



PURCHASE ORDER TERMS AND CONDITIONS

MTC-001 Revision A Date 2/1/2010

1. FORMATION OF CONTRACT.

These terms and conditions apply to the purchase of the goods and services (“Goods”) between Buyer and Seller. Unless specifically agreed to in writing by Buyer and Seller the parties are not bound by any term or condition that differs from these terms and conditions. The Purchase Order and these Terms and Conditions shall be referred to herein as the “Contract”. The term “Buyer” shall mean the ArmorWorks entity identified in the Purchase Order, and the term “Seller” shall mean the supplier identified in the Purchase Order.

2. SCHEDULE

- a. Seller shall strictly adhere to shipment or delivery schedules specified in this Contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reason for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the “Force Majeure” article of this Contract. The added premium transportation costs shall be borne by Seller.
- b. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized by Buyer.
- c. Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within 45 days of shipment, Seller request return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess. If Goods are manufactured with reference to Buyer’s proprietary information or materials, Seller agrees that, pursuant to the “Confidential, Proprietary and Trade Secrets Information and Materials” article of this Contract, it will not sell or offer such goods for sale to anyone other than Buyer without Buyer’s prior written consent, which may be withheld in Buyer’s sole discretion.

3. PACKING AND SHIPPING

a. Seller shall pack the Goods to prevent damage and deterioration and Seller shall comply with carrier tariffs. Unless this Contract specifies otherwise, the price includes shipping charges for the Goods sold F.O.B. destination. Unless otherwise specified in this Contract, Goods sold F.O.B. place of shipment shall be forwarded collect. Seller shall make no declaration concerning the value of the Goods shipped except on Goods where tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packaging.

b. Unless this Contract specifies otherwise, Seller will ship the Goods in accordance with the following instructions:

(i) Shipments by Seller or its subcontractors must include packaging sheet containing Buyer's contract number, line item number, description and quantity of Goods shipped, part number or size, if applicable, and appropriate evidence of inspections. A shipment containing hazardous and nonhazardous materials must have separate packing sheets for the hazardous and non hazardous materials. All hazardous materials must be accompanied by a materials data safety sheet ("MSDS"). The MSDS shall contain all information required by any applicable laws or as required by Buyer. Seller warrants that all information in the MSDS is true and correct in all material respects, and Seller understands that Buyer will rely solely upon written information provided by Seller in the MSDS. Seller shall not include vermiculite or other hazardous substance in any packaging material included with the Goods. Items shipped on the same day will be consolidated on one billing invoice and one bill of lading or air bill unless Buyer's Authorized Procurement Representative authorizes otherwise. The shipping documents will describe the material according to the applicable classification and/or tariff. The total number of shipping containers will be referenced on all shipping documents. Originals of all government bills of lading will be surrendered to the origin carrier at the time of shipment.

(ii) Seller will not insure any FOB origin shipment unless preauthorized in writing by Buyer.

(iii) Seller will label each shipping container with the contract number and the number on each container represents of the total number being shipped (e.g. box 1 of 2, box 2 of 2)

(iv) Buyer will select the carrier and mode of transportation for all shipments where freight costs are charged to Buyer.

(v) Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any with its invoices.

(vi) If Seller is unable to comply with the shipping instructions in this Contract, Seller will contact Buyer's Authorized Procurement Representative.

4. QUALITY CONTROL.

Seller shall establish and maintain a quality controls system acceptable to Buyer for the Goods purchased under this Contract. Seller shall permit Buyer to review procedures, practices, and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.

5. SELLER'S NOTICE OF DISCREPANCIES.

Seller shall notify Buyer in writing when discrepancies in Seller's quality control process or Goods are discovered or suspected regarding Goods delivered or to be delivered under this Contract.

6. INSPECTION

a. At no additional cost to Buyer, Goods shall be subject to inspection, surveillance and testing at reasonable times and places, including Seller's subcontractors' locations. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work or interfere with Seller's operations.

b. Seller shall maintain an inspection system acceptable to Buyer for the Goods purchased under this Contract.

c. If Buyer performs an inspection or test at Seller's or its subcontractors' premises, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.

7. ACCEPTANCE AND REJECTION

a. Buyer shall accept the Goods or give Seller notice of rejection or revocation of acceptance, notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Contract or impair any rights or remedies of Buyer.

b. If Seller delivered non-conforming Goods, Buyer may at its option and at Seller's expense (i) return the Goods for credit of refund; (ii) require Seller to promptly correct or replace the Goods; (iii) correct the Goods; or (iv) obtain replacement Goods from another source.

c. Seller shall not redeliver corrected Goods or rejected Goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's Authorized Procurement Representative may reasonably direct.

d. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amount that may be owed to Seller under this Contract.

8. WARRANTY

Seller warrants that all Goods furnished under this Contract shall conform to all specifications and requirements of this Contract and shall be free from defects in material and workmanship. To the extent Goods are not manufactured pursuant to detailed design and specifications furnished by Buyer, the Goods shall be free from design and specification defects. This warranty shall survive inspection, test and acceptance of, and payment for, the Goods. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance. In the event Goods are determined to be defective under this Section 8, Buyer may, at its option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective non-conforming Goods. Return to Seller of defective or non-conforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this article and the "Inspection" article of this Contract in the same manner and to the same extent as Goods originally delivered under this Contract, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's request to: (i) repair, rework or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller is not in breach of this warranty, the parties shall equitably adjust the contract price.

9. TAXES.

Unless this Contract specifies otherwise, the price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption.

10. INVOICES AND PAYMENT.

Unless otherwise authorized by Buyer's Authorized Procurement Representative, Seller shall issue a separate original invoice for each delivery that shall include Buyer's contract number and line item number. Seller shall forward its invoice to the address specified in this Contract. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date or the actual delivery date or the date of receipt of an accurate invoice. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay Buyer amounts paid in excess of amounts due Seller.

11. CHANGES

a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or design; (ii) shipment or packaging methods; (ii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities and delivery schedules or both; (v) amount of Buyer-furnished property; and if this Contract includes services; (vi) description of services to be performed; (vii) time of performance (e.g. hours of the day, days of the week); (viii) place of performance; and (ix) terms and conditions of this Contract required to meet Buyer's obligations under any government prime contracts or subcontracts. Seller shall comply with such directions.

b. If such change increases or decrease the cost or time requirement to perform this Contract, Buyer and Seller shall negotiate an equitable adjustment in the price and the schedule, or both, to reflect the increase or decrease. Buyer shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within 25 days and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 60 days after Seller's receipt of such adjustment. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

c. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.

12. DISPUTES.

Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the parties may be decided by court of competent jurisdiction. The parties agree that any disputes arising out of or related in any way to this Contract, including a breach of this Contract, shall be filed exclusively in the state or federal courts in Maricopa County, Arizona. The parties consent and agree to the jurisdiction of the Arizona courts. Neither party will argue or contend that it is not subject to the jurisdiction of the Arizona courts or that venue in Maricopa County, Arizona, is improper. Pending final resolution of any dispute, Seller shall proceed with the performance of work within the scope of this Contract according to the Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

13. FORCE MAJEURE.

Seller shall not be liable for excess procurement costs pursuant to the "Cancellation for Default" article of this Contract, incurred by Buyer because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes include: (a) acts of God or the

public enemy, (b) acts of the government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without fault or negligence of Seller. If the delay is caused by delay of a subcontractor of Seller and if such delay arises out of cause beyond the reasonable control of both, and if such delay is without the fault or negligence of either, Seller shall not be liable for excess cost unless the Goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within 10 days after beginning of any such cause.

14. TERMINATION FOR CONVENIENCE.

Buyer may terminate all or part of this Contract, effective as of the date specified by the Buyer, in accordance with the provisions of Federal Acquisitions Regulation (“FAR”) 52.249-2, Termination for Convenience of the Government (Fixed Price),” which provisions except for subparagraphs (d) and (i), are incorporated herein by reference. The terms “Government” and “Contracting officer” shall mean “Buyer,” “Contractor” shall mean “Seller”, and the phrase “1 year” is deleted each place it occurs and “six months” is substitute in its place. The time for requesting an equitable adjustment under subparagraph (l) is reduced to 45 days.

15. CANCELLATION FOR DEFAULT

a. Buyer may, by written notice to Seller, terminate all or part of this Contract if (i) Seller fails to deliver the Goods within the time specified by this Contract or any written extension; (ii) Seller fails to perform or fails to make progress, so as to endanger performance of this Contract, and in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Buyer specifying the failure; or (iii) in the event of Seller’s suspension of business, insolvency, appointment of a receiver for Seller’s property or business, or any assignment, reorganization or arrangement by Seller for the benefit of it’s creditors.

b. Seller shall continue work not terminated. If Buyer terminates all or part of this Contract, Seller shall be liable for Buyer’s excess procurement costs.

c. Buyer may require Seller to transfer title and deliver to Buyer, (i) any completed Goods, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively, “Manufactured Materials”) that Seller has specifically produced or acquired for the terminated portion of this Contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or Buyer’s customer has interest.

d. Buyer shall pay the contract price for Goods accepted. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the “Termination for Convenience” article of this Contract, except Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer’s customer against loss because of outstanding liens or claims of former lien holders.

e. If, after termination for default, it is determined that Seller was not in default the rights and remedies of the parties shall be as if the Contract had been terminated according to the "Termination of Convenience" article in this Contract.

16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING.

Seller shall not assign any of its rights or interest in this Contract or subcontract all or substantially all of its performance of this Contract, without Buyer's prior written consent, which may be withheld in Buyer's sole discretion. Seller shall not delegate any of its duties or obligations under this Contract. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

17. PUBLICITY.

Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Contract or the Goods or program to which the Goods pertains. Seller shall be liable to Buyer for any breach of such obligation by any subcontractor.

18. BUYERS PROPERTY.

Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody and control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Contract without Buyer's prior written consent, which may be withheld in Buyer's sole discretion. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damage or destroyed. As directed by Buyer, upon completion, termination or cancellation of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered Goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this article limits Seller's use, in its direct contract with the government, of property in which the government has interest.

19. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY.

Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to awards based on international fees and/or costs), liabilities, damages, costs and attorney's fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or mask work or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Buyer or its customer. Buyer and /or its customer will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit, or action on behalf of indemnities. Seller will

have no obligation under this article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller.

20. CONFIDENTIAL, PROPRIETARY AND THE TRADE SECRET INFORMATION AND MATERIALS.

Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items and software containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this Contract or other agreement referencing this Contract (collectively referring to as "Proprietary Information and Materials"). Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose in this Contract. However, despite any other obligations or restrictions imposed by this article, Buyer shall have the right to use, disclose and reproduce Seller's Propriety Information and Materials, and make derivative works thereof, for the purpose of testing, certification, use, sale or support of any Goods delivered under this Contract or any other agreement referencing this Contract. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Buyer and Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived there from, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other material containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article. Seller may disclose Proprietary information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Material. Seller shall be liable to Buyer for any breach of such obligations by such subcontractor. The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this Contract.

21. RECORDS AND AUDITS.

Seller shall retain all record and documents pertaining to the Goods for a period of no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogs, price lists, invoices and inventory records for purpose of verification of prices at rates charged by Seller for Goods procured by Buyer. Buyer shall have the right to examine, reproduce

and audit all such records related to pricing and performance to evaluate that accuracy, completeness and currency of cost and pricing data submitted with Seller's bid or offer to sell; and related to "Changes," "Termination for Convenience" or "Cancellation for Default" articles of this Contract.

22. RIGHTS OF BUYER'S CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE AND TESTING.

Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, and configuration control shall extend to the customer's of Buyer that are departments, agencies or instrumentalities of the United States Government and any successor agency or instrumentality of the United States Government. Nothing in this Contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.

23. GRATUITIES.

Seller warrants that neither it nor any of its employees, agents, and representatives have offered or given, or will offer, any gratuities to Buyer's employees, agents or representatives for the purpose of securing favor treatment under this Contract.

24. OFFSET CREDITS

a. To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits which might result from this Contract. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for industrial benefit or offset credits.

b. Seller agrees to use reasonable efforts to identify the foreign content of goods that Seller either produces itself or procures from subcontractors for work directly related to this Contract. Promptly after selection of a non-U.S. subcontractor for work under this Contract, Seller shall notify Buyer of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.

25. UTILIZATION OF SMALL BUSINESS CONCERNS.

Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantage businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, historically underutilized business zone small business and U.S. concerns and U.S. veteran and service-disabled veteran owned small business concerns to participate in subcontractors Seller awards to the fullest extent consistent with the efficient performance of this Contract.

26. RIGHTS AND REMEDIES.

Any failures, delays or forbearance of either party in insisting upon enforcement of any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise

limited in this Contract, the right and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

27. COMPLIANCE WITH LAWS.

Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Exports Controls.

28. GOVERNING LAW.

This Contract shall be governed by and construed in accordance with the laws of the state of Arizona.

29. GOVERNMENT CLAUSES.

Government clauses applicable to this Contract, if any, are incorporated herein by attachment to this document.

30. SUSPENSION OF WORK

a. Buyer's Authorized Procurement Representative may, by written orders, suspend all or part of the work to be performed under this Contract for a period not to exceed 100 days. Within such period of any suspension of work, Buyer shall (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" article of this Contract; (iii) cancel this Contract in accordance with the "Cancellation for Default" article of this Contract; or (iv) extend the stop work period.

b. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if (i) this Contract is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (iii) Seller submits a claim for adjustment within 20 days after the suspension is canceled.

31. ACCESS TO PLANTS AND PROPERTIES.

Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and premises controlled by Buyer and Buyer's customer.

32. ENTIRE AGREEMENT.

This Contract contains entire agreement of the parties and supersedes any and all prior agreements, understanding and communications between Buyer and Seller related to the subject matter of this Contract. No amendment or modification of this Contract shall bind either party unless it is in writing and is signed by both Buyer's Authorized Procurement Representative and an authorized representative of Seller.