliveries, or it is reasonably determined by BUYER that SELLER will be so delinquent, or is delaying correction of previously rejected items, as to affect or reasonably threatens to affect BUYER's commitments to its customers, BUYER may upon written notice require SELLER to submit acceptable supplies within 10 days from the date of such notice. Failure to comply shall constitute a default of order by SELLER.
- H. If SELLER is unable to meet the required delivery schedules for any reason, BUYER shall have the option to: (i) Terminate the Order; (ii) Fill such Order or any portion thereof, from sources other than SELLER and to reduce SELLER's Order quantities accordingly at no increase in unit price and without any penalty to BUYER; or (iii) Accept late delivery and recover from SELLER any costs BUYER incurs caused by the late delivery, (This condition shall not limit BUYER's rights under the default clause contained herein.)
- I. If SELLER is permitted to use terms other than FOB Destination (DAP Incoterms 2010), SELLER shall provide the name and contact information for all freight forwarders, carriers or cartage agents expected to be used not later than 10 days after acceptance of the order. BUYER retains the right to deny SELLER's use of SELLER proposed freight forwarders, carriers or cartage agents within 30 days of SELLER notification. SELLER shall ensure that BUYER's purchase does not transit through one of the Proscribed Countries listed in the U.S. International Traffic in Arms Regulations, 22 CFR 126.1.

6. **EXCUSABLE DELAYS.** Neither party shall be liable for damages for delay in delivery due to causes beyond its control or without its fault or negligence. Such causes including without limitation, acts of God, acts a public enemy, acts of the government, fires, floods, epidemics, quarantine, restrictions, strikes except those of SELLER's employees, freight embargoes, earthquakes and unusually severe weather. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the SELLER and its subcontractor, and without the fault or negligence of either, the SELLER shall not be liable for any excess cost of BUYER for its failure to perform unless the supplies and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the SELLER to meet the required delivery schedule. SELLER will notify BUYER in writing of such causes within 10 days after SELLER first learns of same.

7. **INVOICE AND FREIGHT BILL.** SELLER shall submit a separate invoice for each shipment and shall include the following information taken from BUYER's Order: (a) Order number; (b) item number; (c) part serial number (if serialized); (d) part number; (e) unit of measure; (f) unit price; and (g) unit Export Control Classification Number (ECCN) or International Traffic in Arms Regulations (ITAR) designation. Further, SELLER's invoice shall also include: (h) SELLER's phone number and address; (i) invoice number; (j) date prepared; (k) item quantity; (l) extended item price; and (m) total invoice value. If SELLER's "remit to" address is different than the address indicated on the Order, clearly identify the "remit to" address on the invoice. No invoice shall be issued prior to shipment of Products. SELLER shall also provide documentation to support its invoice as BUYER may reasonably require. For each shipment made at BUYER's expense (i.e., FOB Origin if specified on the face of this order), SELLER shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice. BUYER reserves the right to reject and return invoices failing to comply with these instructions for re-submittal of a correct invoice.

8. **PAYMENT.** BUYER shall make payment forty-five (45) days calculated from: (a) the date of BUYER's receipt of acceptable Products, (b) the delivery date specified in the order, or (3) a correct invoice, whichever is later. Unless freight and other charges are itemized, any discount will be taken on the full amount invoiced. Payment shall not constitute acceptance of Products. Any amounts owing to BUYER by SELLER may be set off against amounts otherwise due to SELLER under this Order.

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- 9. PACKING AND SHIPPING.** No charges shall be made for transportation, handling, boxing or packing or for the materials used in connection therewith unless stated in this order. Supplies shall be packed to secure lowest transportation costs and to comply with carrier regulations. All shipments must be packed in a manner that will provide for efficient handling and prevent damage to the supplies in shipment and in storage including without limitation protection against atmospheric deterioration and fungus growth. Damages to any supplies resulting from improper packing will be charged to SELLER.
- 10. QUALITY MANAGEMENT SYSTEM.**
- A.** SELLER shall provide and maintain a quality control system to an industry recognized quality standard and in compliance with any other specific quality requirements identified in this contract.
  - B.** Records of all quality control inspection WORK by SELLER shall be kept complete and available to Marvin Test Solutions and its customers.
  - C.** Unless otherwise specified to the contrary in this purchase order SELLER may use statistical techniques for product acceptance and related instructions for acceptance.
- 11. INSPECTION AND ACCEPTANCE.**
- A.** SELLER shall test, inspect and verify that all products, processes and services meet the requirements of this purchase order.
  - B.** All supplies will be subject to final inspection and acceptance at destination notwithstanding prior payment or inspection and/or testing at the source by the BUYER, BUYER's customer or (if appropriate) the Government.
  - C.** Rejected supplies shall be returned at SELLER's expense and no replacement of such defective supplies shall be made unless specified by BUYER. BUYER reserves the right for full reimbursement of all rejected defective supplies or, a BUYER's option, for replacement or correction; in either event the BUYER shall be entitled to reimbursement for all expenses incurred by BUYER. If SELLER fails to promptly replace and/or correct rejected supplies to BUYER's satisfaction, BUYER may purchase or otherwise replace or correct such supplies and SELLER shall be liable to BUYER for any excess costs incurred thereby.
- 12. RIGHT OF ACCESS.** BUYER as well as its customer and regulatory authorities shall have the right of access to all applicable areas of SELLER's facilities and the facilities of SELLER's suppliers/subcontractors, at any level of the supply chain, involved in this order and to all applicable records involving quality assurance. BUYER will provide SELLER reasonable notice of any such inspection and identify the purpose(s) of the inspection, verification or validation to be performed.
- 13. SUPPLIER PERFORMANCE DATA.** SELLER shall notify and obtain BUYER's written concurrence prior to delivery of the product or services affected by any changes in its processes, suppliers, or manufacturing facility locations. Furthermore, SELLER shall notify BUYER of changes in its place of performance regardless of its effect on the product or service required by this purchase order.
- 14. NONCONFORMING GOODS.**
- A.** SELLER is required to inform BUYER prior to delivery which goods to be delivered do not conform to the requirements of this purchase order, in any regard, and obtain BUYER's concurrence for delivery.
  - B.** If SELLER delivers nonconforming products without the prior coordination and approval of BUYER, or fails to deliver or a delivers defective or nonconforming Products, BUYER may take those actions set forth in the preceding paragraph 11, or terminate the order for default in whole or in part.
- 15. WARRANTY.**
- A.** SELLER warrants that all Products delivered under this Order will be: merchantable, free from defects in materials, Workmanship, suitable and usable without restriction for the intended use, conform to applicable specification, drawings, samples and description, manufacturing processes; conform to all requirements of this Order; and be free of all liens and encumbrances. To the extent Products are not manufactured pursuant to detailed design and specifications furnished by BUYER, SELLER warrants that the Product shall be free from design and specifications defects.
  - B.** If any Product fails to comply in any respect to the warranty set forth above, SELLER, at BUYER's option, shall promptly repair or replace the Product. Transportation of replacement Product and return of nonconforming Product shall be at SELLER's expense. If repair or replacement of Product is not timely, BUYER may elect to return, repair, replace, or repurchase the nonconforming Product at SELLER's expense.
  - C.** BUYER's approval of any documentation prepared by SELLER or BUYER's participation in design reviews or first article approval process or similar reviews shall not relieve SELLER of any obligation under this warranty.
  - D.** These warranties shall remain in effect for twelve (12) months after the date the supplies are delivered by BUYER to its customers or 15 months from the date the supplies are accepted by the BUYER, whichever occurs first. . This warranty



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period shall be extended for an additional period equal to the time elapsed from the date that SELLER has been notified to repair or replace defective supplies until delivery of corrected supplies or replacements is made to BUYER.

- E. All warranties herein shall run to BUYER, BUYER's successors, its customers and shall not be deemed to exclude other rights or warranties which BUYER has under law, equity or has obtained.

### 16. CHANGES.

- A. SELLER shall make no changes in the supplies ordered, including without limitation, the specifications, drawings, packing or shipment thereof, except as authorized in writing by BUYER's Purchasing Agent.
- B. BUYER's Authorized Purchasing Representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order including but not limited to: (i) drawings, designs, specifications, planning, and/or other technical documents; (ii) method of shipment, packaging, or packing; (iii) place of delivery; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) place of inspection; and (vi) place of acceptance.
- C. If a BUYER directed change causes a change in the cost or time required to perform this Order, BUYER and SELLER shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. BUYER shall modify this Order in writing accordingly.
- D. Any claim for adjustment shall be unconditionally waived unless: (i) asserted in writing and delivered to BUYER within 15 days of date of written change order; and (ii) A fully supported proposal is delivered to BUYER's Authorized Purchasing Representative within 30 days after SELLER's receipt of such direction.
- E. If SELLER claims the cost of any Property made obsolete or excess by a BUYER directed change, BUYER shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
- F. BUYER has the right to examine any of SELLER's pertinent books and records for the purpose of verifying SELLER's claim.
- G. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause hereof. However, SELLER shall not be excused from proceeding with the Order as changed.

### 17. BUYER AUTHORIZATION.

- A. BUYER's Authorized Purchasing Representative has sole authority to: (i) make contractual commitments on behalf of the BUYER, (ii) to provide contractual direction, and (iii) to change contractual requirements as defined in the Order.
- B. BUYER's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with SELLER's personnel concerning the Product hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment.

### 18. DISPUTES.

- A. Any dispute that may arise under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the Parties up to the Senior Executive of the organization placing the Order, and SELLER's equivalent executive level.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon, in writing, either Party may only bring suit in federal court or a state court, (as appropriate) located in the County of Orange, in the state of California from which this Order is issued. SELLER consents to personal jurisdiction for this purpose in the state of California.
- C. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, SELLER shall proceed diligently, as directed by BUYER, with performance of the Order.
- D. To the maximum extent permitted by law, the parties waive any right to a jury trial and agree that such dispute shall be decided by a judge only.

- 19. **TERMINATION FOR CONVENIENCE.** Buyer may at any time terminate all or any part of this Order in accordance with the contract clause entitled "Termination for Convenience of the Government (Fixed-Price)" set forth at 52.249-2 of the FAR, which clause is hereby incorporated herein and made a part hereof by this reference, except that the term "contract" therein shall mean this Order, the term "Contracting Officer" therein shall mean "BUYER", the term "Government" therein shall mean "BUYER" except that in subparagraph (b) (8) and at the first occurrence thereof in paragraph (h) it shall mean "BUYER" and in paragraph (n) it shall mean "BUYER", the term "Contractor" therein shall mean "SELLER", paragraphs (d) and (j) thereof are deleted, the period "120 days" in paragraph (c) is changed to "60 days", the period "1 year" in paragraph (e) is changed to "3 months" and the period "90 days" in paragraph (l) is changed to "45 days"; provided, however, that if this Order is a first-tier subcontract under a U.S. Government prime contract, the period "1 year" in paragraph (e) is changed to "180 days."

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### 20. TERMINATION FOR DEFAULT.

- A. The FAR 52.249-8 "Default (Fixed Price Supply and Service)" clause is by this reference incorporated herein and made a part hereof except that the term "contract" therein shall mean this Order, the term "Contractor" therein shall mean "SELLER", the term "Contracting Officer" therein shall mean "BUYER", the term "Government" in all paragraphs thereof except paragraph (c) shall mean "BUYER" and all reference therein to "Disputes" shall mean the "Disputes" clause of this Order. BUYER may terminate this Order in whole, or in part, for SELLER's default in accordance with this clause. In addition, BUYER may terminate this Order in whole, or in part, in the event one of the following occurs, is threatened, or is imminent with respect to SELLER: insolvency; bankruptcy; suspension of business; sale of a substantial part of SELLER's assets; filing for dissolution; liquidation proceedings; appointment of a trustee or receiver for SELLER's property or business; or assignment.
- B. As set forth in FAR 52.249-8 the Parties agree that in the event a determination is made whether by the Parties or a court that the default termination was inappropriate, the Parties' rights and obligations shall be solely governed by the "Termination for Convenience" clause contained herein and SELLER shall be entitled to a recovery no greater than that permitted in said "Termination for Convenience" clause.

### 21. BUYER, CUSTOMER or GOVERNMENT PROPERTY.

- A. SELLER shall assume the risk of, and be responsible for, any loss, destruction of or damage to BUYER's property while in SELLER's possession or control. SELLER shall, at its sole cost, maintain insurance covering any loss or damage to BUYER's materials, tools, and/or equipment for the full replacement value, and protecting against all perils normally covered in an "all-risk" policy including but not limited to fire, windstorm, hurricane, tornado sandstorm, explosion, riot, civil commotion, aircraft, earthquake, floor or other acts of nature during such time as they remain in SELLER's possession. Upon request, SELLER shall provide BUYER with adequate proof of insurance against such risk of loss or damage.
- B. Should SELLER fail to return such property upon five (5) days of BUYER's demand, BUYER shall have the right, upon reasonable notice, to enter SELLER's premises and remove any such property without being liable for trespass or damages of any sort.
- C. If, in performing this Order, any Government property is furnished to SELLER, SELLER shall assume the risk of, and be responsible for, any loss, destruction of or damage to Government property while in SELLER's possession or control except to the extent that this Order provides otherwise. SELLER shall return all Government property in a condition as good as when received except for reasonable wear and tear. SELLER shall establish and maintain a system for control of Government property in accordance with FAR 52.245-1, "Government Property". SELLER shall notify BUYER if the Government determines that its system is inadequate.
- D. If SELLER cannot locate BUYER or Government-furnished property, SELLER has five (5) business days to find the misplaced item. After such period, the property shall be deemed "lost" and SELLER must reimburse BUYER for the full replacement cost of the item. The search period begins either: (i) Upon SELLER's notification to BUYER of a misplaced item (where the reimbursement shall take place on the 6th business day the item is lost), or (ii) Five (5) business days after Property Transfer Authorization issuance date (i.e. ten (10) business days total) where the reimbursement shall take place on the 11th business day the item is lost.

**22. DISPOSAL OF PRODUCTS.** SELLER shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use. Upon completion or termination of this Order, SELLER shall, at SELLER's expense, dispose of all Products, including partially completed Products, as required or directed by BUYER.

**23. TAXES.** The price of this Order includes all applicable Federal, State, and Local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Use or sales taxes for which BUYER has furnished a valid exemption certificate or a direct pay permit shall not be included.

### 24. ASSIGNMENT.

- A. SELLER shall not assign any of its rights under this Order without BUYER's prior, written consent, except as specifically stated in this clause; any such assignment shall be void. Nevertheless, SELLER may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to SELLER from BUYER under this Order, provided: (i) The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and setoff or recoupment for any present or future claim or claims or indebtedness which BUYER may have against SELLER; and (ii) SELLER furnishes to BUYER written notice of assignment and a true copy of the instrument of assignment.
- B. BUYER may make direct settlements or adjustments in price, or both, with SELLER under the terms of this Order

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notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.

- C. SELLER shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document or any of BUYER's Proprietary Information (including this Order) until and unless authorized to do so by BUYER's Authorized Purchasing Representative.
- D. Prior to a potential change of control of SELLER and at least ninety (90) days prior to the proposed effectiveness of such change of control, SELLER will promptly notify BUYER in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as BUYER may request, consistent with applicable law and confidentiality restrictions.

### **25. SUBCONTRACTING AND PURCHASING.**

- A. SELLER shall flow down to its supply chain utilized in fulfillment of this order the applicable requirements of this purchase order.
- B. SELLER shall use BUYER or Customer designated or approved supplier(s), including process sources when required by this purchase order.
- C. SELLER shall not subcontract without the prior written authorization of BUYER for the design or procurement of the whole or any major component of any Product ordered hereunder, and SELLER shall require a like agreement from immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.
- D. No subcontract placed under this Order shall provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in FAR subsection 15.404-4(c).
- E. Any subcontract awarded to a foreign person, as defined in the ITAR or the Export Administration Regulations (EAR), must comply with the "Export and Import Compliance" clause herein.

### **26. INFORMATION OF BUYER AND SELLER.**

- A. Unless expressly stated otherwise herein, the exchange of information under this Order shall be governed by this Order and, in particular this Clause 26, which supersedes any prior agreement between BUYER and SELLER to protect information relating to the purpose of this Order.
- B. SELLER shall keep confidential all information, drawings, specifications, or data and return, upon request, all documents furnished by BUYER and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of this Order, SELLER shall not make copies or permit copies to be made without the prior written consent of BUYER. SELLER shall make no use, either directly or indirectly, of any such data or any information derived therefrom, except in performing this Order, without obtaining BUYER's written consent.
- C. SELLER agrees that all information heretofore or hereafter furnished or disclosed to BUYER by SELLER in connection with the placing or performance of this Order is furnished or disclosed as a part of the consideration for this Order; that such information is not, unless otherwise agreed to by BUYER in writing, to be treated as confidential or proprietary; and that SELLER shall assert no claims (other than for patent infringement) by reason of the use or disclosure of such information by BUYER, its assignees, or its customers; SELLER shall not place any restrictive markings on such information. Any agreement purporting to provide for the confidential treatment of, or limiting the use of or disclosure of, information so furnished or disclosed, must be in writing and signed by BUYER.
- D. Each Party agrees to keep confidential and not to disclose to any other person (unless permitted below or elsewhere in this Order) any Proprietary Information received from the other Party in connection with this Order.
  - 1) In order to qualify for protection under this provision, the Proprietary Information exchanged shall be clearly and conspicuously marked as being proprietary using an appropriate legend. If disclosed in a nontangible form (e.g., orally or visually) the disclosing Party shall:
    - a) identify the information as proprietary at or prior to the time of original disclosure;
    - b) summarize the Proprietary Information disclosed in writing within thirty (30) days of the original disclosure.
  - 2) The foregoing limitation on disclosure and use shall not apply to data or information which:
    - a) was in the rightful possession of a receiving Party without restriction, prior to the first receipt from the disclosing Party; or
    - b) now or hereafter, through no act or failure to act on the part of a receiving Party, becomes generally known and available to the public without restriction; or
    - c) is hereafter disclosed and made available to a receiving Party without restriction by others having the right to make such disclosure.
- E. All documents and other tangible media (excluding Products) transferred in connection with this Order, together with any copies thereof, are and remain the property of BUYER.
- F. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information shall be construed as granting expressly, by implication, by estoppel or otherwise, a license under any invention or patent now

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or hereafter owned or controlled by BUYER or BUYER's customer, except as specifically set forth herein.

- G. SELLER's obligations with respect to information or data disclosed hereunder during or prior to the performance in Order shall survive completion, cancellation or termination of the order.

**27. SUBCONTRACT DELIVERABLES.** SELLER agrees and acknowledges that all deliverables, or portions thereof, under this Order ("Deliverable Materials") may be incorporated into BUYER'S deliverables under the next higher tier or prime contract. SELLER hereby grants BUYER the right to deliver the Deliverable Materials or any portion thereof under the next higher tier or prime contract. SELLER further hereby agrees to deliver the Deliverable Materials under this Order with the appropriate markings required by the Government regulations incorporated into this Order.

**28. INFRINGEMENT INDEMNIFICATION.**

- A. In lieu of any other warranty by SELLER to BUYER against intellectual property infringement, statutory or otherwise, expressed or implied, SELLER will defend, indemnify, and hold harmless BUYER, BUYER's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under this Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.
- B. BUYER shall notify SELLER in writing of such claim and BUYER shall provide SELLER with reasonable information and assistance, at SELLER's expense, for the defense thereof.
- C. If the use or sale of the Product is enjoined as a result of a suit, SELLER, at no expense to BUYER, shall obtain for BUYER and its customer the right to use and sell the Product or shall substitute an equivalent Product acceptable to BUYER and extend this indemnification thereto.
- D. SELLER's obligation shall not apply to Products manufactured by SELLER pursuant to detailed designs developed by BUYER and furnished to SELLER under an Order, which does not require research, development, or design WORK by SELLER. SELLER's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with Products not delivered by SELLER if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.
- E. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, SELLER's liability for SELLER's patent infringement under this Order shall be coextensive with BUYER's liability.

**29. INSURANCE.**

- A. During the entire Order period SELLER and its subcontractors shall, at their sole cost and expense, procure and maintain Worker's Compensation insurance coverage as required by the laws of the state in which the WORK is performed and such insurance shall provide waiver of subrogation against BUYER. SELLER shall also maintain, at its sole cost and expense, Employer Liability insurance in the amount of at least US \$1,000,000.
- B. SELLER and its subcontractors shall, procure and maintain the following insurance coverage in the minimum limits indicated:
  - 1) Commercial General Liability (CGL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
  - 2) Automobile Liability (AL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage covering all owned, hired and non-owned vehicles.
- C. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the WORK is being performed and shall be in a form reasonably acceptable to BUYER.
- D. General Liability and Automobile Liability insurance coverage shall provide that BUYER is named as an additional insured and if requested by BUYER, SELLER shall provide evidence that the required insurance is in place in the form of insurance certificates.
- E. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to BUYER at least 15 days prior to the expiration date of the insurance under each required coverage.
- F. BUYER and SELLER agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of, or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negligence of the agents, subcontractors or employees of the indemnified parties.
- G. Additional insurance types and/or limits will be necessary if the WORK involves extra hazardous operations. The extra hazardous operations include dispensing of medical care, operations involving the nuclear hazard, providing professional

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engineering advice, large construction projects (above \$5,000,000) hazardous waste, food service, crane operation, WORK above ground, WORK below ground, and operations involving demolition or explosives.

- H. If WORK involves aviation products, Aviation Products Liability: \$100,000,000.
- I. Foreign Direct Sale Insurance mandated by the country involved.

**30. LABOR DISPUTES.** Whenever SELLER has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, SELLER shall immediately give notice to BUYER including all relevant information including, but not limited to, nature of dispute, labor organizations involved, contingency plans regarding the protection of the BUYER's Order and estimated duration. SELLER shall also provide updated reports throughout the dispute duration. SELLER agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

**31. COMPLIANCE WITH LAWS.**

- A. SELLER shall comply with all applicable Federal, State and Local laws, statutes, rulings, ordinances, orders, and regulations in effect on the date of this Order.
- B. SELLER certifies that the Products called for by this Order have been or will be produced in full compliance with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219), as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof.
- C. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.
- D. SELLER, at its expense, shall provide reasonable cooperation to MTS in conducting any investigation regarding the nature and scope of any failure by SELLER or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of SELLER's obligations under this Contract.

**32. CHOICE OF LAW.**

- A. The Parties agree that, irrespective of the place of performance of this Order, this Order will be construed and interpreted according to the law of the State of California, without regard to its' conflicts of law provisions.
- B. Any litigation under this Order shall be brought in a court of competent jurisdiction in the State California, County of Orange. The parties hereby submit to the exclusive jurisdiction and venue of such court(s), and waive any defense or objection to the exercise of personal jurisdiction and/or venue by any such court(s).
- C. If this Order is issued under a Government prime contract, any provision in this Order that is: 1) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); and/or 2) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; and/or 3) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the U.S. federal common law of government contracts as enunciated and applied by U.S. federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the U.S. Government. If a decision on a question of fact is issued by the Contracting Officer under the Prime Contract "Disputes" clause and the decision relates to this Order, said decision, if binding upon BUYER under the prime contract, shall also be binding upon BUYER and SELLER with respect to this Order.

**33. ASBESTOS AND TOXIC SUBSTANCES.**

- A. SELLER shall not provide any Product that contains asbestos and shall submit certification to BUYER on demand that the Products contain no asbestos.
- B. SELLER represents that each chemical substance constituting or contained in WORK sold or otherwise transferred to BUYER hereunder is, as applicable, on the Toxic Substances Control Act (TSCA) Chemical Substances inventory compiled by the United States the Environmental Protection Agency pursuant to TSCA (15 U.S.C. Sec. 2607(b)) as amended and implemented in 40 CFR Part 710; and is designated as "active" pursuant to the TSCA Inventory Notification Rule (codified by amendments to 40 CFR Part 710 effective August 11, 2017).
- C. SELLER shall make available to MTS all Safety Data Sheets for any material provided to Buyer, or brought or delivered to Buyer or its customer's premises in the performance of this Contract as required by applicable law, such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.
- D. WORK delivered by SELLER under this Contract may be incorporated into deliverable goods for use in the European Economic Area (EEA) and subject to the European Union Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH); the Classification, Labeling and Packaging Regulation (EC) No. 1272/2008 (CLP); and the Biocidal Products Regulation (EU) 528/2012 (BPR).
  - 1) SELLER represents and warrants that the WORK and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with CLP, and BPR, and that no current requirement in, CLP, or BPR



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prevents the sale or transport of SELLER's WORK or substances in SELLER's WORK in the EEA, and that all such WORK and substances have been pre-registered, registered, reported, approved, and/or authorized as and to the extent required by CLP, and BPR.

- 2) SELLER shall make a timely respond to any request from Buyer with all relevant information on the WORK so that the intents of CLP, and BPR are met for communicating with downstream users (e.g., as defined in article 3(13) of REACH [any person established in the EEA using substances in the course of that person's industrial or professional activities; and in any case, SELLER shall provide all information necessary for BUYER and any downstream user to timely and accurately fulfill their obligations under CLP, and BPR.
- 3) SELLER shall bear all costs, charges and expenses related to pre-registration, registration, evaluation, authorization, reporting, and approval under CLP, and BPR.

### **34. OFFSET COMMITMENT.** This clause shall only apply to Orders in excess of \$50,000.00.

- A. Definition: "Offset" means the obligations that BUYER undertakes, in order to market or sell its Products, to assist a customer country in reducing any trade imbalance caused by its purchase of BUYER's Products or to meet other customer country national objectives.
- B. Notwithstanding that this Order is or is not made in direct support of a foreign sale, SELLER agrees that it is obligated to support BUYER's Offset commitments as a condition of this Order.
- C. The offset credits arising out of or resulting from, directly or indirectly, this Order is for the exclusive use of BUYER and may be used by BUYER and any of its affiliates and subsidiaries to fulfill all past, present and future offset obligations. In addition, SELLER agrees to identify and retain for BUYER's use any rights to offset credits generated by its suppliers and subcontractors arising out of or resulting from this Order.
- D. SELLER shall provide a copy of each Order or Subcontract placed with a foreign source under this Order in support of BUYER's rights to offset credit.
- E. SELLER shall execute all necessary documents to evidence BUYER's right to use or assign any offset credits.
- F. BUYER reserves the right to assign offset credits generated through SELLER's efforts under this Order to third parties.
- G. SELLER shall include the substance of this clause, in favor of BUYER, in its subcontracts issued at all tiers pursuant to this Order.

### **35. EXPORT AND IMPORT COMPLIANCE.**

#### **A. EXPORT COMPLIANCE.**

- 1) General Performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2799 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations or "ITAR") or 50 United States Code 2401-2420 (Export Administration Act of 1979, as amended), 50 United States Code 1701-1706, (International Emergency Economic Powers Act, as amended), and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) 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;
  - a) A U.S. Person as that term is defined in the Export Laws and Regulations; or
  - b) A Foreign Person as that term is defined in the Export Laws and Regulations and has disclosed to BUYER's Representative in writing the country in which it is incorporated/authorized/ organized to do business, and all nationalities of any dual or third-country national employees who will require access to the data, articles or services provided hereunder.
- 2) SELLER shall comply with all applicable Export Laws, Regulations, and licenses.
  - a) Registration. If SELLER is a U.S. entity and 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 U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program in accordance with the ITAR to any other non-U.S. person or entity (including the SELLER's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export Laws and Regulations.
- 3) Prior to any proposed re-transfer, SELLER shall first obtain the written consent of the BUYER. No consent granted by BUYER in response to SELLER's request shall relieve SELLER of its obligations to comply with the provisions of paragraph A. of this Clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for SELLER to violate any provision of the Export Laws and Regulations.

## Terms and Conditions Applicable to All Purchase Orders

- B. POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS.** If this Purchase Order is valued in an amount of \$500,000 or more, then in performance of this Purchase Order, SELLER shall not directly or indirectly pay, offer or agree to pay any political contributions or any fees or commissions.
- 1) For purposes of this section and pursuant to 22 CFR 130.6, political contribution means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:
    - a) To or for the benefit of, or at the direction of, any non-U.S. candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and
    - b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.
  - 2) For purposes of this section and pursuant to 22 CFR 130.5, fee or commission means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is: a) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with the SELLER; and b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization.
- C. IMPORT COMPLIANCE.** Both parties shall comply with all U.S. Customs laws and regulations (e.g., 19 CFR) and all other applicable U.S. government regulations pertaining to importations of goods and materials into the United States.
- 1) For International Orders (Purchase Orders issued to entities addressed in foreign countries): Specifically, without excluding other regulations, SELLER shall comply with and adhere to the commercial invoice requirements detailed in 19 CFR 141 subpart F of the regulations, and provide additional information as requested by the BUYER. SELLER shall immediately upon discovery, notify BUYER of any change to the shipment data related to product valuation, quantities shipped, country of origin, port of export and any additional information directed by the BUYER. SELLER will timely provide pre-alert shipping information and documentation prior to shipment arrival to the U.S. BUYER will direct SELLER where to send pre-alert shipping information and documentation. Pre-alert shipping documentation includes, but is not limited to, a commercial invoice, airway bill, bill of lading, and other required documentation as directed by U.S. regulations and BUYER.
  - 2) For Domestic Orders (Purchase Orders issued to entities addressed in the United States): SELLER shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, Customs clearance, duty, taxes, and fees for goods entering into the United States. Unless otherwise agreed in writing, BUYER will not assume any import liabilities for goods procured through a domestic purchase order.
- D. INDEMNIFICATION.** SELLER shall indemnify and save harmless BUYER from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney's fees, arising out of claims, suit, allegations or charges of SELLER's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph A or C. Any failure of SELLER to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.
- E. SUBCONTRACTS.** The substance of this Clause shall be incorporated into any lower-tier subcontract or purchase order entered into by the SELLER for the performance of any part of the WORK under this Order.
- F. NOTIFICATION.** SELLER agrees to provide prompt notification to BUYER in the event of changes in circumstances such as ineligibility to contract with U.S. Government, debarment, assignment of consent agreement, and initiation or existence of a U.S. Government investigation, that could affect SELLER's performance under this Order. SELLER further agrees to provide prompt notification to BUYER should any offer, agreement or payment of political contributions, fees or commissions (as defined herein and pursuant to this Order) be made in contravention of the prohibition in Section B. WORK involved in producing and supporting all Products and performing all services purchased under this Order.
- 36. DEPENDABILITY.** SELLER represents and warrants that SELLER's employees are expert and fully competent in all phases of the WORK involved in producing and supporting all Products and performing all services purchased under this Order.
- 37. RELEASE OF INFORMATION AND ADVERTISING.** Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, will be made by SELLER without the prior written approval of BUYER. Additionally, SELLER shall not use the name Marvin Test Solution, Inc., Inc. or in any other

## **Terms and Conditions Applicable to All Purchase Orders**

manner identify BUYER in any advertisement, display, news release, or other public disclosure without BUYER's prior written consent.

- 38. COMPLIANCE WITH AND APPLICABILITY OF THE OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) ACT OF 1988 (41 USC 423).** SELLER represents that during the conduct of the procurement of which this Order forms a part, it has complied with and will continue to comply with the requirements of FAR 52.203-10 and Section 27 of the OFPP Act as implemented in FAR. SELLER further agrees that it shall indemnify and hold harmless BUYER from and against any loss, cost or damage incurred by BUYER under BUYER's contract with its customers as a result of or in connection with SELLER's violation of the OFPP Act.
- 39. INDEMNITY FOR DEFECTIVE CERTIFIED COST OR PRICING DATA.** SELLER hereby indemnifies and agrees to hold BUYER harmless from any and all price or cost reductions made pursuant to the FAR 52.215-10 "Price Reduction for Defective Cost or Pricing Data" clause or the FAR 52.215-11 "Price Reduction for Defective Cost or Pricing Data - Modifications" clause, or any other provisions of the prime contract or higher-tier subcontract under which this Order is issued, and from and against any and all cost disallowances or non-recognitions of costs under such prime contract or subcontract, if such price or cost reduction, cost disallowance or non-recognition of costs arises or results directly or indirectly because:
- A.** SELLER, or any SELLER subcontractor at any tier or prospective subcontractor hereunder, furnished cost or pricing data that were not complete, accurate and current as certified in SELLER's Certificate of Current Cost or Pricing Data; or
  - B.** SELLER, or any SELLER subcontractor or prospective subcontractor at any tier hereunder, furnished data of any description that were not accurate. Accordingly, without limitation of the foregoing, the price of this Order shall be reduced and the Order shall be modified in writing as necessary to reflect the full amount of any and all such price or cost reductions and any and all such cost disallowances or non-recognitions of costs. The rights and remedies of BUYER under or pursuant to this indemnity shall be cumulative and additional to any other or further rights and remedies provided under this Order or at law or in equity.
- 40. PARTIAL INVALIDITY.** If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.
- 41. NON-WAIVER.** A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.
- 42. COMPLETE AGREEMENT.** This Order is the Parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between the Parties, whether such understandings, proposal, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order.
- 43. RESPONSIBILITY FOR CLAIMS/INDEMNITY.** SELLER shall, at its own expense, defend, indemnify and hold harmless BUYER from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of SELLER, its subcontractors, agents, or employees in the performance of this Order. If SELLER fails to defend, hold harmless, and indemnify BUYER as provided in this clause, then SELLER shall pay for any damages, attorney's fees, and any other fees, costs, and expenses that may be incurred by BUYER in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.
- 44. SUSTAINABILITY.** BUYER is committed to providing a sustainable environment for all of its stakeholders including but not limited to employees, customers, investors, suppliers, and communities. BUYER's goal is to promote resource conservation and environmental responsibility through the use of recycled contents and recovered materials to achieve maximize waste reduction, water conservation and energy efficiency. BUYER is dedicated to obtaining products and services from suppliers that exceed or comply with all applicable laws, regulations, and ordinances relating to preservation conservation and protection of the environment, in addition to employing policies, programs, processes techniques and materials that support sustainability. To assist BUYER in maintaining its commitment, suppliers of products and services are strongly encouraged to demonstrate the same degree of integrity from a social and environmental perspective and strive for continuous improvement in the following key areas of sustainability: water quality, water and energy conservation, greenhouse gas emission reductions, responsible solid waste minimization, recycling, hazardous waste management and air quality. BUYER is committed to working with SELLER in achieving BUYER's sustainability goals and SELLER agrees to provide BUYER any and all documentation to demonstrate compliance upon BUYER's request.

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**45. ANTI-CORRUPTIONS COMPLIANCE.** SELLER represents, warrants and covenants that: It has not, and none of its' respective officers, directors, employees, agents or other individuals or entities acting for or on its behalf or that of BUYER have: (i) used any funds for contributions, gifts, entertainment, or other payments related to political activity, or (ii) made any payment to any government official, which in each case is in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act of 2010 or any similar law, rule or regulation.

**46. INTELLECTUAL PROPERTY RIGHTS.** SELLER, as part consideration for this Order and without further cost to BUYER, hereby grants and agrees to grant to BUYER and its customers an irrevocable, non-exclusive, royalty-free right to license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with SELLER's performance of this Order and further, SELLER hereby grants to BUYER a license to repair, rebuild or relocate and to have repaired, rebuilt or relocated the Products purchased by BUYER under this Order.

All product information provided by BUYER to SELLER in conjunction with this Order is the property of BUYER. Any product made from this information shall solely and exclusively be for sale to BUYER and shall not be transferred to any third party or used for any purpose other than satisfying the Order.

**47. RETENTION OF RECORDS.** The SELLER shall retain the documented information relating in any way to this Order for the periods relating to this order for a period of four (4) years, after which, the records shall be disposed of per the Supplier's standard procedure.

**48. SUSPECT/COUNTERFEIT PARTS. (Applies to all Orders and is in addition to DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System; see clause 48, FAR/DFARS Provisions/Clauses, for DFARS applicability).**

**A.** Counterfeit WORK: WORK consists of those parts delivered under this Contract that are the lowest level of separately identifiable items. Counterfeit WORK is WORK that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved WORK that has reached a design life limit or has been damaged beyond possible repair but is altered and misrepresented as acceptable. "Suspect Counterfeit WORK" means WORK for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the WORK part is authentic.

**B.** SELLER shall: 1) Ensure that no Counterfeit WORK is delivered to BUYER. 2) Third-party products incorporated into products and services are purchase only directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM) or through an OCM/OEM authorized distributor chain/dealer. 3) Immediately notify BUYER with the pertinent facts if SELLER becomes aware or suspects that it has furnished Counterfeit WORK. 4) When requested provide BUYER OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

**C.** If counterfeit or suspect counterfeit parts are furnished under this Order or found in any of the goods delivered hereunder, such items will be impounded by BUYER. SELLER shall promptly replace such suspect counterfeit parts with parts acceptable to the BUYER and the SELLER shall be liable for all costs relating to the removal and replacement of said parts. BUYER's remedies described herein shall not be limited by any other clause of this Order. At BUYER's request, SELLER shall return any counterfeit parts it removed 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 indicating that such parts are counterfeit, shall be deemed definitive evidence that SELLER's parts contain counterfeit parts.

**D.** This clause applies in addition to any quality provision, specification, statement of WORK or other provision included in this Contract addressing the authenticity of WORK. To the extent such provisions conflict with this clause, this clause prevails.

**E.** SELLER shall include paragraphs A through C of this clause or equivalent provisions in lower tier subcontracts for delivery of items that will be included in or furnished as WORK to BUYER.

**49. CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM.** BUYER has joined with the U.S. Bureau of Customs and Border Protection in the C-TPAT program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of the United States to BUYER, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. SELLER shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. In addition, SELLER agrees to take such reasonable measures as may be required by BUYER to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or

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dangerous materials, drugs, contraband, weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in SELLER's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Contact the BUYER's Authorized Purchasing Representative for assistance in identifying transportation companies that are validated under the C-TPAT program.

### **50. EUROPEAN UNION REGISTRATION, EVALUATION, AUTHORIZATION AND RESTRICTION OF CHEMICALS (REACH).**

- A.** SELLER shall, if applicable, comply with any and all European Union (EU) Registration, Evaluation, Authorizations and Restriction of Chemicals (REACH) Regulation obligations with respect to any of the Products delivered by SELLER to BUYER under the terms of this Order.
- B.** SELLER must provide BUYER with a list of substances contained in any of the Products that were included on the list of Candidate List substances published by European Chemicals Agency (ECHA), which can be found on the internet at [www.echa.europa.eu](http://www.echa.europa.eu).
- C.** By accepting this Order, SELLER recognizes and agrees that BUYER will thereafter act in reliance on SELLER's compliance with EU REACH regulations, subject to the further provisions below.
- D.** Should any Products contain substances listed on the Candidate List that are above 0.1% on a weight by weight basis within that Product, SELLER shall provide BUYER with so-called Safe-Use information, pursuant to the provisions of REACH Article 33 and shall maintain the REACH database for the life of this Order.
- E.** As indicated, BUYER will act in reliance on the statements and commitments SELLER makes regarding the Candidate List status of each of the substances contained in any of the Products. If SELLER fails to comply with the provisions of this clause, such failure constitutes a breach of this Order and may result in Termination for Default. SELLER will be liable for damages, including financial losses, BUYER may suffer as a consequence of such failure.

### **51. CONFLICT MINERALS.**

- A.** SELLER shall use commercially reasonable efforts for products supplied to BUYER under this Order to: A. Identify whether such Products contain tin, tantalum, gold or tungsten; B. Determine whether any such minerals originated in covered countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"); and C. Perform appropriate due diligence on its supply chain in support of BUYER's obligations under the Act.
- B.** In addition, SELLER shall, as soon as reasonably practicable following the completion of the calendar year, provide a completed Conflict Minerals Reporting Template, using the form found at <http://www.conflictreesourcing.org/conflict-minerals-reporting-template/>. If requested, SELLER will promptly provide information or representations that BUYER reasonably believes are required to meet BUYER's conflict minerals compliance obligations.

**52. CYBER SECURITY.** SELLER shall comply with the National Standards and Technology (NIST) Special Publications (SP) 800-171 titled, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organization in effect at the date of the purchase order issued by Marvin Test Solutions. This document can be obtained via the internet at <http://dx.org.10.6028/NIST.SP.800-171>.

**53. SUPPLIER DESIGN REQUIREMENTS.** If SELLER is required to design a part or product to meet Marvin Test Solutions needs and requirements, SELLER shall,

- A.** Maintain a controlled design and development process to ensure the satisfactory fulfillment of the requirements listed in this Purchase Order, and,
- B.** The supplier's design and development process shall, as required, identify and control special requirements, critical requirements, or key characteristics

**54. SUPPLIER QUALITY WORK ENVIRONMENT:** In order to assure a high level of quality and its continued improvement Supplier shall ensure that its personnel are aware of their contribution to product/service conformity and product safety, and the importance of their ethical behavior.