



## MTS GENERAL TERMS & CONDITIONS OF PURCHASE

**1. DEFINITIONS.** The following definitions apply unless otherwise specified:

**Buyer** means MTS Systems Corporation;

**Buyer Property** means property or material owned by either Buyer or its customer, which may in some case be the U.S. Government and includes items that Buyer or its customer may take title to in accordance with the terms of the PO.

**EU** means European Union;

**Laws** mean any law, statute, ordinance, rule, regulation and order;

**Purchase Order or PO** means the contractual instrument, including these Terms and Conditions, special or supplemental provisions, drawings, technical data, specifications, quality provisions, and all other documents incorporated herein and any agreed upon changes thereto;

**Seller** means the legal entity contracting with Buyer;

**Terms and Conditions** means these MTS General Terms & Conditions of Purchase; and

**Work** means the labor, articles, materials, products, supplies, parts, substance, mixture, preparation, assemblies, subassemblies, commodity, data, drawings, goods, items, and/or services constituting the subject matter of the PO, including any packaging materials or containers.

**2. GENERAL; ACCEPTANCE OF PO.** Seller agrees to provide Work to Buyer in accordance with the PO. Acceptance of the PO is strictly limited to the terms and conditions stated herein. Any term or condition stated by Seller in any prior proposal, on Seller's acknowledgement form, or otherwise acknowledging or accepting the PO is deemed to be a material alteration of the PO and is hereby rejected. Any of the following acts by Seller will constitute acceptance of the PO: signing and returning a copy of the PO (in hard copy or electronically); commencement of performance; Seller's notice to Buyer of the commencement of performance; or delivery of Work.

**3. ENTIRE AGREEMENT.** The PO is the complete and final statement of the terms between the parties. It supersedes any and all prior or contemporaneous negotiations or agreements, whether oral or written, relating to the subject matter hereof. Any inconsistencies in the PO will be resolved in accordance with the following descending order of precedence: (a) these Terms and Conditions; (b) the face of the PO document; (c) any supplementary terms, conditions or provisions referenced in the PO; and (d) other documents incorporated into the PO by reference.

**4. CHANGES.** The PO may not be changed in any respect without the written approval of Buyer and Seller.

**5. SELLER CHANGES/PART OBSOLESCENCE.** Seller will not make any changes in the tooling, facilities, specifications, physical composition of, or processes used to manufacture Work without Buyer's written direction or prior written consent. Seller will notify Buyer of any pending or contemplated action to discontinue any Work. Seller will provide written notice to Buyer at least twelve (12) months prior to actual discontinuance of Work and will use its best

efforts to obtain last time buys in sufficient quantities to satisfy Buyer's demands.

**6. DELIVERY TERMS AND TRANSFER OF TITLE.** Delivery of Work will be Free Carrier At (FCA – Seller's location) as defined in the most recent version of Incoterms. Delivery will be made pursuant to the schedule, via the carrier named by Buyer to the Buyer facility specified on the face of the PO, without charge for boxing, crating or storage unless otherwise specified. Title to Work will pass to Buyer upon acceptance, regardless of when or where Buyer takes physical possession, unless the PO specifically provides for earlier passage of title. The risk of loss of nonconforming goods remains with Seller until cure or acceptance.

**7. INSPECTION; ACCEPTANCE.** All Work will be received subject to inspection by Buyer, its customers, higher tier contractors, and (in the case of Work purchased for a U.S. Government contract or subcontract) the U.S. Government, at all reasonable times and places, including but not limited to, the facilities of Seller's subcontractors. If such inspection or testing is made on Seller's premises, Seller will provide, without additional charge, all reasonable facilities and assistance for such inspections and test. No inspection (including source inspection), test, approval or acceptance of Work will relieve Seller from responsibility for defects in Work or other failure to meet the requirements of the PO or other legal obligations.

Work defective in workmanship or material or otherwise not in conformity with the requirements of the PO may be rejected and returned at Seller's expense or may be accepted at an appropriate reduction in price. Buyer, in addition to such other rights, remedies and choices it may have by contract or by law, at its option and sole discretion, may require Seller to promptly replace, repair, or credit Buyer for rejected items or terminate the PO in accordance with the termination provisions herein. If Seller fails to promptly replace or repair, Buyer may replace the items elsewhere and charge to Seller the additional cost, if any.

Buyer has the right to evaluate Work for compliance with the PO. Seller will, in its internal inspection and testing of Work, provide and maintain an inspection system in accordance with sound business practices, or if required by Buyer under the PO, use an inspection system accepted by Buyer in writing. All inspection records relating to Work will be kept complete and made available to Buyer during performance of the PO and thereafter. Seller's quality control or inspection system and Seller's manufacturing process are subject to review, analysis and verification by Buyer.

Final inspection and acceptance by Buyer will be at destination unless otherwise specified in the PO. Such inspection will be in accordance with the terms of the PO or the customary established inspection procedures of the location of Buyer where Work is received. If rejection of Work would result from Buyer's normal inspection level under such procedures, Buyer may, at its option, conduct above-normal level of inspection, up to 100% inspection, and charge Seller the reasonable costs thereof.

**8. DELIVERY; NOTIFICATIONS.** Time is of the essence, and Seller will deliver Work according to the PO schedule date(s). Seller will promptly notify Buyer if it suspects or becomes aware of an inability to deliver Work in accordance with the PO. Upon such notice, Buyer may, at its option, i) decline to accept Work and terminate the order; ii) demand its allocable fair share of Seller's available Work and terminate the balance of the PO; or iii) require delivery at the sole expense of Seller by the fastest method to meet the delivery dates. If Seller fails to deliver all the Work as scheduled, at Buyer's discretion, Buyer may require Seller to pay 1% of the total amount of the PO per week or part of the week of delay, up to 15% of the total value of the PO. The parties agree that such amounts are a reasonable pre-estimate of the damages Buyer will suffer as a result of delay based on circumstances existing at the time the PO was issued and are to be assessed as liquidated damages and not as a penalty. Buyer's remedies are cumulative and Buyer shall be entitled to pursue any and all remedies available under applicable Law, contract and/or equity, including but not limited to Buyer's right to terminate this PO for default.

**9. WARRANTY.** Seller warrants that Work will conform to applicable specifications, drawings, samples and/or other descriptions given and will be merchantable and fit for the particular purpose for which it has been purchased and free from defects in workmanship and material for a period of eighteen (18) months from shipment or for the period provided in Seller's standard warranty covering Work, whichever is longer. Supplier will use commercially reasonable efforts to obtain and flow through to Buyer third party warranties for any Work not manufactured by Seller. In addition, all Work will be subject to all warranties provided by applicable law. Seller warrants that it has and will provide Buyer with title to Work, free and clear of all claims, liens or encumbrances. All Work provided to Buyer hereunder will be new. The warranties contained in this section are in addition to and are not to be construed as restricting or limiting any warranties or remedies of Buyer, express or implied, which are provided by the PO or law. Any attempt by Seller to limit, disclaim or restrict any such warranties or remedies of Buyer, in any manner whatsoever will be null, void, and ineffective. Inspection, test, acceptance, or Buyer's incorporation of Work will not affect Seller's obligations under this warranty, and will survive such inspection, test, acceptance, and use. Upon notice from Buyer that Work supplied hereunder fails within the warranty timeframe, in addition to any rights or remedies Buyer may have under the PO or law, Seller will reimburse Buyer for all costs incurred by Buyer as result of such failure, including all repair and replacement costs, and Seller will replace such defective Work at no cost to Buyer or refund the purchase price of Work, at Buyer's discretion. Warranty failures will be returned to Seller at Seller's expense and at Buyer's discretion. All repairs and/or replacements will be with new products only. For services provided, Seller warrants that (a) Seller and the individuals provided by it hereunder possess the experience and ability to perform Work; (b) services will be performed in a workmanlike and professional manner and in conformance with all applicable Laws and professional standards; (c) no services, material, equipment or work product supplied by Seller will infringe the rights of any third party, including, but not limited to, patent, trade secret, trademark or copyright; (d) Seller is not prohibited by any agreement from entering into the PO or

providing the services contemplated hereby; and (e) Seller has verified the credentials of the individuals provided by it hereunder and that they are suited to perform the services.

**10. INVOICING.** Seller's invoices for Work will be emailed to Accounts Payable ([accounts.payable@mts.com](mailto:accounts.payable@mts.com)) promptly upon shipment. PO number, line item detail, descriptions of Work and reference numbers on Seller's invoices must correspond to their counterparts on the face of the PO.

Buyer will pay all properly invoiced amounts due to Seller net 75 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Applicable taxes and other charges such as shipping costs, value added taxes, duties, customs, tariffs, imposts and government imposed surcharges must be stated separately on Seller's invoices. Unless the PO specifies otherwise, prices do not include any sales or use taxes for which Buyer provides an exemption.

Buyer has the right to set off any amount owing from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer.

**11. INDEMNIFICATION.** Seller agrees to indemnify, hold harmless and, and at Buyer's request, defend, Buyer, its officers, employees and directors (each, an "Indemnified Party") against any and all claims, liabilities, fines, penalties, offsets, judgments, costs, damages, losses and expenses, including reasonable attorneys' fees and expenses, alleged against or incurred by an Indemnified Party on account of the acts or omissions of Seller or its employees, agents or subcontractors in any way connected with Work or the performance of the PO, including violations of Law. Seller will not settle any such claim without Buyer's prior approval.

If Buyer's or Buyer's customers' use of Work is enjoined or otherwise prevented by legal action because of alleged infringement, Seller will, at its sole expense, (a) substitute fully equivalent non-infringing Work; (b) modify Work so that it no longer infringes but remains fully equivalent in functionality; (c) obtain for Buyer and its customers the right to continue using Work; or (d) refund all amounts paid for the infringing Work.

**12. CONFIDENTIALITY.** In addition to any obligations Seller may have under any non-disclosure agreement with Buyer, Seller agrees to maintain Buyer Confidential Information (as herein defined) as confidential and proprietary during and following termination or expiration of the PO and will use such information only for purposes of the PO and not for any other commercial purpose. Seller will not copy, alter or otherwise use Buyer Confidential Information for its own benefit or disclose Buyer Confidential Information to others. "Buyer Confidential Information" is all of Buyer's information disclosed to Seller, whether written or oral, in any form, relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, work product and other material or information relating to Buyer's current or anticipated business, whether or not such information is marked as confidential. At Buyer's request or on termination of the PO, Seller will return all Buyer Confidential Information.

Seller agrees to limit distribution of Buyer Confidential

Information only to Seller's employees, agents or subcontractors who have a need to know, and to take steps to ensure that such distribution is so limited, including the execution by Seller's employees, agents or subcontractors of confidentiality/nondisclosure agreements containing provisions substantially similar to those set forth herein.

Seller will not, without Buyer's prior written consent, use Buyer's name or trademarks in any advertising, promotion or communication to the public or advertise, publish or announce Buyer's purchase of Work.

**13. INTELLECTUAL PROPERTY.** "Background Intellectual Property" means all Intellectual Property other than Foreground Intellectual Property. Each Party retains its existing rights in Background Intellectual Property.

"Foreground Intellectual Property" means all intellectual property and tangible work product conceived, created, developed, or first reduced to practice in connection with the Order, including without limitation inventions, technology, designs, works of authorship, technical information, computer software, computer software documentation, copyrights, patents, and patent applications. Buyer will own all Foreground Intellectual Property. Supplier will disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier will deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns and promises to assign to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's rights in Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property.

To the extent that any Background Intellectual Property is used in connection with, included, or contained in Work and not owned by Buyer pursuant to this or a previous agreement, Seller grants to Buyer a worldwide, non-exclusive, irrevocable, paid up, perpetual, royalty-free right and license to make, have made, sell, offer for sale, import, use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivatives of, and authorize other to do any, some or all of the foregoing.

In the event of any inconsistency between this Section 13 and any Government clause incorporated herein by reference in the PO, the incorporated Government clause will govern.

**14. TITLE TO DRAWINGS, SPECIFICATIONS AND WORK PRODUCT.** Buyer will at all times have title to all drawings, specifications, and work product generated by or for Seller in connection with the PO. In addition, Seller agrees that it does not have title to the drawings, specifications and work product provided to Seller by Buyer. Seller agrees to use all drawings, specifications, and work product generated pursuant to the PO solely in connection with the PO and that such information is Buyer Confidential Information.

**15. INSURANCE.** Seller will obtain and maintain insurance in the forms and amounts as required by applicable law and as satisfactory to Buyer: Workers Compensation: Statutory in accordance with the state in which the services are being performed; Employers Liability in the amount of \$1,000,000 each occurrence; Commercial General Liability with limits of \$1,000,000 each occurrence, \$2,000,000 aggregate, for bodily injury and property damage combined (policy will include the following coverage features (1) blanket contractual liability, (2) products, (3) completed operations, and (4) independent Seller's coverage); Automobile Liability with limits of \$ 1,000,000 each occurrence for bodily injury and property damage combined if automobile usage is required to perform Services hereunder (coverage will include "owned", "hired" and "non-owned" auto's); Umbrella or Excess Liability with limits of \$5,000,000 each occurrence and aggregate for bodily injury and property damage. Each policy must be "follow form" to all primary policies listed above with the exception of Workers Compensation; all insurance required above will be written with insurers rated A or better by the latest "Bests" Guide and all policies with the exception of Workers Compensation will identify Buyer as an additional insured. Suppliers insurance will be primary and non-contributory to that maintained by Buyer.

**16. TERMINATION FOR DEFAULT.**

(a) Buyer may by written notice of default to Seller, terminate the PO in whole or in part if Seller: (1) fails to deliver Work within the time specified in the PO or any extension issued in writing by the Procurement Representative; (2) fails to make progress, so as to endanger performance of the PO; (3) fails to comply with or perform any of the provisions of the PO; or (4) files a petition in bankruptcy, is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or is liquidated or placed in receivership.

(b) Buyer's rights to terminate the PO under Paragraph (a)(2) and (a)(3) of this clause may be exercised if Seller does not cure such failure within 10 days after receipt of the notice from Buyer specifying the failure.

(c) If Buyer terminates the PO in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Work similar to that terminated, and Seller will be liable to Buyer for any excess costs of such Work. However, Seller will continue Work not terminated.

(d) If the PO is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by the Procurement Representative, any (1) completed Work, and (2) partially completed Work that Seller has specifically produced or acquired for the terminated portion of the PO. Upon direction of Buyer, Seller will also protect and preserve property in its possession in which Buyer has an interest.

(e) Buyer will pay the PO price for completed Work accepted by Buyer. Seller and Buyer will agree on the payment for other uncompleted Work that the Procurement Representative has directed be delivered to Buyer. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss.

(f) If, after termination, it is determined that Seller was not in default, the rights and obligations of the parties will

be the same as if the termination had been issued for the convenience of Buyer under the Termination for Convenience clause. The rights and remedies of Buyer in this clause are in addition to those provided by law or under the PO.

**17. TERMINATION FOR CONVENIENCE.** Buyer, for its convenience, may terminate the PO in whole or in part at any time by written notice to Seller. Upon receipt of such notice, Seller will immediately proceed with the following actions: (a) stop work as specified in Buyer's written notice; (b) place no further subcontracts or orders except as necessary to complete the non-terminated portion of the PO; and (c) comply with instructions of Buyer's written notice and any subsequent written notice.

For a PO placed under a U.S. Government prime or subcontract, settlement will be made in accordance with the principles contained in FAR 52.249-2 in effect on the award date of the U.S. Government prime contract, except that Seller must submit its termination settlement proposal to Buyer within forty-five (45) days after the written notice of termination or such claim will be absolutely and unconditionally waived. Seller and Buyer will negotiate the whole or any part of the amount to be paid because of the termination for convenience. The amount of any settlement may include a reasonable allowance for profit on Work; however, if it appears that Seller would have sustained a loss on the entire contract had it been completed, Buyer may not allow profit and may reduce the settlement to reflect the indicated rate of loss.

**18. BUYER PROPERTY.** Buyer may provide Buyer Property to Seller and such Buyer Property will be used only for the performance of the PO. Title to Buyer Property will not be affected by the incorporation or attachment thereof to any other property; and Buyer Property or any other part thereof will not be or become a fixture or lose its identity as Buyer Property by reason of affixation to any realty. Seller will manage, maintain and preserve Buyer Property in accordance with good commercial practice or as otherwise provided by the terms of the PO. Seller will dispose of Buyer Property (including scrap) only in accordance with Buyer's direction. Seller's property records for Buyer Property will include a complete, current, auditable record of all Buyer's Property transactions and will include: ownership; description; quantity; unit cost; accountable contract number/code; location; disposition; inventory date; and traceability to shipping, receiving, storage and utilization documents. Such records will be available for Buyer's review. Seller will provide to Buyer an equipment inventory listing on an annual basis by 15 September. Seller will clearly mark all Buyer Property to show its ownership as "Property of MTS Systems Corporation" or as otherwise directed for property of Buyer's customer. Seller will not substitute any property for Buyer Property.

Unless otherwise provide on the face of the PO, all Buyer Property will be provided "AS IS" and without warranty. Buyer or Buyer's customer will have access at all reasonable times to premises where Buyer Property is located for the purpose of inspecting or retrieving Buyer Property when deemed necessary by Buyer. Buyer Property will be returned to Buyer within seventy-two (72) hours upon Buyer's written request. Buyer Property, while in Seller's custody or control, will be held at Seller's risk and Seller will

be responsible for any loss, damage or destruction thereof except for the reasonable wear and tear and except to the extent that such property is reasonably consumed in the performance of the PO. Seller will promptly notify Buyer if Buyer's Property is lost, damaged, or destroyed. The Government Property clause in the flowdown provisions hereof will take precedence and apply to U.S. Government owned property or property to which the U.S. Government may take titled under the PO.

**19. FORCE MAJEURE.** Neither Seller nor Buyer will be liable for any delay or failure to perform any of its obligations under the PO if and to the extent such delay or failure is due to circumstances beyond the reasonable control of such party, including but not limited to, fires, floods, explosions, accidents, acts of God, declared and undeclared wars or riots, strikes or lockouts, shortages of materials or transportation facilities, inability to obtain export or import licenses, acts of government or any provision or requirement of any law, regulation, order or rule.

**20. LABOR DISPUTES.** Seller will give Buyer prompt notice of every labor dispute or issue that may affect Seller's ability to deliver Work. Buyer will not have any obligation to reimburse Seller for losses or additional costs incurred by Seller as a result of labor disputes.

**21. INDEPENDENT SELLER.** Seller is an independent Seller for all purposes, without express or implied authority to bind Buyer by contract or otherwise. Seller will secure, at Seller's sole cost, worker's compensation insurance, disability benefits insurance, and any other insurance required by law. Buyer will not provide, nor will it be responsible to pay for, employee benefits to Seller or employees of Seller. Seller will pay all required taxes, whether federal, state or local in nature, and any other fees, charges, licenses, or other payments required by law on any compensation paid by Buyer to Seller pursuant to this Agreement. Seller hereby waives any right to bring a claim or action against Buyer or any of its affiliates as to entitlement to any employee benefits with respect to periods of performance hereunder.

**22. COMPLIANCE WITH ANTI-CORRUPTION AND BRIBERY LAWS AND REGULATIONS.** Seller warrants that the Work to be furnished and the services to be rendered under this PO shall be manufactured, sold, used and rendered in compliance with all applicable federal, state, local law, orders, rules, ordinances, and regulations and will comply with all applicable country laws relating to anti-corruption and/or anti-bribery, including but not limited to the Foreign Corrupt Practices Act, as amended, (FCPA) regardless of whether Seller is within the jurisdiction of the United States, and the 2010 UK Bribery Act (as amended) and neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from a buyer to a public official or any person in violation of the FCPA, UK Bribery Act and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.

**23. EXPORT/IMPORT CONTROLS.** If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, Seller certifies by acceptance of the PO that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply

with International Traffic in Arms Regulations (“ITAR”) and Export Administration Regulations (“EAR”).

Seller will control the disclosure of and access to technical data, information, Work and other items received under the PO in accordance with U.S. export control laws and regulations, including but not limited to ITAR and EAR. Seller will not use, export, re-export or otherwise release any technology, Work, technical data or other items provided to Seller by Buyer, except in compliance with all applicable U.S. export Laws.

It will be the sole responsibility of Seller to determine whether the information or other items provided by Buyer are controlled by the ITAR or the EAR. Seller will immediately notify Buyer if it is or becomes listed on any excluded or denied party list of an agency of the U.S. Government or its export privileges are denied, suspended or revoked. Seller will also promptly notify Buyer if it becomes debarred, suspended or proposed for debarment or suspend relating to U.S. Government contracts. Should Work originate from a foreign location, such Work may also be subject to the export control Laws of the country in which Work originates. Seller agrees to comply with all applicable export control Laws of that originating country. Buyer may be required to obtain information concerning the citizenship or export status of Seller’s personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct when provided.

**24. STANDARDS OF CONDUCT.** Seller acknowledges receipt of a copy of Buyer’s Code of Conduct (“Code”) located at the following website - <http://www.mts.com/en/about/terms/index.htm> and will conduct itself and otherwise perform Work consistent with the Code. Seller will call Buyer’s Compliance Alertline (888-321-5562) promptly if Seller becomes aware of any conduct by Seller or Buyer that is inconsistent with the Code.

**25. COUNTERFEIT PARTS.** “Counterfeit Goods” means Work, including any material, part, component, module, or assembly of such Work, the description, origin, material, source of manufacture, performance, or characteristics of which are misrepresented. This term includes items that (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, “OEM/OCM”) Work; (ii) are not traceable to an OEM/OCM sufficient to ensure authenticity in OEM/OCM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM/OCM or are not constructed in accordance with OEM/OCM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM/OCM design but not disclosed as such or are represented as OEM/OCM authentic or new; or (v) have not successfully passed all OEM/OCM required testing, verification, screening, and quality control processes. “Authorized Distributor” will mean a person, business, or firm that is expressly authorized by an OEM/OCM to sell or distribute the OEM/OCM’s Work.

Seller will not furnish to Buyer any Work that is or contains Counterfeit Goods. Seller will maintain counterfeit risk mitigation processes in accordance with industry recognized

standards and with any other specific requirements identified in the PO. If Seller becomes aware or has reason to suspect that it has furnished Counterfeit Goods to Buyer, Seller will promptly notify Buyer and replace, at Seller’s expense, such Counterfeit Goods with OEM/OCM’s or Buyer-approved Work that conforms to the requirements of the PO. Seller will be solely liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic Work after Counterfeit Goods have been replaced. The remedies contained in this article are in addition to any remedies Buyer may have at law, equity, or under other provisions of the PO. Seller will solely bear the responsibility for procuring authentic Work from its suppliers and subcontractors and will flow down the requirements of this section to its suppliers and subcontractors at any tier for the performance of the PO.

**26. CONFLICT MINERALS.** Seller agrees to review and comply with Buyer’s [Conflict Minerals Policy](#) and to use commercially reasonable efforts to: (a) identify whether Work contains tantalum, tin, tungsten or gold; (b) conduct a reasonable country of origin inquiry regarding the origin of such minerals in Work to determine whether such minerals originated in covered countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; (c) if such minerals originated in covered countries, conduct due diligence on the chain of custody of the source of such minerals for the purpose of identifying the smelter of said minerals; and (d) assist Buyer in conducting reasonable due diligence concerning the smelters of such minerals. Seller will include the substance of this Section 26 in any agreement between Seller and its suppliers. Seller will provide Buyer with reasonable documentation of Seller’s and its suppliers’ due diligence efforts with regard to Conflict Minerals, in a format prescribed by Buyer, when requested by Buyer.

**27. COMPLIANCE WITH PRODUCT ENVIRONMENTAL AND REGULATORY REQUIREMENTS.** Seller represents and warrants that it will comply with any and all applicable global, federal, state or local governmental laws, regulations and orders, including but not limited to the following:

(a) European Directive 2011/65/EU of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (“RoHS 2”), as implemented by the various member states of the European Union. Seller shall comply with any amendments to RoHS 2, and any further instructions given by Buyer.

(b) European Directive 2012/19/EU of 4 July 2012 on Waste Electrical and Electronic Equipment (“WEEE 2”), as implemented by the various member states of the European Union. With respect to any Work transferred to Buyer under a PO which are “electric and electronic equipment” (“EEE”) covered by WEEE 2, Seller agrees, at no additional costs to the Buyer, to assume responsibility for taking back the Work in the future upon the request of Buyer and for treating or otherwise managing the Work in accordance with the requirements of WEEE 2 and applicable national implementing legislation; and take back as of the date of the PO the used Work currently owned by Buyer up to the number of new units being purchased by Buyer, or to arrange with a third-party to do so in accordance with all applicable requirements.

(c) Requirements associated with China RoHS2 (as of July 1 2016) must be adhered to for electrical materials: (i) A label must be provided to define whether or not the products contain any of the six hazardous substances. If they are present, the "Environment-Friendly Use Period" (EFUP) must also be determined and indicated; and (ii) A table, in the product documentation, must disclose which hazardous substances are contained in the product and the component(s) they are present in.

(d) The UK Sale of Goods Act 1979.

(e) Regulation (EC) No 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") that applies to or affects the Work supplied by Seller to Buyer. Seller further represents, warrants, and covenants the following: (i) No substance contained in any Work is intended to be released under normal and reasonably foreseeable conditions of use, as understood under Article 7(1) of REACH; (ii) No substance on the Candidate List is present in any Work in a concentration at or above 0.1% (w/w), as such concentration is defined and interpreted pursuant to REACH; (iii) No substance present in any Work supplied by Seller to Buyer requires registration or notification under Article 6 or 7 of REACH (or any corresponding amended provisions); (iv) No substance on the Authorisation List (Annex XIV) is present in any Work supplied by Seller to Buyer; (v) All substances comply with the restrictions (laid out in Annex XVII to REACH) in any Work supplied by Seller to Buyer; (vi) In the event that Seller becomes aware that any representation or warranty set forth in sub-sections (i) through (v) is not accurate, or ceases to be accurate, Seller shall: (A) promptly notify Buyer; (B) ensure that such a substance is registered and/or notified to the European Chemicals Agency ("ECHA"), as applicable, pursuant to REACH, and that the said registration and/or notification includes Buyer's use of the substance; (C) provide Buyer with the name of the substance as well as with sufficient information to allow Buyer to safely use the Work or fulfill Buyer's own obligations under REACH; and (D) use best efforts to ensure, if applicable, that authorization for Buyer's use of each such a substance is granted pursuant to REACH, regardless of whether the substance is delivered as such or in the form of "preparations" or contained in "articles" within the meaning of REACH; and (vii) In order to comply with the above-mentioned commitments, Seller shall monitor the publication and the updating of the Candidate List by ECHA and immediately notify Buyer if any of the Work supplied to Buyer contains a substance officially proposed for listing on the Candidate List; shall undertake a complete inventory of substances contained in preparations and articles within the meaning of REACH; and shall ensure that its suppliers undertake the same exercise and timely pre-register and register substances to the extent required to prevent any interruption of the supply chain.

(f) Restrictions and obligations placed on the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone layer pursuant to Regulation (EC) 1005/2009 of September and subsequent updates and revisions thereto.

(g) Radioactive Materials. Supplier shall adhere to all

regulations concerning radioactive substances in metals; and, if necessary, routinely test and audit its supply chain for potential radioactive contamination of stainless steel or other nickel bearing alloy contamination of Cobalt 60.

(h) Seller also warrants their understanding of, agreement to, and conformance with any supplier requirements located at

<http://www.mts.com/en/about/Suppliers/Resources/index.htm>.

**28. EU PRODUCT SAFETY HARMONIZATION LEGISLATION CE DIRECTIVES.** Seller shall ensure that the Work intended to be placed on the EU market conform with the applicable EU product safety harmonization legislation, including the EU legislation pertaining to electrical/electronic devices, machinery and pressure vessels/equipment. Seller agrees that all Work conforms with applicable *Conformité Européenne* ("CE") directives for products intended for use in the European Union (EU), including those regarding EEE (e.g., RoHS 2), electrical/electronic devices, machinery and pressure vessels/equipment. Seller will affix the CE mark on Work as required. Seller will provide all documentation required by the applicable CE directives, including but not limited to Declaration of Conformity, Declarations of Incorporation, technical files and any documentation regarding interpretations of limitations or exclusions. Seller shall draw up the requisite technical documentation and carry out the applicable conformity assessment procedure. Where compliance of the Work with the applicable technical requirements has been demonstrated by the conformity assessment procedure, Seller shall draw up an EU declaration of conformity (i.e. a statement by the manufacturer demonstrating satisfaction of the EU regulatory requirements applicable to a specific product) and affix the CE conformity marking on the regulated Work in a visible, legible and indelible way.

Seller shall ensure that the Work bears a type, batch or serial number or other element allowing its identification, or, where the size or nature of the Work does not allow it, that the required information is provided on the packaging or in a document accompanying the Work. Seller shall indicate its name, registered trade name or registered trade mark and the address at which it can be contacted on the Work or, where that is not possible, on its packaging or in a document accompanying the Work.

Seller shall ensure that the Work is accompanied by instructions and safety information in a language which can be easily understood by consumers and other end-users, as determined by the EU Member State concerned. If the Seller considers or has reason to believe that a Work which it has placed on the EU market is not in conformity with the applicable EU harmonization legislation, it shall immediately take the necessary corrective measures to bring that Work into conformity, to withdraw it, or to recall it (if appropriate).

In addition, where the Work presents a safety risk, the Seller shall immediately inform the competent national authority of the EU Member State(s) in which the Work was marketed, giving details of the non-compliance and of any corrective measures taken.

Seller shall, further to a reasoned request from an EU Member State's competent authority, supply it with all the

information and documentation necessary to demonstrate the conformity of the Work with the EU harmonization legislation, in a language easily understandable by that authority.

**29. LABELING, PACKING, MARKING, AND SHIPPING.** With respect to any Work and packaging (included but not limited to containers, crating, boxing, bundling, dunnage, carting, or storage) sold or otherwise transferred by Seller to Buyer hereunder, Seller shall provide all relevant information, including without limitation, safety data sheets in the language and the legally required format of the location to which the Work will be shipped and mandated labeling information, required pursuant to applicable requirements such as: Occupational Safety and Health Act ("OSHA") regulations codified at 29 CFR 1910.1200; RoHS2; WEEE 2; REACH; and any other applicable law, rule or regulation or any similar requirements in any other jurisdiction to or through which Buyer informs Seller the Work is likely to be shipped or through which Seller otherwise has knowledge that shipment will likely occur, such as U.S. Department of Transportation regulations governing the packaging, marking, shipping and documentation of hazardous materials specified pursuant to 49 CFR, the International Maritime Organizations ("IMO") and the International Air Transport Association ("IATA").

Seller shall pack, mark and ship all Work in accordance with the conditions of the PO and in compliance with all applicable transportation regulations and good commercial practices for protection against damage from weather or shipment, including any laws related to packaging, labeling, transportation and shipment of hazardous materials and global restricted-substance laws and regulations. Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking, or method of shipment shall be reimbursed by the Seller. No separate or additional charge is payable by Buyer for packaging unless specifically agreed to by the Procurement Representative in writing. Work and packaging shall be appropriately labeled, contain packing sheets listing each item, its associated PO line item number, and any additional information related to Work content (e.g., restricted-substance information), safe use and handling, and take-back/recycling/disposal. The Buyer PO number must appear on all containers, packing sheets, delivery tickets and bills of lading.

**30. AUDIT RIGHTS.** Buyer and its representatives may have reasonable access to Seller's facilities or request documentation to audit and inspect materials, processes, and records connected with Work and compliance with the PO.

**31. RECORDS.** Unless a different period is set forth elsewhere in the PO, Seller will retain all pertinent books, documents, papers, and records involving transactions related to the PO for a period of seven (7) years after final payment on the PO.

**32. SEVERABILITY.** If any provision of the PO is declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

**33. ASSIGNMENT.** Seller may not assign the PO or any of its rights or obligations hereunder without Buyer's prior

consent and any assignment without such consent is null and void.

**34. NOTICES.** All notices and other communications relating to the PO, including consents, will be in writing and will be addressed to Seller or Buyer at the addresses set forth on the face of the PO and will be considered given when (a) delivered personally, (b) sent by confirmed facsimile or email, (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

**35. WAIVER.** No waiver by any party of any of the provisions of the PO will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the PO, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the PO will operate or be construed as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**36. SURVIVAL.** All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the PO, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations will survive the expiration or termination of the PO.

**37. DISPUTES.** Any controversy or claim that may arise out of or in connection with the PO that after good faith negotiations cannot be resolved to the parties' mutual satisfaction may be resolved by submitting a claim to a court in the District Court of Hennepin County, Minnesota or the United States District Court for the District of Minnesota which will have exclusive jurisdiction and venue over all controversies arising from or related to the PO. Pending resolution or settlement of any dispute arising under the PO, Seller will proceed diligently as directed by Buyer with the performance of the PO.

**38. GOVERNING LAW.** The PO and performance of the PO will be governed by and construed in accordance with the laws of the State of Minnesota, excluding its conflict of laws rules. Seller and Buyer agree that the UN Convention on Contracts for the International Sale of Goods does not apply to the PO.

**39. ADDITIONAL FLOW-DOWN CLAUSES.** In the event that any clause that is not already incorporated herein is required to be included in the PO by law, regulation, the prime contract, or higher-tier subcontract, or in the event that Buyer's prime contract or higher-tier subcontract is modified subsequent to the effective date of the PO so as to modify or add any additional such clause or requirement, Seller agrees to enter into a modification of the PO to insert any such clause or requirements. If any such additional clause or requirement causes an increase or decrease in the cost of, or the time required, for the performance of any part of Work under the PO, an equitable adjustment will be made in the PO price or delivery schedule, or both, pursuant to the Changes clause herein.



**40. PRIORITY RATING.** If so identified, the PO is a “rated order” certified for national defense use, and Seller will follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. 700).

**41. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND OTHER RESPONSIBILITY MATTERS.** By either submitting its proposal/quotation or accepting this order, Seller will be deemed to have certified that, to the best of its knowledge and belief, that: (a) Seller and/or any of its Principals (as defined in FAR 52.209-5), (1) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; (2) have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and (3) are not presently indicated for otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this provision; and (b) that it has not within a three-year period preceding this offer had any contract terminated for default by any Federal agency. Seller will provide immediate written notice to Buyer if, any time prior to award of any order, it learns that its certification was erroneous when submitted, or has become erroneous by reason of changed circumstances. The certification in this Section 41 is a material representation of fact upon which Buyer placed reliance in making the award.

**42. U.S GOVERNMENT CONTRACTS.** When Work furnished for the PO is in connection with a U.S. Government prime contract or subcontract, in addition to the general provisions herein, the following supplemental provisions will apply and are incorporated by reference, as required by the terms of the prime contract or by operation of Law. All clauses incorporated herein are those in effect on the date of the PO and carry the same force and effect as if included in full text. In the event of a conflict between these FAR or DFAR provisions and the general provisions herein, the FAR, DFAR or NFS provisions will control.

In all clauses listed herein, the terms “Government”, “Contracting Officer” and “Contractor” will be revised to suitably identify the contracting parties herein and affect the proper intent of the provision except where further clarified or modified below. Seller will include in each lower-tier subcontract the appropriate flow-down clauses as required by the FAR, DFAR, NFS or other Federal regulations.

NOTE: Commercial Items must meet the following criteria: Seller identifies and represents its Work to be a Commercial Item as defined in FAR 2.101 and provides supporting rationale and documentation as requested by Buyer.

The DFARS clauses set forth below are applicable only to POs issued under DoD contracts. The NFS clauses set forth below are applicable only to POs issued under NASA contracts.

- 52.203-3 Gratuities
- 52.203-7 Anti-Kickback Procedures
- 52.203-12 Limitation of Payments to Influence Certain Federal Transactions
- 52.203-13 Contractor Code of Business Ethics and Conduct (Applicable only to POs that have a value of more than \$5,000,00 and that have a period of performance of more than 120 days.)
- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
- 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights
- 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards
- 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements
- 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters
- 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment
- 52.209-10 Prohibition of Contracting with Inverted Domestic Corporations
- 52.211-15 Defense Priority and Allocation Requirements
- 5.2212-5 Contract Terms and Conditions Required to Implement Statutes and Executive Orders
- 52.219-8 Utilization of Small Business Concerns
- 52.222-3 Convict Labor
- 52.222-19 Child Labor – Cooperation with Authorities and Remedies
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-25 Affirmative Action Compliance
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Veterans
- 52.222-36 Affirmative Action for Workers with Disabilities
- 52.222-37 Employment Reports Veterans
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act
- 52.222-41 Service Contract Act of 1965
- 52.222-50 Combating Trafficking in Persons
- 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, Repair of Certain Equipment – Requirements
- 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services - Requirements
- 52.222-54 Employment Eligibility Verification
- 52.223-6 Drug Free Workplace
- 52.223-11 Ozone Depleting Substances
- 52.223-18 Contractor Policy to Ban Text Messaging While Driving
- 52.225-1 Buy American Act - Supplies
- 52.225-5 Trade Agreements
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.226-6 Promoting Excess Food Donation to Nonprofit Organizations
- 52.227-19 Commercial Computer Software – Restricted Rights
- 52.233-3 Protest after Award
- 52.233-4 Applicable Law for Breach of Contract Claim
- 52.243-1 Changes – Fixed Price
- 52.244-6 Subcontracts for Commercial Items
- 52.247-64 Preference for Privately Owned U.S. Flag



- Commercial Vessels
- 52.249-2 Termination for Convenience of the Government (Fixed Price)
- 52.252-2 Clauses Incorporated by References
- 252.204-7008 Export Controlled Items
- 252.204-7012 Safeguarding of Unclassified Controlled Technical Information
- 252.212-7001 Terms and Conditions Required for Acquisition of Commercial Items
- 252.223-7004 Drug Free Workplace
- 252.223-7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies
- 252.223-7008 Prohibition of Hexavalent Chromium
- 252.225-7001 Buy American and Balance of Payments Program
- 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals
- 252.225-7010 Commercial Derivative Military Article – Specialty Metals Compliance Certificate
- 252.225-7039 Contractors Performing Private Security Functions
- 252.227-7015 Technical Data – Commercial Items
- 252.227-7037 Validation of Restrictive Markings on Technical Data
- 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (if subcontract involves the acquisition of steel as a construction material)
- 252.237-7010 Prohibition on Interrogation of Detainees by Contractor Personnel
- 252.237-7019 Training for Contractor Personnel Interacting with Detainees
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components
- 252.246-7003 Notification of Potential Safety Issues
- 252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer
- 252.247-7023 Transportation of Supplies by Sea
- 252.247-7024 Notification of Transportation of Supplies by Sea
- 1852.223-72 Safety and Health
- 1852.225-70 Export Licenses
- 1852.237-73 Release of Sensitive Information
- 952.203-70 Whistleblower Protection for Contractor Employees