

MERCURY SYSTEMS, INC.  
GENERAL TERMS AND CONDITIONS OF PURCHASE

**ENTIRE AGREEMENT.** The attached purchase order (the "PO" or "Order") and these terms and conditions constitute the entire agreement (together, this "Agreement") between BUYER and SELLER with respect to the product(s) (the "Product(s)") and/or services (the "Services") described in the PO, and no term or condition hereof may be amended, modified or waived except by a writing signed by an authorized representative of BUYER.

**1) ACCEPTANCE OF ORDER/TERMS AND CONDITIONS**

- (a) This Order integrates, merges, and supersedes any prior offers (quotes/proposals), negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) SELLER's acknowledgment, acceptance of any payment for Products and/or Services, or commencement of performance of any part of the Products or Services, shall constitute SELLER's unqualified acceptance of this Order and these Terms and Conditions.
- (c) Any terms or conditions proposed by SELLER, whether on SELLER's quotes, invoices, acknowledgment forms or other documents, that are inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by BUYER in writing. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by BUYER. These terms and conditions, together with any referenced exhibits, attachments or other documents, constitute the entire agreement between the Parties with respect to the subject matter of this Order.
- (d) The prices payable for the Products and Services will be the prices set out in this Order. Unless otherwise expressly stated in this Order, the prices will be firm fixed price.

**2) PRIORITY RATING**

If this Order contains a Defense Priorities and Allocations System (DPAS) rating, this Order is a "rated order" certified for national defense, emergency preparedness, and energy program use, and SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

If this Order carries a DPAS rating, SELLER shall provide unqualified written acceptance or rejection to BUYER's Purchasing Representative within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order.

**3) PACKING AND SHIPMENT (RISK OF LOSS)**

SELLER shall be responsible for ensuring the proper packaging of Products hereunder. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in this Order.

SELLER shall at all times comply with BUYER's written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on

one bill of lading or airbill, as appropriate. SELLER shall submit all required shipping papers to BUYER prior to final payment including any information to support the use of applicable Free Trade Agreements. Title to Products furnished under this Order shall pass to BUYER upon formal acceptance, regardless of when or where BUYER takes physical possession, unless the Order specifically provides for earlier passage of title.

For domestic (United States) Products purchased, the delivery terms will be FOB Destination and for international (non-United States) Products purchased, the delivery terms will be DDP (Delivered Duty Paid) (Incoterms). SELLER shall bear the expense of transport of, and risk of loss or damage to, the Products to the named place. FOB Destination and DDP are BUYER's standard shipping terms.

BUYER's purchase order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, airbills, and invoices.

Notwithstanding the preceding paragraphs of this Section 3, if the Order (or a statement of work that is part of the Order) contains payment milestones (e.g. performance-based payments), title to all materials acquired by SELLER solely for BUYER under such a payment milestone shall vest in BUYER upon the issuance of an invoice from SELLER to BUYER for the applicable payment milestone, provided, however, (a) SELLER shall remain responsible for the risk of loss for such materials until the Products have been delivered to BUYER and (b) the transfer of title to the materials to BUYER does not constitute BUYER's acceptance of such materials or the Products.

**4) DELIVERY OF PRODUCTS**

Time is of the essence for the delivery of Products under this PO. SELLER shall deliver Products in strict conformity with all requirements set forth in this PO, including any delivery schedule and shipping instructions. If SELLER does not make deliveries as specified on the face of this PO, BUYER reserves the right to cancel/and or purchase elsewhere and hold SELLER accountable for all reasonable excess costs and expenses incurred by BUYER. SELLER shall not substitute other items or revise specifications from those specified in the PO without the prior written consent of BUYER. SELLER shall notify the BUYER in writing of any proposed change to (i) the Product(s), including any proposed change to the manufacturing location or the manufacturing process of the Products or the potential closure of the applicable manufacturing facility, or (ii) the ownership of SELLER at least thirty (30) days prior to the shipment date of such Product(s). Unless otherwise expressly permitted in this PO or authorized in writing by BUYER, SELLER shall not deliver Product(s) more than five (5) days in advance of the delivery date specified in this PO. In the event of such an early shipment, BUYER may, at its sole discretion, either retain or return the Product(s) at SELLER's expense. If BUYER elects to retain the Product(s), BUYER will not issue payment for such Product(s) until such time that payment would have been due if such Product(s) had been delivered in accordance with the scheduled delivery date.

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**5) ELECTRONIC ORDERING**

The parties agree that if this Order is transmitted electronically or by email, neither party shall contest the validity of this Order, or any acknowledgement thereof, on the basis that this Order or acknowledgement contains an official written acceptance or electronic signature.

**6) QUALITY MANAGEMENT SYSTEM**

- (a) SELLER shall provide and maintain a quality management system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Order.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and available to BUYER and its customers. SELLER shall require lower-tier suppliers to comply with quality assurance requirements comparable to those contained in this Order. SELLER shall assume responsibility for the quality of all procured material and workmanship. SELLER shall include this clause in its subcontracts with lower-tier suppliers and require lower-tier suppliers to flow down this clause to their lower-tier suppliers.

**7) INSPECTION AND REJECTIONS**

All Products and deliverables identified on an order or resulting from the performance of the Services (“Deliverables”) are subject to BUYER’s inspection and testing. BUYER reserves the right, upon reasonable notice to SELLER, to conduct an on-site inspection, which may also include BUYER’s customer. BUYER’s inspection may, in its sole discretion, include physical, visual, and/or mechanical review, as well as any documentation necessary to substantiate SELLER’s compliance with quality requirements or other specific requirements set forth in this PO. Defective Products or Deliverables, or Products or Deliverables not in accordance with the specifications, may be rejected and held for SELLER’s instruction at SELLER’s expense and risk, and if SELLER so directs, BUYER will return the defective Products or Deliverables to SELLER, at SELLER’s cost and expense. If inspection discloses that part of the Products or Deliverables received are not in accordance with the specifications, BUYER shall have the right to cancel any unshipped portion of the order and purchase elsewhere and hold SELLER accountable, therefore. Payment for Products, Services or Deliverables prior to inspection shall not constitute acceptance thereof or of any Services and is without prejudice to any and all claims that BUYER may have against SELLER. Notwithstanding inspection and payment, SELLER shall, at all times, be responsible and liable for latent defects.

**8) WARRANTY**

- (a) SELLER warrants to BUYER that the Products will, at the time of delivery, conform to SELLER’s then current documentation supplied with the Products. SELLER further warrants to BUYER that the Products will be free from defects in material, workmanship, and design for a period of one (1) year from the date of

final acceptance of the Products by BUYER (the “Warranty Period”).

- (b) SELLER shall repair or replace any Product or component part found by BUYER to be nonconforming or defective when notified in writing during the Warranty Period. All repaired/replaced Products or components are warranted for sixty (60) days or for the remaining unexpired term of the original warranty, whichever is longer.
- (c) SELLER shall perform the Services diligently, professionally and in accordance with all applicable professional and industry standards. SELLER shall perform the Services through the use of personnel and equipment appropriate for the type of Service to be provided and will use its best efforts in performing the Services. BUYER may inspect the results of SELLER’s efforts at reasonable intervals and will inform SELLER if performance is unsatisfactory, in which event SELLER agrees to correct deficiencies within a reasonable time to be agreed between BUYER and SELLER.
- (d) For Products and Services provided by SELLER under this Order, all warranties shall run to BUYER and its customers.
- (e) SELLER warrants without limitation as to time that any Products, including any hardware, software and firmware components, delivered under this Order shall not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware.

**9) MATERIAL REVIEW BOARD (MRB)**

Unless otherwise specified in this PO, SELLER and its lower –tier suppliers and subcontractors do not have the authority to process “use-as-is”, “repair”, standard repair procedures (SRPs)”, or “non- SRPs” via their material review board (MRB). These dispositions, as well as deviations and requests for waivers, requiring MRB disposition shall be submitted to BUYER for approval (this does not include rework or scrap). SELLER shall utilize its appropriate nonconforming material disposition form and submit it to the BUYER’s Purchasing Representative for approval by BUYER.

**10) PAYMENTS, TAXES, AND DUTIES**

- (a) Unless otherwise provided, terms of payment shall be net ninety (90) days from latest of the following: (1) BUYER’s receipt of SELLER’s proper invoice; (2) final acceptance of the Products by BUYER; or (3) final acceptance of the Services by BUYER.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by BUYER or SELLER not to have been properly payable and shall also be subject to reduction for overpayments. SELLER shall promptly notify BUYER of any such overpayments

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and remit the amount of the overpayment except as otherwise directed by BUYER.

- (c) BUYER shall have a right of setoff against payments due or at issue under this Order or any other Order between the parties.
- (d) Payment shall be deemed to have been made as of the date of mailing BUYER's payment or electronic funds transfer.
- (e) 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) ORDER DIRECTION**

- (a) Only the BUYER's Purchasing Representative has authority on behalf of BUYER to make changes to this Order. All amendments must be identified as such in writing and executed by the parties.
- (b) BUYER 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 Products or Services 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.
- (c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the BUYER's Purchasing Representative.

**12) CHANGES**

- (a) BUYER's Purchasing Representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order in any of the following: (1) drawings, designs, statement of work, specifications, planning and/or other technical documents; (2) method of shipment, packaging, or packing; (3) time and place of inspection, delivery or Acceptance; (4) reasonable adjustments in quantities and/or delivery schedules; (5) place of performance of the Service; (6) the amount of BUYER furnished property or property furnished by BUYER's customer; and (7) terms and conditions required to meet BUYER's obligations under its customer prime contracts or subcontracts.
- (b) If such change causes an increase or decrease in the cost or time required to perform this Order, BUYER and SELLER shall negotiate an equitable adjustment in the price and/or schedule, to reflect the increase or decrease. BUYER shall modify this Order in writing accordingly.
- (c) Any claim for adjustment shall be unconditionally waived unless: (i) asserted in writing and delivered to BUYER's Purchasing Representative within fifteen (15) days of the date of the written change order and (ii) a fully supported proposal is delivered to BUYER's Purchasing Representative within thirty (30) days of the date of the written change order.

- (d) BUYER, its authorized representatives, and its customer have the right to examine any of SELLER's pertinent books and records for the purpose of verifying SELLER's claim. However, at SELLER's request, in lieu of BUYER, a mutually agreeable third party can examine books and records to verify SELLER's claim.
- (e) Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause hereof. However, SELLER shall not be excused from proceeding with this Order as changed.

**13) COMMUNICATION WITH BUYER CUSTOMER**

SELLER shall not communicate with BUYER's customer or higher tier customer in connection with this Order, except as expressly permitted by BUYER. This clause does not prohibit SELLER from communicating with the U.S. Government with respect to (1) matters SELLER is required by law or regulation to communicate to the U.S. Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information, or (3) any matter for which this Order provides for direct communication by SELLER to the U.S. Government.

**14) SERVICES ON BUYER PREMISES**

If Services are to be performed on premises owned or controlled by BUYER or BUYER's customer, then SELLER shall comply with all the rules and regulations established by BUYER or any such BUYER customer for access to and activities in and around premises owned or controlled by BUYER or such BUYER customer.

**15) RIGHT OF ACCESS.**

BUYER, BUYER's customers, and the applicable regulatory authorities shall have the right to access all applicable facilities of SELLER and other applicable facilities at any level of SELLER's supply chain that are involved in the performance of this PO. In addition, BUYER, BUYER's customers, and the applicable regulatory authorities shall have the right to access all records of SELLER and the records at any level of SELLER's supply chain that are relevant to this PO.

**16) STOP WORK**

BUYER, may, at any time, by written notice to SELLER, require SELLER to stop all, or any part, of the performance of this Order and its obligations hereunder with respect to the Products or Services described in this Order for a period of 90 days, and for any further period to which the parties may agree. Upon receipt of such notice, SELLER shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs under the Order during the period of work stoppage. Within a period of 90 days after a stop work notice is delivered to the SELLER, or within any extension of that period to which the parties shall have agreed, the BUYER shall either (i) cancel the stop work order or (ii) terminate the Order as provided in the Termination for Default or Termination for Convenience section in these terms. If a stop work order issued under this section is canceled or the period of the stop work order or any extension

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thereof expires, the SELLER shall resume its performance of its obligations under this Order and if such stop work order results in an increase or decrease in the cost or time required to perform this Order, SELLER shall submit a request for an equitable adjustment within 20 days after the end of the period of work stoppage and BUYER and SELLER shall negotiate such equitable adjustment in the price and/or schedule, to reflect the increase or decrease. BUYER shall modify this Order in writing accordingly.

**17) TERMINATION FOR CONVENIENCE**

- (a) BUYER reserves the right to terminate this Order, or any part hereof, for its convenience. BUYER shall terminate by delivering to SELLER a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, SELLER shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Within forty-five (45) days after the effective date of termination, SELLER may submit to BUYER a claim reflecting the percentage of the work performed prior to the effective date of termination, plus reasonable charges SELLER can demonstrate to the satisfaction of BUYER, using SELLER's standard record keeping system, have resulted from the termination. SELLER shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (b) In no event shall BUYER be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Order price.
- (c) SELLER shall continue all work not terminated. The provision of this section shall not limit or affect the right of BUYER to terminate the Order for default.

**18) TERMINATION FOR DEFAULT**

- (a) BUYER, by written notice, may terminate this Order for default, in whole or in part, if SELLER: (i) fails to comply with any of the terms of this Order; (ii) fails to make progress so as to endanger performance of this Order; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. SELLER shall have ten (10) days (or such longer period as BUYER may authorize in writing) to cure any such failure after receipt of notice from BUYER. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.
- (b) Following a termination for default of this Order, SELLER shall be compensated only for Products and Services actually delivered/performed that have been accepted by BUYER. BUYER may require SELLER to deliver to BUYER any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for

the terminated portion of this Order. BUYER and SELLER shall agree on the amount of payment for such supplies and materials.

- (c) SELLER shall continue all work not terminated or cancelled.

**19) EXCUSABLE DELAY – FORCE MAJEURE**

Neither BUYER nor SELLER shall be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include but are not limited to: (1) acts of God or of the public enemy; (2) acts or failure of any government in either its sovereign or contractual capacity; (3) fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, nuclear incident, or any other act or event beyond reasonable control and without the fault of either Party or its suppliers or subcontractors. In the event that performance of this Order is hindered, delayed, threatened to be delayed, or adversely affected by causes of the type described above: (i) the Party whose performance is so affected shall immediately notify the other Party's authorized representative in writing, including all relevant information with respect thereof, and shall likewise notify promptly of any subsequent change in the circumstances, (ii) SELLER shall use all commercially reasonable efforts to avoid or minimize all such instances, and (iii) at BUYER's sole option, this Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of such cause or this Order may be terminated for convenience.

**20) FURNISHED PROPERTY**

- (a) BUYER may, by written authorization, provide to SELLER property owned by either BUYER or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Order.
- (b) Title to Furnished Property shall remain in BUYER or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify BUYER of, any loss, damage, theft or destruction to Furnished Property within two (2) working days.
- (d) At BUYER's request, and/or upon completion of this Order, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by BUYER.

**21) INSURANCE**

- (a) In the event that SELLER or its subcontractors perform work at the premises) of BUYER or BUYER's customers for any reason in connection with this Order (unless only a small amount of work is required on the BUYER or BUYER's customer premises, e.g., a few brief visits per month) then SELLER and its subcontractors shall maintain for the performance of this Order the following insurances:

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- (b) Workers' compensation insurance meeting the statutory requirements where work will be performed;
- (c) Employer's liability (EL) in the amount of \$1 million per each accident or per each employee for disease;
- (d) Commercial general liability (CGL) including Products Liability and Completed Operations liability in the amount of \$1 million per occurrence and \$2 million in the aggregate annually, or in such higher amounts as BUYER may require;
- (e) Automobile liability (AL) insurance covering third party bodily injury and property damage with a minimum of \$1 million per occurrence limit, or in such higher amounts as BUYER may require; and
- (f) Such other insurance as BUYER may require.
- (g) SELLER shall provide BUYER thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to maintain the required insurance. SELLER shall have its insurers name BUYER as an additional insured on the CGL and AL policies for the duration of this Order. If requested, SELLER shall provide a "Certificate of Insurance" evidencing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of BUYER and is not contributory with any insurance which BUYER may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Order.

**22) APPLICABLE LAWS**

- (a) This Order and any matter arising out of or related to this Order, including any dispute, controversy, or claim arising out of or related to this Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of the conflict of laws provisions thereof. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of, in connection with, or in relation to this Order, or the breach thereof, shall be only in the United States Federal District Court in Massachusetts or in the Massachusetts Court having competent jurisdiction.
- (b) SELLER, in the performance of this Order, shall comply with all applicable local, state, federal, and international laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state and/or federal governmental authority. SELLER, at its expense, shall provide reasonable cooperation to BUYER in conducting any

investigation regarding the nature and scope of any failure by SELLER or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of SELLER's obligations under this Order.

- (c) SELLER shall notify BUYER promptly in writing if a charge of noncompliance with any law addressing occupational health and safety or protection of the environment has been filed against SELLER in connection with the performance of this Order.

**23) WAIVERS, APPROVALS, AND REMEDIES**

- (a) Failure by either party to enforce any of the provisions of this Order or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.
- (b) BUYER's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Order.
- (c) The rights and remedies of either party in this Order are cumulative and in addition to any other rights and remedies provided by law or in equity.

**24) INDEMNIFICATION**

SELLER, at its own expense, shall indemnify, defend and hold BUYER and its customers harmless from and against any and all claims, demands, suits, judgments, damages and liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising directly or indirectly out of or in connection with (a) SELLER's performance under this Order, (b) any breach of any SELLER's obligations under this Order, or (c) any claim made by SELLER's personnel against BUYER.

**25) DISPUTES**

- (a) Any dispute arising under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties.
- (b) If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon in writing, either Party may bring suit only in the state or federal court located in the Commonwealth of Massachusetts. SELLER consents to personal jurisdiction for this purpose in the Commonwealth of Massachusetts.
- (c) Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, both Parties shall proceed diligently, with their respective obligations under this Order.
- (d) In no event shall SELLER acquire any direct claim, or direct course of action against a customer of BUYER, including the U.S. Government, except as may

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otherwise be approved by BUYER or otherwise be authorized by law.

**26) INTELLECTUAL PROPERTY**

- (a) Intellectual Property ("IP") means inventions, discoveries and improvements, know-how, technical data, drawings, specifications, process information, reports and documented information, and computer software. IP includes all worldwide common law and statutory rights to the foregoing, including but not limited to, patents, industrial designs, trade secrets, copyrights, mask work registrations, and the like.
- (b) Background IP: SELLER shall retain ownership of all IP owned or developed by SELLER prior to the effective date of or outside the scope of this Order ("Background IP"). SELLER shall grant to BUYER a non-exclusive, paid-up, royalty-free worldwide license (i) to use, reproduce, distribute, and modify such Background IP and (ii) to use, make, have made, offer for sale, sell, distribute and import products and services that incorporate or embody such Background IP, in each case as necessary for the purpose of exploiting BUYER's use of the Products or Services or the Foreground IP that are delivered to BUYER by SELLER under this Order or are performed for BUYER by SELLER under this Order.
- (c) Third Party IP: To the extent SELLER incorporates third-party IP into any Products, SELLER shall obtain for BUYER the license rights granted in subparagraph (b) of this Clause 26 in such third-party IP, at no additional cost to BUYER.
- (d) Foreground IP means any IP that is conceived, developed, or reduced to practice in the performance of this Order. BUYER shall retain sole and exclusive ownership of such Foreground IP and SELLER acknowledges that all Foreground IP is being created for BUYER as "works made for hire" and shall be the exclusive property of BUYER. To the extent the Foreground IP is not deemed a "work for hire" under applicable law, SELLER hereby irrevocably assigns and transfers to BUYER all right, title and interest in the Foreground IP, including but not limited to patent and copyright interests and rights to create derivative works, and shall execute all documents reasonably required and provide all assistance reasonably necessary for BUYER to perfect its rights in such Foreground IP.
- (e) Nothing in this clause shall modify or alter any rights that the United States Government may have in any of the Products or Services that are delivered or performed under this Order.
- (f) SELLER warrants that the Products delivered, or the Services performed under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S.

Government assumes liability therefor, SELLER shall defend, indemnify, and hold harmless BUYER, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Products or Services delivered or performed under this Order infringes or otherwise violates the intellectual property rights of any person or entity.

- (g) SELLER's obligation to defend, indemnify, and hold harmless BUYER and its customers under Paragraph (f) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to BUYER's Prime Order for infringement of a U.S. patent and BUYER and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.

**27) PROPRIETARY RIGHTS/INFORMATION ASSURANCE**

- (a) Information provided by BUYER to SELLER remains the property of BUYER. SELLER shall comply with the terms of any proprietary information agreement with BUYER and comply with all proprietary information markings and restrictive legends applied by BUYER to anything provided hereunder to SELLER. SELLER shall not use any BUYER provided information for any purpose except to perform this Order and shall not disclose such information to third parties without the prior written consent of BUYER. SELLER shall maintain data protection processes and systems sufficient to adequately protect BUYER provided information and comply with any law or regulation applicable to such information.
- (b) If SELLER becomes aware of any unauthorized compromise, use, copying or disclosure of any BUYER information, whether by SELLER, its officers, employees, agents, SELLER's, suppliers or subcontractors or any entity under SELLER's direction or control (an "Incident"), SELLER shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including prompt notification to BUYER after learning of the Incident. As used in this Section, "compromise" means that any information provided by BUYER has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to deliver or perform under this Order. SELLER shall provide reasonable cooperation to BUYER in conducting any investigation regarding the nature and scope of any Incident. Any costs incurred in investigating or remedying Incidents shall be borne by SELLER.

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- (c) Any BUYER provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.
- (d) The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.
- (e) SELLER shall not use BUYER's name or any other trademark, service mark, trade name, product name, logo, and/or any portion or component thereof, owned by BUYER, in whatever shape or form, without the prior written consent of BUYER.
- (f) SELLER shall not publish or cause to be published by any means the existence of this Order or any details concerning the Products or Services that are the subject of this Order without BUYER's prior written consent.

**28) SECURITY BREACHES**

In the event SELLER becomes aware of any actual or suspected security breach including but not limited to, physical trespass on a secure facility, unauthorized intrusion or access into SELLER's information systems or computer-related networks, loss/theft of a PC (laptop or desktop), loss or theft of printed materials, or any unauthorized compromise or use of SELLER's data or information that may potentially affect or adversely impact BUYER, SELLER shall take appropriate immediate actions to investigate, eradicate and contain such security breach, at its own expense and carry out any recovery reasonably necessary to remedy any impact of such security breach. SELLER shall notify BUYER as soon as reasonably practical but in no event later than seventy-two (72) hours after learning of such an incident. SELLER shall, without limitation, pay for or reimburse BUYER for all costs, losses and expenses incurred by BUYER and shall indemnify BUYER for any payments made by BUYER as a result of any such incident regardless of whether SELLER was aware of such an incident. BUYER shall have the right to immediately suspend accepting transactions and data from SELLER's systems until incidents are resolved; provided however, that BUYER will use commercially reasonable best efforts to limit any such suspension to only that which is reasonably necessary to permit the SELLER to investigate the severity of the incident, devise a remedy or otherwise secure the data/affected systems.

Upon the request of BUYER, SELLER shall cooperate with and assist in any effort by BUYER or a third party engaged by BUYER to evaluate the security of SELLER's information systems or computer-related networks.

**29) ASSIGNMENT**

SELLER may not assign, delegate, or subcontract its rights, duties, or obligations under this Order without the prior written consent of BUYER, provided, however, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if

BUYER is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of BUYER against SELLER. BUYER shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

**30) EXPORT CONTROL**

SELLER shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations, specifically including but not limited to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Export Control Reform Act of 2018; the Export Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws").

- (a) SELLER shall notify BUYER if any deliverable under this Order is restricted by applicable Trade Control Laws. Before providing BUYER any item or data controlled under any of the Trade Control Laws, SELLER shall provide in writing to the BUYER Representative the export classification of any such item or controlled data (i.e. the export classification under the EAR, ITAR, EU List of Dual Use Items and Technology, Wassenaar Arrangement's List of Dual-Use Goods and Technologies or other applicable export control list) and shall notify the BUYER Representative in writing of any changes to the export classification information of the item or controlled data. SELLER represents that an official authorized to bind the SELLER has determined that the SELLER or the designer, manufacturer, SELLER or other source of the Products has properly determined their export classification. SELLER shall also identify on the face of its shipping documentation the Country of Origin and for international shipments, the applicable Harmonized Tariff Schedule number.
- (b) SELLER shall not export, re-export, transfer, disclose or otherwise provide or make accessible BUYER's technical data and/or hardware controlled by Trade Control Laws ("Export Controlled Information") to any persons, or entities not authorized to receive or have access to the data, services and/or hardware, including third country/dual national employees, lower-tier subcontractors and sub-licensees, or modify or divert such Export Controlled Information to any military application unless SELLER receives advance, written authorization from BUYER and verification of any required export authorization is in place. SELLER shall not provide a defense service as defined by the Trade Control Laws using any or all of BUYER's technical data and/or hardware. Upon BUYER's request, SELLER shall demonstrate to BUYER's reasonable satisfaction, SELLER's and SELLER's lower-tier subcontractors' compliance with this clause and all Trade Control Laws. To the extent SELLER's Products provided under this

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Order include packing, labeling, processing, and/or handling exports for BUYER, SELLER shall maintain an auditable process that assures accurate packing, labeling, processing, and handling of such exports. SELLER shall also promptly notify BUYER if it becomes aware of any failure by SELLER or SELLER's lower-tier subcontractors to comply with this clause and shall cooperate with BUYER in any investigation of such failure to comply.

SELLER hereby represents that neither SELLER nor any parent, subsidiary or affiliate of SELLER is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists"). SELLER shall immediately notify the BUYER Representative if SELLER, or any parent, subsidiary or affiliate of SELLER becomes listed on any Restricted Party List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

- (c) If SELLER is engaged in the business of exporting manufacturing (whether exporting or not) or brokering defense articles or furnishing defense services, SELLER represents that it is and will continue to be registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (d) Where SELLER is a party to or signatory under a BUYER Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA), license exception or license exemption, collectively, "Export Authorization," SELLER shall provide prompt notification to BUYER's Purchasing Representative in the event of (1) changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR or other applicable governmental restrictions, and the initiation or existence of a U.S. Government investigation, that could affect SELLER's performance under this Order, or (2) any change by SELLER that might require BUYER to submit an amendment to an existing Export Authorization or request a new or replacement Export Authorization. SELLER shall provide to BUYER all information and documentation as may reasonably be required for BUYER to prepare and submit any required export license applications. Delays on SELLER's part to submit

the relevant information for export licenses shall not constitute an excusable delay under this Order.

- (e) SELLER shall include paragraphs (a) through (g) and this paragraph (h) of this clause or equivalent provisions in lower-tier Subcontractors for the delivery of items that will be included in or delivered as Products or Services to BUYER. SELLER shall immediately notify BUYER upon learning that any lower-tier subcontractor with which it engages has become listed on the Restricted Parties List.
- (f) 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, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

**31) USE OF FREE, AND OPEN SOURCE SOFTWARE (FOSS)**

- (a) This section only applies if SELLER's performance includes the delivery of open source software or free software (including such software residing on hardware).
- (b) SELLER shall disclose to BUYER in writing any FOSS that will be used or delivered in connection with this Order and shall obtain BUYER's prior written consent before using or delivering such FOSS in connection with this Order. BUYER may withhold such consent in its sole discretion.
- (c) As used herein, "FOSS License" means the General Public License (GPL), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution (BSD) license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."
- (d) As used herein, "FOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates BUYER to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.



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**32) COUNTERFEIT WORK**

- (a) SELLER shall not deliver any Counterfeit Part to BUYER under this Order. "Counterfeit Part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- (b) SELLER shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in this Order. SELLER shall immediately notify BUYER with the pertinent facts if SELLER becomes aware that it has delivered a Counterfeit Part to BUYER. When requested by BUYER, SELLER shall provide Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM) documentation that authenticates traceability of the affected parts to the applicable OCM/OEM. SELLER, at its expense, shall provide reasonable cooperation to BUYER in conducting any investigation regarding the delivery of a Counterfeit Part under this Order.
- (c) This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Order addressing the authenticity of Products or parts delivered by SELLER to BUYER.
- (d) In the event that a Counterfeit Part has been delivered under this Order, SELLER shall, at its expense, promptly replace such Counterfeit Part with genuine parts conforming to the requirements of this Order. Notwithstanding any other provision in this Order, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Parts, including without limitation BUYER's costs of removing Counterfeit Part, of installing replacement parts and of any testing necessitated by the reinstallation of parts after a Counterfeit Part has been exchanged. The remedies contained in this paragraph are in addition to any remedies BUYER may have at law, equity or under other provisions of this Order.
- (e) SELLER shall include paragraphs (a) through (e) and this paragraph (f) of this clause or equivalent provisions in lower tier suppliers or subcontractors for the delivery of parts or components that will be included in or furnished as Products to BUYER.

**33) PARTS OBSOLESCENCE**

During performance of this Order, SELLER shall notify BUYER of any planned obsolescence of the Products or any parts or components of such Products set out in this Order at least twelve (12) months prior to any such planned obsolescence.

**34) CONFLICT MINERALS**

- (a) All parts, components, and/or material that are made part of Products delivered under this Order cannot contain conflict minerals originating in the Democratic Republic of the Congo or the adjoining countries of Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia ("Covered Countries"). Accordingly, SELLER shall certify: whether the parts, components, and/or material that are part of the Products delivered under this Order contain conflict minerals – tantalum, tin, tungsten or gold; and, if such parts, components, and/or material contain conflict minerals:
  - (i) the relevant identification number(s) of the parts and/or material that contain conflict minerals and which conflict minerals are incorporated in each item;
  - (ii) that the conflict minerals did not originate in a Covered Country;
  - (iii) the supplier from which SELLER obtained the conflict minerals; and
  - (iv) the smelter used to produce the conflict minerals.
- (b) SELLER shall include this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Products to BUYER.

**35) OFFSET CREDIT/COOPERATION**

This Order has been entered into in direct support of BUYER's international offset programs. All offset benefit credits resulting from this Order are the sole property of BUYER to be applied to the offset program of its choice. SELLER shall assist BUYER in securing appropriate offset credits from the respective country government authorities.

**36) RETENTION OF RECORDS**

Unless a longer period is specified in this Order or by law or regulation, SELLER shall retain all records related to this Order for four (4) years from the date of final payment received by SELLER. Records related to this Order include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to BUYER and to BUYER's customer, including the US Government upon request.

**37) TRAVEL COSTS**

- (a) All travel incurred by SELLER in the performance of this Order is included within the Order price and shall not

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be separately reimbursed by BUYER unless such travel is expressly authorized in writing in advance by BUYER.

- (b) When travel is authorized under this Order, SELLER shall be reimbursed only for necessary, reasonable, and actual travel expenses for transportation, lodging, meals and incidental expenses only to the extent that they do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the United States Federal Travel Regulations for the area of travel authorized under this Order. Air travel shall be reimbursed for coach class only. Lodging expenses are reimbursable only where incurred from establishments serving the general public.
- (c) SELLER shall provide a detailed summary of all such costs by category of expense with each invoice. SELLER shall provide a legible receipt for each claimed individual expense exceeding \$75.00.

**38) PRECEDENCE**

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Written or typed provisions on the face of the Order (including any continuation sheets), as applicable
- (b) Contract Security Classification Specifications, if applicable
- (c) These General Terms and Conditions of Purchase
- (d) FAR/Defense FAR Supplement (DFARS) and Other Agency Supplemental Clauses, if applicable
- (e) Statement of Work, if applicable
- (f) Specifications/Drawings, if applicable,
- (g) Quality/Mission Assurance Requirements, if applicable
- (h) SELLER Data Requirements List (SDRL)/Data Item Description (DID), if applicable
- (i) Other Referenced Documents

**39) SEVERABILITY**

If any provision of this Order or application thereof is found invalid, illegal or unenforceable by law, the remainder of this Order will remain valid, enforceable and in full force and effect.

**40) SURVIVABILITY**

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

**41) SUPPLIER CODE OF CONDUCT**

SELLER agrees that it will comply with the Mercury Systems Inc. Supplier Code of Conduct (available at <https://mrcy.com/legal/>).

**42) DEFINITIONS**

The following terms shall have the meanings set forth below:

**"BUYER"** means Mercury Systems Inc. acting through its companies or business units as identified on the face of this Order. If a subsidiary or affiliate of Mercury Systems, Inc. is identified on the face of this Order, then "BUYER" means that subsidiary or affiliate. For Order administration purposes, BUYER's Purchasing Representative is either a Purchasing or Subcontracts representative authorized to administer and/or execute this Order.

**"SELLER"** means the party identified on the face of this Order with whom BUYER is contracting.