

# **ALL FLEX SOLUTIONS, INC. PURCHASE ORDER GENERAL TERMS & CONDITIONS**

The following purchase order terms and conditions shall apply to all goods and services furnished by the seller to All Flex Solutions, Inc.

## **1. Definitions**

The following definitions apply herein:

“Seller” – the entity with which All Flex Solutions, Inc. entered into the Order

“Order” – the purchase order entered into between All Flex Solutions, Inc. and Seller

“Goods” – the items Seller agreed to provide All Flex Solutions, Inc. per the Order

“Services” – the actions and work Seller agreed to provide All Flex Solutions, Inc. per the Order

## **2. Acceptance**

The parties agreement is limited to the terms of the Order. The terms herein prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with this transaction.

## **3. Specifications**

Seller shall comply with all specifications stated in this Order and contained in Seller’s product literature or proposal to the extent consistent with this Order. All Flex Solutions, Inc. purchase order number must be referenced on all packaging/packing slips and invoices.

## **4. Changes**

(a) All Flex Solutions, Inc. may, at any time and without notice to third parties, including sureties (if any), unilaterally make changes within the general scope of this Order, including, but not limited to, changes in whole or part and to any one or more of the following:

- (i) shipping or packing instructions,
- (ii) place of delivery,
- (iii) any drawings, designs, or specifications,
- (iv) the statement of work,
- (v) the method or manner of performance of the work, and
- (vi) All Flex Solutions, Inc.-furnished property, facilities, equipment, materials, or Services.

Seller shall perform any changes ordered by All Flex Solutions, Inc.

(b) All Flex Solutions, Inc.’s engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller’s personnel concerning the Work hereunder. No such action shall be deemed to be a change under the “Changes” clause of this Order and shall not be the basis for equitable adjustment. No change will be binding on All Flex Solutions, Inc. unless issued in writing signed by an authorized representative of All Flex Solutions, Inc.’s purchasing department.

(c) If any change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment, must be asserted in writing not later than fifteen (15) calendar days after the date of receipt by Seller of the change order, or within such extension of that fifteen-day period as All Flex Solutions, Inc., in its sole discretion, may grant in writing at Seller’s request. Seller’s complete change proposal, fully supported by factual information, shall be submitted to All Flex Solutions, Inc.’s purchasing department within forty-five (45) days of the notice of change, provided, however, that All Flex Solutions, Inc. may in its

discretion consider any such claim regardless of when asserted, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this Order.

- (d) If the cost of property or material made obsolete or excess as a result of a change is included in Seller's claim for adjustment, All Flex Solutions, Inc. shall have the right to prescribe the disposition of such property or material.
- (e) Notwithstanding any pending claims for adjustment submitted by Seller, Seller shall diligently proceed with the performance of this Order, as directed by All Flex Solutions, Inc., and nothing herein shall be construed as relieving Seller of its obligations to perform, including without limitation the failure of the parties to agree upon Seller's entitlement to, or the amount or nature of, any such adjustment.

## **5. Delivery**

Seller's timely performance is critical to the success of this Order. Seller will make deliveries strictly in accordance with the delivery schedule. If the Seller suspects or determines that deliveries will not be made on time, the Seller will advise All Flex Solutions, Inc. of the possible delay, the cause, and the proposed recovery schedule as soon as possible, and shall continue to notify All Flex Solutions, Inc.'s Purchasing Representative of any material change in the situation. In the event of such notification or of an actual failure by Seller to comply with the delivery or completion schedules, All Flex Solutions, Inc. may, in addition to all other remedies, require Seller, at Seller's expense, to ship goods via air freight or expedited routing to avoid or minimize delay. All Flex Solutions, Inc. reserves the right, at its sole discretion, to return, or delay payment, for any Goods which are received fifteen (15) days early to the terms of the Order.

## **6. Quality Control, Inspection, Acceptance & Rejection**

- (a) Seller shall provide and maintain, without additional charge to All Flex Solutions, Inc., an inspection system that complies with all specifications stated in this Order and, in the absence of such specifications, Seller shall be required to provide and maintain without additional charge to All Flex Solutions, Inc., an inspection system, which is acceptable to All Flex Solutions, Inc. and, if applicable, All Flex Solutions, Inc.'s customer.
- (b) Seller shall tender to All Flex Solutions, Inc. for acceptance only Goods that have been inspected in accordance with the appropriate inspection system and have been found by Seller to be in conformity with all requirements of this Order.
- (c) All Flex Solutions, Inc. may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. Such reviews and evaluations shall be conducted in a manner that will not unduly delay work under this Order. Further, it is recognized that despite such reviews, Seller controls the day-to-day production, delivery and associated documentation of its work, and therefore, All Flex Solutions, Inc.'s right of review, whether exercised or not, does not release Seller of any of its obligations of testing, inspection, quality control and associated documentation.
- (d) All Flex Solutions, Inc. and All Flex Solutions, Inc.'s customer shall have the right to inspect and test the material and workmanship of all Goods at all places and times including, when practicable, during the period of manufacture or provision of Services. If any such inspection or test is made on the premises of Seller, Seller shall furnish, without additional charge to any such party(ies) all reasonable facilities and assistance for the safe and convenient performance of the inspection or test.
- (e) Inspections and tests by All Flex Solutions, Inc. do not relieve the Seller of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (f) If acceptance is not conclusive for any of the reasons in in this section, All Flex Solutions, Inc., in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Seller:
  - (1) to not increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Seller's plant at the election of All Flex

Solutions, Inc.'s Authorized Procurement Representative, and in accordance with a reasonable delivery schedule as may be agreed upon between the Seller and All Flex Solutions, Inc.'s Authorized Procurement Representative; provided, that All Flex Solutions, Inc.'s Authorized Procurement Representative may require a reduction in contract price if the Seller fails to meet such delivery schedule; or

- (2) within a reasonable time after receipt by the Seller of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if All Flex Solutions, Inc.'s Authorized Procurement Representative elects not to require correction or replacement. When supplies are returned to the Seller, the Seller shall bear the transportation cost from the original point of delivery to the Seller's plant and return to the original point when that point is not the Seller's plant.
  - (3) If the Seller fails to perform or act as required in sections (1) or (2) of this clause and does not cure such failure within a period of 10 days (or such longer period as All Flex Solutions, Inc.'s Authorized Procurement Representative may authorize in writing) after receipt of notice from All Flex Solutions, Inc.'s Authorized Procurement Representative specifying such failure, All Flex Solutions, Inc. shall have the right by contract or otherwise to replace or correct such supplies and charge to the Seller the cost occasioned All Flex Solutions, Inc. thereby.
- (g) Seller will not redeliver corrected or rejected items without disclosing the reason for rejection or requirement for correction. Seller will disclose any corrective action taken. Repair, replacement and other correction and redelivery will be completed within the original delivery schedule or such later time as All Flex Solutions, Inc.'s authorized Purchasing Department Representative may reasonably direct.
  - (h) All Flex Solutions, Inc.'s rights under this Section shall be in addition to and shall not be deemed to diminish its rights under this Order including the section hereof entitled "Warranty" or under any other warranties, express or implied, provided by Seller.

## **7. Warranty**

- (a) Seller warrants that, for a period of twenty-four (24) months from acceptance, the Goods will conform to all specifications and requirements of the Order, be free from defects in materials and workmanship and be free from all liens and encumbrances. To the extent items are not manufactured pursuant to detailed designs and specifications furnished by All Flex Solutions, Inc., the items will be free from design and specification defects. This warranty will survive inspection, test, acceptance and payment for the items, will run to All Flex Solutions, Inc. and its successors, assigns and customers and will begin after All Flex Solutions, Inc.'s acceptance of the items.
- (b) All Flex Solutions, Inc. may, at its option, either: (i) return the Goods for credit or refund, or (ii) require prompt correction or replacement of defective or non-conforming items. The return to Seller of defective or nonconforming items and redelivery to All Flex Solutions, Inc. of corrected or replaced items will be at Seller's expense.
- (c) Regardless of whether the parties disagree about the existence of a breach of this warranty, Seller will promptly comply with All Flex Solutions, Inc.'s direction to: (i) repair, rework or replace the items, or (ii) furnish any materials, parts and instructions required for All Flex Solutions, Inc. to successfully correct the defect or nonconformance or have it corrected at Seller's expense. If All Flex Solutions, Inc. later determines that Seller did not breach this warranty, future payments will be adjusted for actual costs incurred by Seller.

## **8. Price Warranty**

Seller warrants that the prices for the Goods and Services is the lowest price charged by Seller for the same or similar Goods or Services in similar quantities. In the event Seller reduces its price for such Goods or Services during the term of the Order, Seller agrees to reduce the prices hereof correspondingly.

## **9. Packing, Declaration of Origin, And Shipment**

- (a) Unless otherwise specified, Goods will be suitably packed for their protection during transportation and shipped via the lowest cost means that are otherwise appropriate for the item in accordance with the requirements of common carriers. Seller is responsible for contacting All Flex Solutions, Inc. to resolve any questions regarding proper packing or shipment under the Order.
- (b) Seller will describe items in bills of lading in accordance with current national mode of freight or uniform freight classification, whichever is applicable. All Flex Solutions, Inc.'s Order number, symbols, and identification numbers must be plainly marked on all packages, bills of lading and shipping orders. Seller will not declare any value on bills of lading if All Flex Solutions, Inc. is responsible for shipping charges. If Seller does declare a value without the permission of All Flex Solutions, Inc., all insurance charges will be deducted from the Seller's invoice.
- (c) Packing lists will accompany each box or package shipped, showing All Flex Solutions, Inc.'s Order number, symbols, item number and description of items. All Flex Solutions, Inc.'s count or weight will be final and conclusive on shipments not accompanied by packing lists.
- (d) Seller will comply with all applicable export / import requirements.
- (e) When Goods originate outside of the United States, prior to its first shipment of goods to All Flex Solutions, Inc., Seller shall provide All Flex Solutions, Inc. a Certificate of Origin specifying the Country of Origin, including Seller name, All Flex Solutions, Inc. Order number, All Flex Solutions, Inc. part number, and, as requested, any other documentation that is reasonably required for Customs compliance.
- (f) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, Sellers, or subcontractors at any tier, in the performance of any of its obligations under this paragraph.

## **10. Invoicing and Payment**

- (a) Concurrent with each shipment under this Order, Seller will provide one original invoice to All Flex Solutions, Inc.'s, Accounts Payable Department, at the address shown on the face of the Order. Delays in receiving invoices, errors or omissions on invoices, or lack of supporting documentation will be cause for All Flex Solutions, Inc. withholding payment without losing discount privileges. Payment for the items delivered under the Order will be made in accordance with Order terms, following receipt of a valid invoice, or acceptance of such delivered items, whichever is later.
- (b) Payment shall be deemed to have been made as of the date of mailing All Flex Solutions, Inc.'s payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

## **11. Schedule Acceleration/Deceleration**

Notwithstanding Paragraph 4 "Changes", All Flex Solutions, Inc. may revise the delivery schedule without additional cost or change to the unit price stated in the applicable order if (1) the delivery date of the Product under such order is on or before the last date of the contract and (2) All Flex Solutions, Inc. provides Seller written notice of such changes.

Upon receipt of the written notice of the change, Seller shall make its best effort to implement the change as soon as possible, but in no event shall the change be implemented later than four (4) months after notification of a schedule acceleration or three (3) months after notification of a schedule deceleration.

## **12. Compliance with Applicable Laws and Regulations**

- (a) Seller will perform the requirements of this Order in compliance with all applicable laws, statutes, orders, acts, codes, rules and regulations of the United States and its individual states (including, but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, the Occupational Safety and

Health Act, Executive Orders, export/import laws and regulations, Uniform Commercial Code, Uyghur Forced Labor Prevention Act, and Environmental Protection Acts), and of other countries or unions. Seller will indemnify All Flex Solutions, Inc. against any and all loss, cost, liability, damage or expense arising from or related to Seller's failure to comply with this provision.

- (b) If this Order is issued under a United States Government prime contract or subcontract, the flow down clauses attached hereto and any other provision or requirement mandated as applicable to U.S. Government subcontracts by the Federal Acquisition Regulation and or applicable government department or agency supplement (including, without limitation, the Department of Defense FAR Supplement) is hereby incorporated herein. Such government contract provisions shall be controlling over any conflicting terms and conditions set forth herein.
- (c) Seller expressly acknowledge and agrees that it will, to the extent required by law or government contract requirements, provide information and verification concerning the citizenship or immigration status of Seller's personnel or Seller's subcontractor personnel entering onto All Flex Solutions, Inc.'s premises or the premise of All Flex Solutions, Inc.'s prime contractor or the U.S. Government.

### **13. Government Import / Export Regulations**

- (a) The goods and data provided under this Order may be subject to the provision of the Export Administration Act of 1979 (50 USC 2401-2420) and the Export Administration Regulations (15 CFR 768-799) promulgated there under; the Arms Export Control Act of 1976 (22 USC 2751-2779) and the International Traffic in Arms Regulation (22 CFR 120-128 and 130) promulgated there under; and the Foreign Corrupt Practices Act. The Parties acknowledge that these statutes and regulations impose restrictions on import, export, and transfer to third countries of certain categories of data and goods, and that licenses from the U.S. Department of State and/or U.S. Department of Commerce may be required before such goods and data can be provided hereunder, and that such licenses may impose further restrictions on use of such goods and data. Disclosure of such goods and data to foreign persons is subject to the above regulations regardless if the export occurs in the U.S. or abroad. Seller agrees to comply with all U.S. Governmental regulations mentioned above as they relate to the import, export, and re-export of goods and/or data, including, without limitation, the ITAR Registration requirements specified at 22 CFR 122.1.
- (b) Seller agrees to notify All Flex Solutions, Inc. if any deliverable under this contract is restricted by export control laws or regulations.
- (c) Seller shall immediately notify the All Flex Solutions, Inc.'s Procurement Representative if Seller is, or becomes, listed in any denied parties list or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (d) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (e) Where Seller is a signatory under a All Flex Solutions, Inc. export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to the All Flex Solutions, Inc.'s Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U. S. Government investigation, that could affect the Seller's performance under this contract.
- (f) Seller shall on the first shipment to All Flex Solutions, Inc., provide to All Flex Solutions, Inc. a Certificate of Origin or a Manufacturer's Affidavit for each item, and either:
  - (i) for U.S. sources, the U.S. Munitions List Category or Export Control Classification Number; or
  - (ii) for non-U.S. sources, the Harmonized Tariff Schedule Classification Number.
- (g) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising

from any act or omission of Seller, its officers, employees, agents, Sellers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

#### 14. Counterfeit Goods Prevention

- (a) Seller represents and warrants that Counterfeit Goods are not contained in Goods delivered to All Flex Solutions, Inc. through the implementation of policies that include prevention, detection and risk mitigation methods to protect against the use of Counterfeit Parts.
- (b) "Counterfeit Goods" and "Counterfeit Parts" shall mean any goods or parts which are not genuine, not authentic, attempt to mimic a brand without authorization, purport to be of a brand but are made without the brand's consent, and/or are a copy or substitute without legal right or authority to do so or one whose material, performance, or characteristics are knowingly misrepresented by a supplier at any level in the supply chain. Examples of counterfeits include, but are not limited to:
  - (1) Parts that don't contain the proper internal construction (Die, Manufacturer, Wire Bonding, etc.) consistent with the ordered part;
  - (2) Parts that have been used, refurbished, or reclaimed, but represented as new product;
  - (3) Parts that have a different package style or surface plating/finish than the ordered parts;
  - (4) Parts that have not successfully completed the OEM's full production and test flow, but are not represented as completed product;
  - (5) Parts sold as upscreened parts, which have not successfully completed upscreening; or,
  - (6) Parts sold with modified labeling or markings intended to misrepresent the part's form, fit, function, grade, or manufacturing date.
- (c) Seller shall purchase parts directly from the Original Component Manufacturer (OCM) / Original Equipment Manufacturer (OEMs), or from the OCM authorized or franchised distributor. Procurement through an independent distributor, non-franchised distributor or broker is NOT authorized. A certificate of conformance shall accompany each shipment of Goods delivered, along with OCM/OEM documentation that authenticates traceability of the components to that applicable OCM.
- (d) Supplier Certificate of Compliance (C of C) and the Manufacturer C of C are required for the parts listed on the Order.
- (e) In the event Seller becomes aware or suspects that it has furnished Counterfeit Parts, it shall immediately notify All Flex Solutions, Inc. When requested by All Flex Solutions, Inc., Seller shall provide (if available) Authorized Seller documentation that authenticates traceability of the parts to the applicable Authorized Seller.
- (f) In the event that Goods delivered under this Order are, or include, Counterfeit Parts, Seller shall promptly investigate, analyze and report in writing to All Flex Solutions, Inc. whether such Counterfeit Parts should be replaced with genuine parts conforming to the requirements of this Order, or whether an alternative solution is recommended to meet the Order requirements at Seller's sole expense. The parties shall then agree upon the appropriate course of action.
- (g) Seller shall include this clause or reasonably equivalent provisions in all subcontracts for the delivery of Goods that will be furnished to or included in Goods furnished to All Flex Solutions, Inc.

**15. Conflict Minerals**

Seller recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). Accordingly, Seller commits to comply with Section 1502 of Dodd-Frank and its implementing regulations. In particular, Seller commits to have in place a supply chain policy and processes to undertake (1) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into products it provides All Flex Solutions, Inc.; (2) due diligence of its supply chain, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (3) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Seller shall take all other measures as are necessary to comply with the Act and its implementing regulations, as they may be amended over time.

**16. Notification Of Toxic Chemicals**

Where applicable, Seller will comply with Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA) and 40 CFR Part 372. Seller will notify All Flex Solutions, Inc. of the following information with the initial shipment of each item to All Flex Solutions, Inc.:

- (a) A statement that the product contains chemicals which are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 and 40 CFR 372.45.
- (b) The name and the associated Chemical Abstract Service Registry number of each chemical which has been incorporated in the product and which is listed in the specific Toxic Chemical Listings contained in 40 CFR 372.65.
- (c) The percent by weight of each toxic chemical component of the product shipped. This notification must be attached to or otherwise incorporated into Seller's Safety Data Sheet (SDS) whenever the MSDS requirement applies.

**17. Products Manufactured With And/or Containing Ozone Depleting Substances**

If items to be delivered under this Order are manufactured with and/or contain Ozone Depleting Substances as defined by 40 CFR Part 82, the appropriate warning label will be applied in accordance with 40 CFR 82.100.

**18. Electrostatic Discharge Control Requirements**

Seller will determine if any items ordered by All Flex Solutions, Inc. are electrostatic discharge (ESD) sensitive and, if so, will comply with the following requirements: (i) Seller will design, manufacture, test, and repair these items using good commercial ESD control practices at all related sites and facilities; (ii) Items supplied to All Flex Solutions, Inc. that are susceptible to ESD damage as delivered will be properly handled and packaged to prevent ESD damage; and (iii) packages containing ESD sensitive items will be marked with an appropriate caution label.

**19. Parts Obsolescence**

When Seller has knowledge that any hardware item or material to be provided in performance of this purchase order is obsolete, is marked for impending obsolescence, or has an established end of production date, Seller shall immediately give initial notice thereof, including all relevant information with respect thereto, to All Flex Solutions, Inc. Such notice shall include, but not be limited to (1) complete details of which parts are affected, including rated Mean Time Between Failure (MTBF) , where available; (2) date of obsolescence; (3) end of production date; (4) reason for obsolescence; (5) pricing and availability of last-time buy; (6) supportability terms (repair and warranty) for last-time buy; and (7) Seller's recommendation for replacement hardware inclusive of known impacts to performance, pricing, availability, and lead time. Seller's initial notifications of obsolescence shall be made through the end of the contracted warranty period for the items provided under this order.

**20. Access To Seller's Facilities**

All Flex Solutions, Inc., All Flex Solutions, Inc.'s customer and relevant regulatory authorities will have access to Seller's, and all other facilities involved in the order, with reasonable notice, where they will have access to all procedures, practices, processes, associated documents and records related to quality assurance, quality control and configuration control. All Flex Solutions, Inc. reserves the right to determine and verify the quality of work, records and material. The Seller will notify All Flex Solutions, Inc. of any change in the location of Seller's facility.

**21. Subcontracting**

Seller agrees to obtain All Flex Solutions, Inc.'s written approval before subcontracting this Order or any substantial portion of this Order. However, this requirement will not apply to the purchase of standard commercial supplies or raw materials on which Seller will perform further work.

**22. Assignment**

The assignment of any right or interest in this Order, without the written permission of All Flex Solutions, Inc., will be void and totally ineffective. The Seller may, with written consent of All Flex Solutions, Inc., assign claims for money due or to become due through a bank, trust company, federal lending agency or other financial institution. Seller will not delegate any obligation under this Order without the written permission of All Flex Solutions, Inc. and any attempted delegation without written permission will be void and totally ineffective for all purposes. Any permitted assignment will provide that payment by All Flex Solutions, Inc. to an assignee of any amount will be subject to set-off or recoupment for any present or future claims which All Flex Solutions, Inc. may have against Seller and will be valid only after Seller has provided All Flex Solutions, Inc. with two properly executed copies of the assignment.

**23. Confidential, Proprietary and Trade Secret Information and Materials**

- (a) All Flex Solutions, Inc. and Seller will each keep confidential and protect from unauthorized use and disclosure all Proprietary Information, defined as:
  - (i) confidential, proprietary and/or trade secret information;
  - (ii) tangible items containing, conveying or embodying such information; and
  - (iii) tooling identified as being subject to this provision and obtained, directly or indirectly, from the other in connection with the Order.

Seller shall not disclose any information relating to this purchase order or any quote to any persons or organizations not entitled to receive it.

- (b) However, despite any other obligations or restrictions imposed by this provision, All Flex Solutions, Inc. will own and maintain all rights in any design and/or development work or items, including software, that are produced by Seller under the Order and paid for by All Flex Solutions, Inc. Further, All Flex Solutions, Inc. will have the right to use, disclose and reproduce Seller's Proprietary Information and make derivative works for the purposes of testing, certification, use, sale and support of any item delivered in connection with this order. Any such use, disclosure, reproduction or derivative work by All Flex Solutions, Inc. will include restrictions suitable under the particular circumstances.
- (c) The restrictions on disclosure and use of All Flex Solutions, Inc.'s Proprietary Information by Seller will apply to all materials derived there from by Seller. Upon All Flex Solutions, Inc.'s request at any time, and in any event upon the completion, termination or cancellation of the Order, Seller will return to All Flex Solutions, Inc. all of All Flex Solutions, Inc.'s Proprietary Information and all derivative materials and copies unless specifically directed otherwise in writing by All Flex Solutions, Inc. Seller will not, without the prior written authorization of All Flex Solutions, Inc., sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with any of All Flex Solutions, Inc.'s Proprietary Information. Prior to disposing of such parts or other materials as scrap, Seller will render them unusable. All Flex Solutions, Inc. will have the right to audit Seller's compliance with this provision.
- (d) Seller may disclose All Flex Solutions, Inc.'s Proprietary Information to its subcontractors as required for the performance of this Order, provided that legends are maintained on each disclosure and subcontractors first agree in writing to the same obligations imposed on Seller by this provision.



Seller will be liable to All Flex Solutions, Inc. for any breach of this obligation by a subcontractor. The requirements of this provision will take precedence over any inconsistent restrictive legends or notices applied to Proprietary Information and will survive the performance, completion, termination or cancellation of the Order.

- (e) Notwithstanding any other provisions of these Terms and Conditions, upon prior written notice to All Flex Solutions, Inc. and to the extent that such use will not interfere with Seller's performance of purchase orders with All Flex Solutions, Inc., Seller with the Government's authorization, may use any Proprietary Information or items, which the Government owns or for which it has the right to authorize use on other Government contracts or subcontracts

## **24. Intellectual Property Rights**

- (a) All technical work product, including inventions (whether patented or not), information, data, documents, drawings, software, software documentation, designs, specifications and processes produced by or for Seller, either alone or with others, using funds paid by All Flex Solutions, Inc. under this contract will be the exclusive property of All Flex Solutions, Inc. and will be delivered to All Flex Solutions, Inc. promptly upon request.
- (b) All inventions conceived, developed or first reduced to practice by or for Seller, either alone or with others, using funds paid by All Flex Solutions, Inc. under this contract, and any patents based on any such inventions will be the exclusive property of All Flex Solutions, Inc. Seller will (i) promptly disclose all such inventions to All Flex Solutions, Inc. in writing and (ii) execute all papers, cooperate with All Flex Solutions, Inc. and perform all acts necessary in connection with the filing, prosecution or assignment of related patents or patent applications on behalf of All Flex Solutions, Inc.
- (c) All works of authorship, including documents, drawings, software, software documentation, photographs, videotapes, sound recordings and images, created by or for Seller using funds paid by All Flex Solutions, Inc. under this contract, together with all copyrights subsisting therein, will be the sole property of All Flex Solutions, Inc. To the extent permitted under United States copyright law, all such works will be works made for hire, with the copyrights therein vesting in All Flex Solutions, Inc.
- (d) Seller grants to All Flex Solutions, Inc., and to All Flex Solutions, Inc.'s subcontractors and customers in connection with work being performed for All Flex Solutions, Inc., an irrevocable, nonexclusive, paid-up, worldwide license under any patents, copyrights, industrial designs and mask works owned or controlled by Seller at any time and existing prior to or during the term of this contract, but only to the extent that such patents or copyrights would otherwise interfere with All Flex Solutions, Inc.'s or All Flex Solutions, Inc.'s subcontractors', Sellers' or customers' use or enjoyment of the goods being delivered under this contract or the work product, inventions or works of authorship belonging to All Flex Solutions, Inc. under this Order.

## **25. Independent Contractor Relationship**

- (a) Seller's relationship to All Flex Solutions, Inc. shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between All Flex Solutions, Inc. and Seller or All Flex Solutions, Inc. and Seller personnel. Seller personnel engaged in performing Work under this Contract shall be deemed employees of Seller and shall not for any purposes be considered employees or agents of All Flex Solutions, Inc. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. All Flex Solutions, Inc. assumes no liability for Seller personnel.
- (b) Nothing contained in this Order shall be construed as granting to Seller or any personnel of Seller rights under any All Flex Solutions, Inc. benefit plan.
- (c) "Seller personnel:
  - (i) will not remove All Flex Solutions, Inc. or its Customer's assets from All Flex Solutions, Inc.'s or Customer's premises without All Flex Solutions, Inc. authorization;
  - (ii) will use All Flex Solutions, Inc. or Customer assets only for purposes of this Order;

- (iii) will only connect with, interact with or use All Flex Solutions, Inc.'s computer networks and equipment, communications resources, programs, tools or routines as All Flex Solutions, Inc. agrees, all at Seller's risk and expense, and then only in compliance with applicable All Flex Solutions, Inc. policies; and
- (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. All Flex Solutions, Inc. may monitor any communications made over or data stored in All Flex Solutions, Inc. computer networks and equipment or communications resources."

## **26. Electronic Contracting**

All Flex Solutions, Inc. and Seller agree that if this Order, or any ancillary agreement, or correspondence is transmitted electronically neither All Flex Solutions, Inc. nor Seller shall contest the validity thereof, on the basis that this Order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature.

## **27. Force Majeure**

- (a) Neither party shall be deemed in default of this Agreement or any Order to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, or strikes ("Force Majeure").
- (b) If any Force Majeure condition affects Seller's ability to perform, Seller shall give immediate notice to All Flex Solutions, Inc. and All Flex Solutions, Inc. may elect to either: (1) Cancel at no cost to All Flex Solutions, Inc. the affected Order(s) or any part thereof, (2) suspend the affected Order(s) or any part for the duration of the Force Majeure condition, with the option to obtain elsewhere Goods and Services to be furnished under such Order(s) and deduct from any commitment under such Order(s) the quantity of the Materials and Services obtained or for which commitments have been made elsewhere or (3) resume performance under such Order(s) once the Force Majeure condition ceases, with an option in All Flex Solutions, Inc. to extend any affected Delivery Date or performance date up to the length of time the Force Majeure condition endured. Unless All Flex Solutions, Inc. gives written notice otherwise within thirty (30) days after being notified of the Force Majeure condition, option (2) shall be deemed selected.

## **28. Termination**

- (a) All Flex Solutions, Inc. may, at any time by written notice to Seller, terminate all or any part of the Order, in which event Seller agrees to stop work immediately as to the terminated portion of this Order and to notify subcontractor(s) to stop work, and protect and preserve property in its possession in which All Flex Solutions, Inc. has an interest. If the Order is terminated, in whole or in part, by All Flex Solutions, Inc., Seller shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Seller's actual performance of work under the Order to the effective date of termination, plus a reasonable profit thereon provided that no amount shall be paid to Seller for (i) any anticipatory profits related to work not yet performed, or (ii) costs incurred due to Seller's failure to terminate work as ordered on the effective date of termination. All Flex Solutions, Inc. shall have no obligation to make any of the aforementioned payments to Seller, either for completed items or in connection with terminated work in process, unless Seller shall establish to All Flex Solutions, Inc.'s satisfaction that such completed items, or the work in process, including materials, are unusable in connection with Seller's other business. In no event shall the termination charges and all previous payments made under the Order exceed the total value shown on the face of the Order.
- (b) Seller shall submit to All Flex Solutions, Inc. all claims resulting from termination under this section within sixty (60) days after Seller's receipt of All Flex Solutions, Inc.'s notice of termination. All Flex Solutions, Inc. shall have, upon reasonable advanced notice, the right to inspect Seller's records, facilities, work, and materials relating to performance of the Order for purposes of evaluating Seller's claim.

## 29. Default

- (a) All Flex Solutions, Inc. may terminate the whole or any part of this Contract in any of the following circumstances:
  - (i) If Seller fails to deliver the goods or to perform the services required by this Contract within the time specified herein, or any extension thereof granted by All Flex Solutions, Inc. in writing; or
  - (ii) If Seller fails to perform any of the other provisions of this Contract or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two (2) circumstances does not cure such failure within a period of ten (10) days after receipt of notice from All Flex Solutions, Inc. specifying such failure; or
  - (iii) In the event of suspension of Seller's business, insolvency, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of creditors; or
  - (iv) If otherwise expressly authorized under the provisions of this Contract;
- (b) If after notice of termination under this section, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the section entitled "Termination."

## 30. Indemnification

- (a) Seller covenants and agrees to indemnify, protect, and hold harmless All Flex Solutions, Inc., its officers, directors, employees, agents and successors and assigns ("Indemnified Person(s)") from any and every liability, claim of liability, allegation, judgment, cost, expense, reasonable attorneys fees, cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of Seller's performance or failure to perform under the Order, howsoever arising, including, without limitation, by reason of negligence; strict liability; breach of warranty; or defect in design, material, or workmanship, unless solely caused by the negligence of the Indemnified Person. In the event All Flex Solutions, Inc. should bring an action for enforcement of this indemnification provision, Seller agrees that All Flex Solutions, Inc. shall be entitled to be awarded its reasonable attorneys' fees and costs if All Flex Solutions, Inc. prevails in such proceeding.
- (b) Seller agrees, in any instance where any claims, suits, actions or legal proceedings, are brought against the Seller and in any way affect All Flex Solutions, Inc.'s interests under the Order or otherwise, that:
  - (i) Seller shall notify All Flex Solutions, Inc. in a timely manner (not to exceed five (5) business days) after learning of any actual or threatened claims, suits, actions or legal proceedings, and shall not at any time consummate any settlement without All Flex Solutions, Inc.'s prior written consent;
  - (ii) Without releasing any obligation, liability or undertaking of Seller to indemnify All Flex Solutions, Inc. hereunder, All Flex Solutions, Inc. shall have the right to:
    - (1) Cooperate in the defense of such claim; or
    - (2) With permission of the court, intervene in any such action; or
    - (3) Supersede Seller in the defense of any such claim.

## 31. Intellectual Property Indemnity

Seller shall indemnify All Flex Solutions, Inc. and All Flex Solutions, Inc.'s customers and their respective officers, agents and employees against liability and losses, including costs, for infringement of any United States or foreign patent, copyright, trademark, or other intellectual property arising out of the manufacture of

delivery of supplies or performance of services under this Order or out of the use or disposal by, or for the account of, All Flex Solutions, Inc., All Flex Solutions, Inc.'s customer and/or the Government, of such supplies or services. The foregoing indemnity shall not apply unless Seller shall have been informed as soon as practicable by All Flex Solutions, Inc., All Flex Solutions, Inc.'s customer and/or the Government, of the suit or action or other proceedings alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

**32. Entire Agreement**

The Order, together with these Terms and Purchase Order Quality Clauses, contain the entire agreement of All Flex Solutions, Inc. and Seller and supersedes any and all prior agreements, understandings and communications between All Flex Solutions, Inc. and Seller. The agreement shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No amendment or modification will be valid or binding unless it is in writing and is signed by an authorized representative of both All Flex Solutions, Inc. and Seller and specifically states that it amends this agreement.

**33. Order of Precedence**

The various documents constituting the Order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this Order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items: (a) provisions required by statute, regulation or Government contract; (b) provisions set forth on the face page of this Order form; (c) this Terms and Conditions document; (d) the Statement of Work attached hereto, if any; (e) Specifications approved by All Flex Solutions, Inc.; and (f) Drawing(s) approved by All Flex Solutions, Inc.

**34. Notices**

All notices required or permitted to be given in connection with this Order shall be deemed to be properly given if in writing and delivered to the receiving party at the address (including to the attention of the individual representative, if specified) shown on the face of this Order or to such other address or individual representative specified from time to time by such written notice. Notice shall be deemed effective upon receipt.

**35. Disputes and Choice of Law**

Any dispute that arises under or is related to this Order that cannot be settled by mutual agreement of the Parties following consideration through ascending levels of their respective management, up to and including their Presidents or Chief Executive Officers, may be submitted to a Minnesota state court or a United States Court located in Minnesota. This Order and the parties relationship will be governed by, and construed and enforced in accordance with, the laws of the State of Minnesota without regard to any choice of law rule that would cause the application of the laws of any other jurisdiction. While any dispute remains pending, Seller shall proceed diligently with the performance of work, including the delivery of goods in accordance with All Flex Solutions, Inc.'s direction. Upon resolution of the dispute, the Order shall be equitably adjusted, if necessary, to reflect such resolution.

**36. Severability**

If in any instance any provision of this Order shall be determined to be invalid or unenforceable under any applicable law, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms.

**37. Falsification**

The recording of false, fictitious or fraudulent statements or entries may be punishable as a felony under Federal Statute.