



Terms and Conditions

REV	DATE	REASON FOR CHANGE
—	4/25/08	INITIAL RELEASE
	4/17/09	Document reviewed for adequacy and accuracy. No changes required. DSHubbell
	4/14/10	Document reviewed for adequacy and accuracy; no changes required. D. S. Hubbell
	04/04/11	Document reviewed for adequacy and accuracy; no changes required. D. S. Hubbell
A	7/15/11	Paragraph 34 has been added to include DPAS requirements for defense priorities in contracts and sub tier contracts.
B	8/9/11	Added a new section identified as “Financials”.
	8/9/12	Document reviewed for adequacy and accuracy; no changes required. M.Alldridge/A. McBride
	8/9/13	Document reviewed for adequacy and accuracy; no changes required. A. McBride
	8/8/14	Document reviewed for adequacy and accuracy; no changes required. E. Diaz
	8/14/15	Document reviewed for accuracy; no changes required. E. Diaz
	8/15/16	Document reviewed for accuracy. E. Diaz
	8/15/17	Document reviewed for accuracy. E. Diaz

Approved by:

Approved by:

Terri Romero – Vice President

Paul Trinh – Vice President

Approved by:

Approved by:

Director of Quality

Sandy Samudrala – President



1. **Acknowledgment and Acceptance.** Acceptance of this Purchase Order is expressly limited to the terms of this Purchase Order. If any of Seller's terms of sale are in conflict with the terms of this Purchase Order, the terms hereof shall govern unless Seller's terms are accepted in writing by Buyer. No oral agreement or other understanding shall in any way modify this Order, or the terms or conditions hereof. Seller's action in (a) accepting this Order, (b) delivering materials, or (c) performing services called for hereunder shall constitute an unqualified acceptance of the terms and conditions hereof.
2. **Price.** This order shall not be filled at prices higher than those shown on this order unless the buyer has authorized such increased prices.
3. **Shipping Instructions.** All goods must be shipped in accordance with the shipping instructions stated and at the most advantageous rates. Any extra expense in effecting delivery of goods not so shipped will be charged to Seller.
4. **Packing.** Seller shall be responsible for safe packing, which must conform to the requirements of carrier's tariffs. Seller shall separately number all cases, packages, etc. showing the corresponding numbers on the invoices. An itemized packing slip, bearing the Buyer's order number, must be placed in each container. No extra charge will be made for packaging or packing materials unless authority is expressly incorporated in this Order.
5. **Delivery.** Time is of the essence for this order. If delivery is not completed within the time specified herein or if the Seller endangers the performance of this order because the Seller has failed to make sufficient progress, the Buyer reserves the right, without liability, in addition to its other rights and remedies, to terminate this order for default of performance by notice effective when received by Seller as to stated items not yet shipped and to purchase substitute items elsewhere and charge the Seller with any loss incurred. Items shipped to Buyer in advance of the schedule as herein set forth may, at the Buyer's sole discretion, be returned to the Seller at the Seller's expense. Any provision herein for delivery of items by installment shall not be construed as rendering the obligations of the Seller severable.
6. **Invoices.** Invoices shall (a) be rendered separately in triplicate, for each delivery with bill of lading attached, (b) cover not more than one order (c) be rendered with order number noted thereon. If invoice is subject to cash discount, the agreed-to discount period will be calculated from the date the invoice is received by Buyer.
7. **Terms.** Unless otherwise agreed in writing, agreed-to cash discount terms apply the 10th of the month following Buyer's receipt of invoice and all shipping papers.
8. **Warranty.** The Seller warrants all material or services delivered hereunder will:
 - a) conform to designs, specifications, drawings, samples, or other descriptions referred to in this order,
 - b) conform strictly to the requirements of this order, and
 - c) be free from defects in material and workmanship.Such warranties shall survive acceptance and payment and shall forward to the Buyer, the Buyer's successors, customers, and the user of its products, and shall not be deemed to be exclusive. Seller may not limit the remedies available to Buyer or the damages recoverable by Buyer arising out of breach of warrant.
9. **Inspection.** All articles are subject to inspection and test at place of manufacture, at destination, or at both places by the Buyer's representatives. In case of orders to be supplied to or for the use of the Government, such supplies may be subject to inspection and test by Government representatives. Rejected material will be held subject to the Seller's order and risk, or at the Buyer's option, will be returned to Seller at the Seller's expense. Any inbound transportation charges, applicable to the rejected portion, will also be charged to the Seller's account.
10. **Independent Contractor.** The Seller shall perform hereunder as an independent contractor and not as an employee or agent of the Buyer.
11. **Indemnity Against Damages and Liens.** In case the Seller performs work hereunder on the Buyer's land and premises, the Seller shall indemnify and save the Buyer harmless from and against any and all damages for injuries caused to persons or property by reason of the Seller's operations hereunder, other than for such damages caused by negligence of the Buyer or his agents. Further, the Seller shall indemnify and save the Buyer harmless from and against any and all liens upon such land and premises, including without limitations, liens for labor performed and materials furnished, attaching as a result of any act or omission to act by the Seller or his subcontractors. The Seller shall also procure, at Seller's expense, the discharge, release, or satisfaction of any and all notices of intention or other evidence of such liens or claims thereto.
12. **Insurance.** In accepting this order you agree that you have obtained or will obtain Public Liability Property Damage and Workmen's Compensation insurance covering your activities in performance under this order and of character and amount satisfactory to us and you agree to furnish us or make available to us, a certificate or certificates of such insurance before you engage in such performance.
13. **Changes-Specifications.** Buyer shall have the right, by written order, to make changes from time to time in the work to be performed or the materials to be furnished by Seller hereunder; if such changes cause an increase or decrease in the amount due, under this Order, or in the time required for its performance, an equitable adjustment shall be made and the Order shall be modified in writing accordingly. Any claim for adjustment must be asserted in writing within fifteen days from when the date change is ordered. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this Order, as changed.
14. **Contingencies.** Neither party hereto shall be liable to the other for default or delay in delivering or accepting goods hereunder if caused by fire, strike, riot, war, act of God, delay of carriers, governmental order or regulation complete or partial shutdown of plant by reason of inability to obtain sufficient raw materials or



power and/or any other similar or different contingencies beyond the reasonable control of the respective parties.

15. Default-Bankruptcy-Cancellation. Buyer may cancel this Order, in whole or in part at any time, by written or telegraphic notice whenever Seller shall default in performance or shall so fail to make progress in the work as to endanger performance, except that this Purchase Order shall not be terminated for such default where the default is due to causes beyond control of Seller, and without its default or negligence.

16. Tools and materials. Buyer shall retain title to any designs, sketches, drawings, blueprints, patterns, dies, models, molds, tools, plates, cuts, special appliances and materials, furnished by or paid for by Buyer in connection with this Order. They shall be recorded and identified as property of Buyer and retained by Seller on consignment, subject to examination by Buyer. They shall be held at Seller's risk and shall be replaced by Seller if lost, damaged, or destroyed. Such property shall be maintained in good condition at seller's expense and kept insured by Seller with loss payable to Buyer. Such facilities shall be used exclusively in the production for Buyer of articles required by this Order and shall not be used for production of larger quantities than those specified herein, or in the production, manufacture, or design of any article for any other person without prior written consent of Buyer. Such facilities shall be subject to disposition by Buyer at any and all times; upon demand, they shall be returned to Buyer including any unused materials furnished by Buyer and all spoiled or defective materials or products which contain any secret or patented device, unless Buyer shall otherwise direct. Nothing in this paragraph shall be construed as imposing any obligation on Buyer to furnish any such facilities.

17. Taxes. Except as may be otherwise provided in this order, the contract price shall include all applicable Federal, State and local taxes of any kind in effect on the contract date.

18. Patent Indemnity. Seller agrees to defend, indemnify and save harmless the Buyer, the Buyer's successors, assigns, and/or its customers in any and all suits brought for infringement of Letters Patent by reason of the use of the equipment or materials furnished hereunder by the Seller, except where such equipment or materials is furnished upon drawings or designs furnished by Buyer.

19. Confidential relationship. Seller agrees to treat - as strictly secret and confidential - all specifications, drawing, blueprints, nomenclature, samples, models and other information supplied by Buyer. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish, or release for publication any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer articles required by this Order, or quote the opinion of any employees of Buyer. Seller shall not disclose any information relating to this Order to any person not entitled to receive it.

20. Notice of labor disputes. Wherever an actual or potential labor dispute is delaying or threatening to delay the performance of this Order. Seller shall immediately give notice thereof to Buyer.

21. Waiver. No waiver of any of the provisions contained in the Order shall be valid unless made in writing and executed by both parties. No charges beyond the contract price herein specified will be allowed except with Buyer's written consent. Failure of Buyer to insist upon strict performance shall not constitute a waiver of any of the provisions of this order or waiver of any other default.

22. Compliance with Laws. Seller shall comply with all Federal, State, and local laws, and statutory and regulatory requirements, applicable to this order.

U.S GOVERNMENT CONTRACTS

23. In the event Seller is furnished Government-owned property for use in connection with this Order. Seller shall establish property control procedures in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors" dated 3 January 1955 as amended (Section XIII, Appendix "B" to Armed Services Procurement Regulation).

24. Termination. The termination clause set forth in Section B-706 of the Armed Services Procurement Regulation as in effect on the date of this Order, is hereby incorporated herein by reference except that if there is no Government contract number referred to on the face of this Order, the term "the Government" and its immediately preceding words "and", "or", "by", wherever appearing in said clause shall be deemed deleted. The provisions of this clause shall not limit or affect the rights or remedies of Buyer stated in other clauses of this Order or provided by law in the event of default or breach by Seller.

25. Equal Opportunity. Seller further agrees to comply with the provisions of all rules and regulations (including those of the Secretary of Labor) and Executive Orders (including Nos. 11246, 11375, 11625, 11071 and 11758) applicable to this order regarding nondiscrimination because of race, creed, color, sex, age, national origin, and physical or mental handicap.

26. Employment of aliens. No aliens employed by Seller shall be permitted to have access to U.S. Government plans or specifications or the work under production, or to participate in the contract trials without the prior written consent of the secretary of the military department concerned.

27. Security. To the extent that this Order involves access to security information classified "Top Secret", "Secret", or "Confidential", the Seller shall safeguard all classified elements of this Order and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information as amended from time to time and the Government shall have the right to inspect at reasonable intervals the procedures, methods and facilities utilized by Seller in complying with these requirements. Seller agrees to insert in all subcontracts hereunder which involve access to classified security information provisions conforming substantially to the language of this clause.

28. Buy American. Seller agrees that there will be delivered under this order only such unmanufactured articles, materials, and



supplies as have been mined or produced in the United States, and only such manufactured supplies as have been manufactured in the United States substantially all from supplies mined, produced, or manufactured, as the case may be, in the United States, except that the foregoing shall not apply to supplies exempted pursuant to the provisions of the Buy American Act (41 U.S.C.a. Sec. 101a-d). Seller shall insert the provisions of this clause in all subcontracts.

29. Renegotiation. This Order shall be subject to any Act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation thereof and shall be deemed to contain all the provisions required by such an Act without subsequent amendment of this Order specifically incorporating such provisions. Seller shall insert the provisions of this clause in all subcontracts under this Order.

30. Licenses. If this Order is for \$3,000 or more and involves experimental, development or research work, the provisions of the current patent rights clause (9- 107 2) of the Armed Services Procurement Regulations are herein incorporated.

31. Uniform Subcontract Termination Article. In the event of termination of this Order, except for default of Seller, settlement shall be made by negotiation substantially in accordance with the procedure and formula set forth in the Termination Article of the prime contract under which this Order is issued (a copy of such applicable Termination Article will be made available by Buyer to Seller upon request).

32. Records. The Comptroller General of the United States or the Department of the Air Force or any of his duty authorized representatives shall until the expiration of three years after final payment hereunder, except that the three year period should be changed to read six years for any subcontract which is on a cost, CPFF, time and material, or labor hour basis, have access to and the right to examine any directly pertinent books, documents, papers and records of Seller involving transactions related to this Order.

33. Compliance with other laws. Seller will comply with all Federal, State, and municipal laws, rules and regulations that may be applicable to this Order and at the request of the Government or Buyer, will furnish certificates to the effect that it has complied with the same.

34. Defense Priority and Allocation System. Defense contracts may have priority ratings that are certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15CFRPart700).

a Contracts/Purchase Orders with a rating of DO must institute a (contract/purchase order) priority of assembly/manufacture and shipment above all other commercial/unrated contract/purchase orders within the seller's facility. DO contracts/purchase orders must also be flowed to lower tier subcontractors. Finally, the seller must accept or reject the DO rated

contract/purchase order within fifteen (15) working days after receipt of the DO rated order. The seller must provide reasons, in writing if they reject the rated contract/purchase order.

b Contracts/Purchase Orders with a rating of DX have the highest rating and highest priority and are approved by the President of the United States. Sellers with DX rated contracts/purchase orders must institute a priority of assembly/manufacture and shipment above all other commercial/unrated and DO rated contract/purchase orders within the seller's facility. DX contracts/purchase orders must also be flowed to lower tier subcontractors. Finally, the seller must accept or reject the DX rated contract/purchase order within fifteen (15) working days after receipt of the DX rated order. The seller must provide reasons, in writing if they reject the DX rated contract/purchase order.

Financials

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- a) **Do not ship priority/overnight without written approval from an InnovativeTek representative.**
- b) **Do not ship against our account(s) if you are late to deliver. This includes transit time.**
- c) **Example: Due 7-15-11, Shipping 7-13-11, transit time 5 days. You must ship against your account to arrive on our dock by 7-15-11.**
- d) **Do not use the InnovativeTek account(s) to ship (InnovativeTek parts) to your sub-tier suppliers without written approval from an InnovativeTek representative.**
- e) **InnovativeTek will use your shipping account information to return defective material back to you.**
- f) **If you are not maintaining a supplier rating of 95% or above, you will not be allowed to ship any product(s) to InnovativeTek using our account(s).**