

**Times Microwave Systems, Inc.**

**PURCHASE ORDER TERMS AND CONDITIONS**

- 1. Acceptance:** This purchase order must be accepted in writing by Seller. If for any reason, Seller should fail to accept this order in writing, the shipment of any goods ordered here-by, the furnishing of any service called for hereunder or the acceptance of any payment by Seller hereunder or any other conduct by Seller which recognizes the evidence of a Contract pertaining to the subject matter hereof shall constitute an unqualified acceptance by Seller of this order and all its terms and conditions. Any terms and conditions proposed in Seller's acceptance of Buyer's offer or in any acknowledgment, invoice, or other form used by Seller that add to, vary from, or conflict with the terms herein are hereby objected to unless specifically accepted in writing by the Buyer. Any such proposed terms shall be void and the terms and conditions of this order a) shall constitute the complete and exclusive statement of the terms and conditions of the Contract between the parties, b) shall apply to each shipment received by Buyer from Seller hereunder, and c) may hereafter be modified only by written instrument executed by the authorized representatives of both parties.
- 2. Specifications:** Seller shall comply with all Buyer's specifications. The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.
- 3. Quality Control System:**
  - a) Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
  - b) Records of all quality control inspection work by Seller shall be kept complete and available to TMS and its customers. See Supplier Quality Manual for record retention requirements.
  - c) Seller agrees that it shall at a minimum maintain the internal quality assurance provisions in place when approval of Seller as a supplier to Buyer was obtained, as well as be subject to quality assurance
  - d) conditions are specified on the face of the PO.
- 4. Inspection; Rejection:**
  - a) Seller shall provide and maintain, without additional charge to Buyer, an inspection system which 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 Buyer, an inspection system, which is acceptable to Buyer, Buyer's customer and where applicable, the United States Government (the "Government"). Seller shall tender to Buyer 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. As part of the inspection system, Seller shall prepare and maintain records evidencing all inspections made under the system and the outcome of such inspections. These records shall be complete and made available to Buyer during and following performance of this order. Record Retention period is in accordance with TMS Supplier Quality Manual and begins after final payment. Buyer may perform reasonable reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph.
  - b) Buyer, Buyer's customer, regulatory agencies (e.g. FAA) and the Government shall have the right to inspect and test the material and workmanship and conformity with specifications of all goods required under this order at all places and times during normal business hours including, when

practicable, during the period of manufacture; and if any such inspection or test is performed on the premises of Seller, Seller shall furnish, without additional charge to Buyer, all reasonable facilities and assistance for the safe and convenient performance of the inspection test.

- c) Notwithstanding (i) prior inspection, (ii) payment for, (iii) use of the goods ordered hereunder, (iv) passage of title, or (v) execution of a DD-250 or other acceptance document, Buyer shall have the right to reject any goods which do not conform to all requirements of this order. Such right shall be exercisable within the period provided in Buyer's applicable specification, or elsewhere in this order, but in any event, not less than one (1) year following Buyer's receipt of the goods called for hereunder. All such rejected goods shall be returned to Seller at Seller's risk and expense, (transportation collect declared at full value), for full credit, replacement or refund (at Buyer's option) excepting, however, those goods which Buyer elects to repair at Seller's expense or to retain at an equitable reduction in price. Rejected goods shall not again be tendered for acceptance without disclosure of former rejection. Buyer's rights under this subparagraph shall be in addition to and shall not be deemed to diminish its rights under this paragraph or under the paragraph hereof entitled "Warranty."
- d) Buyer reserves the right to reject all or any part of any delivery that varies from the quantity authorized by Buyer for shipment.

#### 5. Warranty:

- a) Seller warrants to Buyer, its successors, assigns, customers, and users of goods sold by Buyer that all goods provided hereunder shall be (i) merchantable; (ii) new; (iii) free from defects in material and workmanship; (iv) free from defects in design; (v) suitable for the purposes intended whether expressed or reasonably implied; (vi) in compliance with all applicable specifications, drawings, and performance requirements; and (vii) free from liens or encumbrances on title. Delivery, inspection, test, acceptance, use of, or payment for the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranty including all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment and use. Seller agrees to correct defects in or replace any goods not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. Deliveries of corrected or replaced goods shall be accompanied by a written notice specifying that such goods are corrections or replacements. In the event that Seller fails to correct defects in or replace non-conforming goods promptly, Buyer, after reasonable notice to Seller, shall have the right to correct or replace such goods and charge Seller for the costs incurred by Buyer in doing so without limitation. Buyer has the right to deduct or offset pursuant to the Offset provisions of this Contract. Buyer's approval of Seller's samples or first articles shall not be construed as a waiver by the Buyer of any requirement of the drawings, specifications, specified performance requirements, and/or other reference descriptions applicable hereto or of any express or implied warranty.
- b) Warranty period is one year after acceptance
- c) In the event of Seller's delivery of defective or nonconforming items or Seller's breach of warranty, Buyer may, at its election and in addition to any other rights or remedies, legally or equitably, under this order, recover from Seller any costs of removing such items from property, equipment or products in which such items have been incorporated and any additional costs of disassembly, faulty isolation, failure analysis, reinstallation, reinspection, scrappage, retesting, manufacturing and remanufacturing.
- d) If services or technical data are to be provided by Seller hereunder, Seller warrants to Buyer that such services and/or technical data have been performed or prepared in a professional and workmanlike manner.

## 6. 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 Contract ("Background IP"). Seller grants to Buyer an irrevocable, nonexclusive, sub-licensable, perpetual, paid-up, royalty-free, worldwide license (i) to use, reproduce, distribute, modify, and prepare derivative works of 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 solely as necessary for the purpose of exploiting Buyer's rights in the goods or Foreground IP (as defined below). Seller grants to Buyer such license rights for any purpose in the event Buyer cancels all or part of this Contract for Seller default in accordance with the Termination for Default provisions of this Contract or in the event Buyer, in its own judgment, must provide Seller with design, manufacturing, or on-site support substantially more than what is required of Buyer under this Contract in order for Seller to comply with this Contract.
- c) Employee Agreements. Seller shall obtain agreements with its personnel to enable the grant of rights to which Buyer is entitled under this Article 6.
- d) Third Party IP. To the extent, Seller incorporates third-party IP into any Contract deliverable, Seller shall obtain for Buyer at least the license rights granted in paragraph b of this Article in such third-party IP, at no additional cost to Buyer.
- e) Foreground IP. The following subparagraphs of this paragraph (e) shall not apply to commercial off-the-shelf Goods except to the extent such Goods are modified or redesigned pursuant to this Contract, or any Goods to the extent their development was funded by the Government.
  - i. All IP conceived, developed, or first reduced to practice by, for, or with Seller, either alone or with others, in performance of this Contract (collectively, "Foreground IP") shall be the exclusive property of Buyer. To the extent, Foreground IP consists of works of authorship, such works shall be works made for hire with the copyrights vesting in Buyer. Seller hereby transfers, conveys, and assigns all right, title and interest in such Foreground IP free of charge to Buyer. Seller hereby irrevocably transfers, conveys, and assigns all right, title and interest in any other Foreground IP not considered a work made for hire free of charge to Buyer. Seller shall protect all Foreground IP as Confidential Information.
  - ii. Seller will, within two (2) months after conception or first actual reduction to practice of any invention and prior to Contract completion, disclose in writing to Buyer all inventions, whether patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs to file, acquire, prosecute, maintain, enforce and assign Buyer's Foreground IP rights. Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
  - iii. Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Contract to use, reproduce, modify, practice and prepare derivative works of any Foreground IP solely as necessary for Seller to perform its obligations under this Contract, except that, notwithstanding the foregoing, Seller may use and disclose Proprietary Information and Materials as permitted under this Contract. Seller shall not, without Buyer's prior written consent, use Foreground IP or such derivative works in any manner not authorized

under this Contract, including, but not limited to, developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Foreground IP to anyone other than Buyer.

**7. Infringement Indemnity:**

Seller shall protect, defend and indemnify Buyer for any cost or expense arising from a claim of infringement of any intellectual property right of a third party by any of the goods delivered hereunder. Seller must notify Buyer within 7 days after receiving notice of such claim of Seller's intent to defend Buyer. Seller shall defend or settle, at its own expense, and only with Buyer's consent, any lawsuit, action, or proceeding brought against Buyer. If Buyer should be enjoined from use of the goods because of such lawsuit or proceeding, Seller shall pay all Buyer's costs and expenses including consequential damages and at Buyer's option may: (a) secure cancellation of the injunction; (b) replace the goods with non-infringing goods at Seller's expense; and/or (c) remove the goods from Buyer's premises and refund to Buyer the amount paid for the goods.

**8. Shipping and Billing Instructions:**

- a) Unless otherwise specified, standard commercial preservation, packing and packaging is acceptable. Seller must not make any charges for packaging or boxing, and Buyer will not allow such charges. Seller must not combine in the same container material for different receiving locations. Seller must package all goods in accordance with good commercial practice in a manner sufficient to ensure arrival in an undamaged condition. Seller shall be responsible to Buyer for all direct and indirect costs or damages incurred by the Buyer, because of, or caused by, improper packing, or packaging. Seller shall give notice of shipment to Buyer at the time of delivery of any shipment of items to a carrier for transportation.
- b) Exterior containers must be marked with the following: (i) address; (ii) purchase order number; (iii) part number; (iv) prime Contract number, if any; and (v) any other special marking called for by this order.
- c) The bill of lading must reference purchase order number and correct ship to address. The original copy of the bill of lading shall be retained by Seller for one (1) year and provided to Buyer's Traffic Department if requested.
- d) On orders where Buyer pays for or reimburses Seller directly for shipping costs, Seller must ship in accordance with routing instructions furnished by Buyer. If such instructions are not received, Seller shall secure the least expensive transportation method consistent with good commercial practice for protection and shipment of the goods shipped. When delivery is to be in accordance with Buyer's written releases, Seller shall not procure, fabricate, assemble or ship any item except to the extent authorized by Buyer in such written releases. Seller will at its own expense ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered for any reason other than Buyer's fault.
- e) Include with each shipment of goods a packing slip which displays (i) the purchase order number; (ii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (iii) the quantity of items.
- f) Render a separate invoice in duplicate of the Buyer's Accounts Payable Department on the day of each shipment made pursuant to this order and indicate thereon: (i) the location to which the item has been shipped; (ii) the purchase order number; (iii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (iv) the quantity of items shipped.
- g) All Inspection Documentation should be in compliance with the approved Quality System and Times Microwave Systems Supplier Quality Manual.

**9. Changes:**

- a) Buyer may, at any time, unilaterally make changes within the general scope of this order. Subject to paragraph c. hereof, if any change causes an increase or decrease in the cost of or the time required for performance, Buyer and Seller may agree to an equitable adjustment in price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause, however, must be submitted in writing in the form of a complete change proposal or as otherwise to Buyer's satisfaction, fully supported by factual information, to Buyer's Purchasing Department not later than fifteen (15) days after the date of receipt by Seller of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Seller's request. No claim for an equitable adjustment hereunder shall be allowed if it is asserted after final payment in this order.
- b) No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's Purchasing Department.
- c) Notwithstanding the above or any other provision of this order, the Seller hereby agrees that no changes to the goods which may be required to meet the specified performance requirements of this order shall entitle the Seller to any adjustment in either price or delivery.
- d) Notwithstanding the pendency of any claim for an adjustment submitted by Seller hereunder, Seller shall diligently proceed with the performance of the order, as directed by Buyer, and nothing herein shall be construed as relieving Seller of its obligations so 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.

**10. Assignment and Offset:**

- a) Performance of this order shall not be assigned by the Seller in whole or in part without the prior written consent of Buyer. Any prohibited assignment by Seller shall be null and void, shall be deemed a material breach of this order, and Seller shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations hereunder. This shall in no way affect Buyer's right to assign this order.
- b) Buyer has the right to offset any amount owed to Seller against any amount owed by Seller to Buyer under this Contract.

**11. Buyer – Furnished Materials, Tooling and Equipment:**

- a) Unless otherwise stated in this order, Seller shall supply all material, equipment, tools and facilities required to perform this order. Title to any material, tooling (including special tooling) or equipment to Seller by Buyer, Buyer's Customer or the Government, or the acquisition of which was directed or paid for by Buyer, and any replacements thereof, or any materials affixed or attached thereto (all hereinafter collectively referred to as "Material") shall be and remain in Buyer, Buyer's Customer or the Government as the case may be, with the right to possession in Buyer. Seller shall bear the risk of loss of all Material while in Seller's custody or control or that of Seller's suppliers. Seller shall keep all Material insured at Seller's expense against loss and damage in an amount equal to the cost of replacement.
- b) Seller agrees, as a material condition of this order, that it will (i) label, identify and segregate any and all Material in such fashion as to clearly identify such Material, as being the property of Buyer, Buyer's Customer or the Government, as the case may be, at all stages of its possession by Seller, (ii) prevent the commingling of said Material with other material in the Seller's possession except in accordance with applicable buyer specifications or Buyer's written approval, and (iii) assume responsibility for all taxes with respect to said Material at all times and if FOB Destination, while in the hands of carriers.

- c) Seller is required to account to Buyer for the proceeds from the sale of scrap generated during the performance of this order by the processing of Material furnished by Buyer. When Buyer furnishes any Material, in whole or in part, for the manufacture of parts or assemblies, Seller shall not substitute material from any other source.
- d) Buyer will manage, automatically, all Material and reserves the right to recall any excess or scrap material generated.

**12. Force Majeure:** Buyer may delay Seller's delivery, Buyer's acceptance or Buyer's payment for the goods when such delays are occasioned by causes beyond Buyer's control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer's sole liability and Seller's sole remedy for any such delay shall be limited to Seller's direct additional costs in holding the goods or delaying performance of this order in excess of six (6) months. Causes beyond Buyer's control may include but are not restricted to, acts of God of the public enemy, acts of any government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

**13. Compliance with Laws:**

- a) Seller represents, warrants, certifies and covenants that it shall perform all activities required under this order in compliance with all applicable international, national, state and local laws, including, but not limited to environmental, health and safety laws and regulations.
- b) Seller represents, warrants, certifies and covenants that no goods supplied under this Contract have been or will be produced using forced, indentured or convict labor, or the labor of persons in violation of the minimum working age laws of the country of manufacture, or in violation of minimum wage, hour of service or overtime laws of the country of manufacture.
- c) From time to time, at Buyer's request, Seller shall provide certificates to Buyer in form and substance acceptable to Buyer relating to the requirements of this Article.
- d) Seller shall permit Buyer or its representatives to have reasonable access to the site where work under this order is performed to assess (1) Seller's work quality and compliance with the specifications, and (2) Seller's compliance with its representations, warranties, certifications and covenants hereunder.

**14. Environmental Compliance:**

- a) Seller represents and warrants that that each chemical substance constituting or contained in goods sold or otherwise transferred to TMS hereunder is on the list of chemical substances compiled and published by:
  - i. the Administrator of the Environmental Protection Agency pursuant to: the Toxic Substances Control Act (15 USC Section 2601 et seq.) as amended; or
  - ii. the European Inventory of Existing Commercial Chemical Substances (EINECS) or the European List of Notified Chemical Substances (ELINCS);
- b) Seller represents and warrants that that each chemical substance constituting or contained in goods sold or otherwise transferred to TMS hereunder comply with the requirements regarding Substances of Very High Concern (SVHC) as defined by the European Union REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) Regulation 1907/2006/EC and any amendment(s).
- c) Seller represents and warrants that goods sold or otherwise transferred to TMS hereunder do not contain substances in excess of that allowed by European Union Directive 2002/95/EC RoHS Directive and its most recent amendment(s).

- d) Seller represents and warrants that unless specifically defined as a requirement by Buyer engineering drawings or specifications, the use of cadmium plating or nickel cadmium plating is strictly prohibited in the manufacture of goods sold or otherwise transferred to TMS hereunder.

**15. Anti-Kickback Provisions:**

- a) Seller represents and warrants that it has complied with the Anti-Kickback Act of 1986 (41 U.S.C. 51-88) (the Act), which prohibits any person from:
  - a. Providing or attempting to provide or offering to provide any kickback;
  - b. Soliciting, accepting or attempting to accept any kickback; or
  - c. Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime contractor to the United States or in the Contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- b) In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including, without limitation, Buyer's cost, attorney's fees, or any fines or penalties assessed against Buyer, resulting from a violation of the Anti-Kickback Act of 1986 by Seller (including any of its officers, partners, employees or agents), or by any Subcontractor below Seller or Subcontractor employee.

**16. Counterfeit Work**

- a) The following definitions apply to this clause:
- b) "Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have 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 Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- c) "Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.
- d) Seller shall not deliver Counterfeit Work or Suspect Counterfeit Work to Buyer under this Contract.
- e) Seller shall only purchase products to be delivered or incorporated in the goods to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Seller may use another source only if (i) the foregoing sources are unavailable, (ii) Seller's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the goods, and (iii) Seller obtains the advance written approval of Buyer.
- f) Seller shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in this Contract.
- g) Seller shall immediately notify Buyer if Seller becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. Seller, at its expense, shall provide reasonable cooperation to Buyer in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.
- h) 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 Contract addressing the authenticity of goods.
- i) In the event that goods delivered under this Contract constitute or include Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine goods

conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of installing replacement goods and of any testing necessitated by the reinstallation of goods after Counterfeit Work 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 Contract.

- j) Seller shall include paragraphs (a) through (g) and this paragraph (h) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as goods to Buyer.

**17. Country of Origin of Products:**

The Seller shall certify the country of origin for each product provided to the Buyer. Country of Origin shall be identified in the Certificate of Conformance included as part of all shipments

**18. FAR and DOD FAR Supplement (DFAR) Clauses:**

The following FAR and DFAR clauses are hereby made a part of this order. Whenever necessary to make the context of the FAR and DFAR clauses applicable to this order, the term "Contractor" shall mean Seller, the term "Contract" shall mean this order, and the terms "Government," "Contracting Officer" and equivalent phrases shall mean Buyer and/or Buyer's purchasing representative, except the terms "Government" and "Contracting Officer" do not change (1) In the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property," (2) In the patent clauses incorporated herein or (3) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime Contract Contracting Officer or his duly authorized representative.

**FAR**

- 52.203-6 Restrictions On Subcontractor Sales To The Government (Sep 2006)
- 52.203-7 Anti-Kickback Procedures (Oct 2010)
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)
- 52.203-13 Contractor Code Of Business Ethics And Conduct (Apr 2010)
- 52.203-14 Display Of Hotline Poster(S) (Dec 2007). This Clause Applies Only If This Contract Is In Excess Of \$5,000,000.
- 52.203-15 Whistleblower Protections Under The American Recovery And Reinvestment Act Of 2009 (Jun 2010)
- 52.204-2 Security Requirements (Aug 1996)
- 52.209-6 Protecting The Government's Interests When Subcontracting With Contractors Debarred, Suspended Or Proposed
- 52.215-2 Audit And Records - Negotiation (Oct 2010) Cost reimbursement,
- 52.215-12 Subcontractor Cost Or Pricing Data (Oct 2010) Otherwise
- 52.215-13 Subcontractor Cost Or Pricing Data - Modifications (Oct 2010)
- 52.215-14 Integrity Of Unit Prices (Oct 2010)
- 52.215-15 Pension Adjustments And Asset Reversions (Oct 2010)
- 52.215-18 Reversion Or Adjustment Of Plans For Post-Retirement Benefits (Prb) Other Than Pensions (Jul 2005)
- 52.215-19 Notification Of Ownership Changes (Oct 1997)
- 52.219-8 Utilization Of Small Business Concerns (Jul 2013) (Note 8 Applies.)
- 52.222-4 Contract Work Hours And Safety Standards Act- Overtime Compensation (Jul 2005)



52.222-21 Prohibition Of Segregated Facilities (Feb 1999)  
52.222-26 Equal Opportunity (Mar 2007)  
52.222-35 Equal Opportunity For Veterans. (Sep 2010)  
52.222-36 Affirmative Action For Workers With Disabilities (Oct 2010)  
52.222-37 Employment Reports On Veterans (Sep 2010)  
52.222-40 Notification Of Employee Rights Under The National Labor Relations Act. (Dec 2010)  
52.222-41 Service Contract Act Of 1965 (Nov 2007)  
52.222-50 Combating Trafficking In Persons (Feb 2009)  
52.222-54 Employment Eligibility Verification (Jan 2009)  
52.223-3 Hazardous Material Identification And Material Safety Data (Jan 1997)  
52.223-7 Notice Of Radioactive Materials (Jan 1997)  
52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving (Aug 2011)  
52.225-8 Duty-Free Entry (Oct 2010)  
52.225-13 Restriction On Certain Foreign Purchases (Jun 2008)  
52.227-1 Authorization And Consent (Dec 2007)  
52.227-2 Notice And Assistance Regarding Patent And Copyright Infringement (Dec 2007)  
52.227-9 Refund Of Royalties (Apr 1984) (Applies When Reported Royalty Exceeds \$250.)  
52.228-5 Insurance -- Work On A Government Installation (Jan 1997)  
52.230-2 Cost Accounting Standards (May 2012)  
52.230-3 Disclosure And Consistency Of Cost Accounting Practices (May 2012)  
52.230-4 Disclosure And Consistency Of Cost Accounting Practices For Contracts Awarded To Foreign  
52.230-5 Cost Accounting Standards -- Educational Institutions (May 2012)  
52.230-6 Administration Of Cost Accounting Standards (Jun 2010)  
52.232-40 Providing Accelerated Payments To Small Business Subcontractors (Dec 2013)  
52.234-1 Industrial Resources Developed Under Defense Production Act Title III (Dec 1994)  
52.244-6 Subcontracts For Commercial Items (Dec 2010)  
52.245-1 Government Property (Aug 2010)  
52.247-63 Preference For U.S.-Flag Air Carriers (Jun 2003)  
52.247-64 Preference For Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) 52.248-1 Value  
Engineering (Oct 2010)

## DFAR

252.203-7001 Prohibition On Persons Convicted Of Fraud Or Other Defense-Contract-Related Felonies (Dec 2008)  
252.203-7002 Requirement To Inform Employees Of Whistleblower Rights (Sep 2013)  
252.203-7004 Display Of Fraud Hotline Poster(S) (Sep 2011)  
252.211-7000 Acquisition Streamlining (Oct 2010). This Clause Applies Only If This Contract Exceeds \$1.5 Million.  
252.211-7003 Item Unique Identification And Valuation (Dec 2013)  
252.223-7006 Prohibition On Storage And Disposal Of Toxic And Hazardous Materials (Apr 1993)  
252.223-7008 Prohibition Of Hexavalent Chromium (Jun 2013) (Note 2 Applies.)  
252.225-7004 Reporting Of Contract Performance Outside The United States And Canada - Submission After Award (Oct  
252.225-7007 Prohibition On Acquisition Of United States Munitions List Items From Communist Chinese Military  
252.225-7009 Restriction On Acquisition Of Certain Articles Containing Specialty Metals (Jan 2011)  
252.225-7013 Duty Free Entry (Dec 2009)  
252.225-7016 Restriction On Acquisition Of Ball And Roller Bearings (Jun 2011)

252.225-7033 Waiver Of United Kingdom Levies (Apr 2003)  
252.225-7047 Exports By Approved Community Members In Performance Of The Contract. (Jun 2013)  
252.225-7048 Export-Controlled Items (Jun 2013)  
252.226-7001 Utilization Of Indian Organizations And Indian-Owned Economic Enterprises--Dod Contracts And Native  
252.227-7016 Rights In Bid Or Proposal Information (Jan 2011)  
252.227-7019 Validation Of Asserted Restrictions - Computer Software (Sep 2011)  
252.227-7037 Validation Of Restrictive Markings On Technical Data (Jun 2012)  
252.227-7038 Patent Rights—Ownership By The Contractor (Large Business) (Jun 2012)  
252.228-7005 Accident Reporting And Investigation Involving Aircraft, Missiles, And Space Launch Vehicles (Dec 1991)  
252.235-7003 Frequency Authorization (Dec 1991)  
252.244-7000 Subcontracts For Commercial Items And Commercial Components (Dod Contracts) (Mar 2013)  
252.247-7023 Transportation Of Supplies By Sea (May 2002)  
252.247-7024 Notification Of Transportation Of Supplies By Sea (Mar 2000)

**19. Export / Import Compliance:**

- a) Seller agrees to comply with all applicable U.S. Government export regulations, including but not limited to the International Traffic in Arms Regulations (22 CFR Part 120-130) and the Export Administration Regulations (15 CFR Parts 730-774).
- b) Seller shall provide to TMS all information necessary to support any export or import authorization requirements by TMS for items ordered hereunder.
- c) The transfer of technical data to any Foreign Person (Foreign National) or foreign company (including foreign employees of Times Microwave Systems, Amphenol Corporation or of Times Microwave Systems and Amphenol's affiliates, vendors/ suppliers of Times Microwave Systems or a foreign company affiliated with Times Microwave Systems) is an export of that information. Technical data cannot be transferred to any Foreign National until required licensing authority has been obtained or a determination is made as to existing export rights (no license required, existing license or exception/exemption from requirement of a license).

**20. Inspection of Records:**

Seller agrees that its books, records, and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by the Buyer or any authorized representative of any Department of the United States Government, or authorized customer of Times Microwave Systems

**21. Termination:**

- a) This order may be terminated in whole or in part at any time for the convenience of Buyer. Upon notice of termination Seller shall promptly stop work on the Order as directed by Buyer. Within one (1) month of the effective date of termination of the Order Seller shall submit its termination claim in such form and with such certification as may be requested by Buyer. The termination claim shall be limited to the actual costs incurred by Seller through the effective date of the termination properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this Order. The termination claim shall exclude any charges for interest or material or parts which can be delivered or diverted to other orders of Seller. In no event will Seller be paid anticipatory profits. The total amount of such termination claim shall not exceed the pro rata portion of the Order which is cancelled. No claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Buyer. All completed or partially completed goods and all material for which compensation is claimed shall be delivered to Buyer or disposed of as directed by Buyer, otherwise, Buyer shall not be obligated to make a termination payment. In the event this Purchase Order is being issued under a Contract with the U.S. Government, the parties shall be governed by the provisions of the clause set forth in Subsection 52.249-2 of the Federal Acquisition Regulations ("FAR") as in effect on the date of this order, which clause is incorporated herein by reference, provided, however, that all references in such clause to the Government or any of its boards or officers are deleted, and all reference therein to the Government or the Contracting Officer shall mean Buyer or its designees (including the Government or its representatives if so designated by Buyer.)
- b) Buyer reserves the right to terminate this order in whole or in part by written or telegraphic notice for Seller's default (i) if Seller fails to perform in accordance with any of the requirements of this order or fails to make progress so as to endanger performance here under or (ii) if Seller becomes insolvent, fails to pay its debts when due or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for items delivered and accepted by Buyer, payment for which can be set off against any damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited, with the reasonable value thereof not to exceed Seller's cost or the Contract price, whichever is less. Seller will be liable for damages caused by or resulting from its default including but not limited to excess costs of re-procurement.
- c) To the extent this order is not terminated pursuant to subparagraphs a. or b. above, Seller shall continue performance.

**22. Notice of Labor Disputes:**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order. Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.

**23. Stop Work Order:**

- a) Buyer may at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this purchase order for a period of 90 days after the order is delivered to Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, Seller shall

immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to Seller, or within any extension of that period to which the parties shall have agree.

- b) Buyer shall either –
  - i. Cancel or let the stop-work order expire, thus allowing Seller to proceed.
  - ii. Terminate the work covered by the order as provided in the Termination clause of this order.
  - iii. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, Seller shall resume work.

**24. Insurance:**

Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, property damage liability, product liability, completed operations liability and contractual liability. Times Microwave Systems Facilities require any contractor constructing, repairing, installing, removing, or moving equipment on site to carry a minimum of \$1,000,000 of liability insurance and to list Times Microwave Systems as co-insured.

**25. Indemnification:**

- a) Seller shall defend, indemnify and save harmless Buyer Buyer's customer (and where applicable the government), their respective parents and affiliated companies and their respective directors, officers, employees, successors and assigns from and against any loss, cost, damage, or expense, arising from (a) any claims which may be made against Buyer by reason of injury or death to person or damage to property, claimed to have been suffered by any person or other entity and alleged to have been caused by defective goods furnished hereunder or by any act or omission, negligent or otherwise, of Seller or any subcontractor of Seller or of any of their employees, workmen, servants, or agents; (b) any damage to Buyer's property, including property occupied or used by, or in the care, custody or control of Seller, alleged to have been caused by defective Goods or by any act or omission, negligent or otherwise, of Seller, or any subcontractor of Seller or any of their employees, workmen, servants, or agents; and (c) any claims which may be made against Buyer by reason of injury or death to person or damage to property, howsoever alleged to have been caused, and claimed to have been suffered by Seller or any subcontractor of Seller or by any of their employees, workmen, servants or agents. In no event shall Seller be required to indemnify Buyer for any injury, death, or loss caused solely by the negligence of Buyer. Seller agrees to defend, indemnify and hold Buyer harmless from all liabilities, claims, fines, civil and criminal penalties, including reasonable costs and settlement, which may arise directly or indirectly out of the failure of Seller to comply with this Contract, including breach of warranty.
- b) Notwithstanding the above provision, Buyer shall have the right, as its own election, and without releasing any obligation, liability, or undertaking of Seller to indemnify Buyer hereunder to cooperate in the defense of such claim: with permission of the court, to intervene in any such suit or action; and supersede Seller in the defense of any such claims, suits actions, or legal proceedings.
- c) Seller further agrees to promptly pay the settlement or judgment pertaining to all such claims, suits or actions or legal proceedings; to hold harmless and indemnify Buyer therefrom; and to promptly pay the costs of attorney's fees and all other costs and expenses incurred in any such defense either by Seller and/or Buyer.

- d) Seller's covenants of indemnity under this Contract shall continue in full forces and effect notwithstanding the termination of this order.

**26. Drawings, Data and Confidentiality:**

- a) Information Furnished by Buyer – Information and ideas disclosed to Seller in connection with this order at any time in any form (including without limitation, orally, or in drawings, specification, software, tools, gauges or goods provided hereunder) are entrusted to Seller only for use on behalf of Buyer. Seller shall keep this information in confidence and shall neither use (other than in performance under this order) nor disclose such information except as authorized in writing by Buyer. On completion of this or all subsequent related orders (as appropriate), Seller shall deliver to Buyer all material (including without limitation, documents, software, tools and goods which may be defective, partially completed or completed) embodying this information, unless otherwise instructed by Buyer.
- b) Information Developed by Seller – Information and ideas developed by Seller under or in the course of performing this order for Buyer shall be owned by and disclosed to Buyer, and such information and ideas shall be treated in accordance to the provisions of paragraph a. hereof.
- c) Data Furnished by Seller – All data required under this order must also be delivered not later than the time specified in this order. Buyer may, at its election, so long as required data remain undelivered beyond the time so specified, withhold payment to Seller for any item previously or subsequently delivered in an amount the total value of this order.

**27. Price Warranty:**

Seller warrants that the prices for the goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. In the event Seller reduces its prices for such goods during the term of this order, Seller agrees to reduce the prices hereof correspondingly Seller warrants that prices shown on this order shall be complete, and no additional charges of any type including but not limited to metal surcharges shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

**28. Delivery:**

Time is of the essence of this order, and if delivery of goods or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this order by notice effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Substitutions will not be accepted. Over shipments may be returned to Seller at the option of Buyer at Seller's risk and expense. The goods must be delivered by the date(s) specified, but must not be delivered earlier unless prior approval for an earlier delivery is given in writing by Buyer.

**29. Duty to Proceed:**

Except as expressly authorized in writing by the Buyer, no failure of Seller and Buyer to reach any agreement provided for by the terms of this order shall excuse the Seller from proceeding diligently with the performance of this order.

**30. Partial Invalidity:**

If in any instance any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given in effect in accordance with their terms.

**31. Waiver:**

Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any such terms, conditions, rights or privileges or any other terms, conditions, rights or privileges, whether of the same or similar type.

**32. Attorney Fees:**

In the event Buyer should bring an action for enforcement of the terms and conditions of this order, Seller agrees that Buyer shall be entitled to an award of its reasonable attorney's fees and court costs associated with such enforcement proceedings.

**33. Subcontracting:**

Seller agrees not to subcontract for any complete or substantially complete articles, supplies, and/or services called for by this order without the prior written approval of Buyer.

**34. Publicity:**

Seller shall not, without the prior written consent of Buyer, make any release of information concerning this order (other than to Seller's employees and subcontractors when required for the performance of this order) nor use the name of Buyer or its customers in any advertising or publicity.

**35. Applicable Law and Forum:**

This order shall be governed by the laws of the state from which the Buyer's order is issued.

**36. Captions:**

Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions may refer.

**37. Cumulative Remedies:**

The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

**38. Dodd-Frank Compliance (Conflict Minerals):**

Under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), the term "Conflict Minerals" includes tin, tungsten, tantalum and gold, and their derivatives, that have been determined by the US Secretary of State to be financing conflict in the Democratic Republic of Congo and adjoining countries ("Covered Countries"). In order to stay in compliance with Section 1502 of Dodd-Frank, BUYER has the right to ensure that Seller:

- a) Certifies that there are no "Conflict Minerals" present in the product being provided. This will require:

- i. Seller to scrutinize its products to determine whether tin, tantalum, tungsten or gold are contained in Seller's products;
  - ii. If so, an analysis of Seller's supply chain to trace the origin of those minerals and to determine whether any of the minerals in Seller's products originate in the Covered Countries or are from scrap or recycled sources; and
  - iii. The collection of written assurances from the Seller's suppliers.
- b) Submit with each shipment made against this purchase order, a separate certification that includes:
- i. A statement that Seller has taken responsible steps to ensure that the product being provided does not contain Conflict Mineral<sup>2</sup>. The name of the country of origin and the name of the smelter from which the minerals were mined,
  - ii. A statement that the materials furnished to BUYER are in conformance with Section 1502 of Dodd-Frank.
- c) This certificate should also affirm that supporting documentation is on file and will be made available to regulatory agencies upon request. Supporting Documentation shall be maintained for a minimum of ten (10) years and remain legible, readily identifiable, retrievable and stored to prevent damage. The certification shall reference the product, Times Microwave Systems purchase order number, Times Microwave Systems part number, and description and quantity shipped.

**Supplemental Clauses (To be included when specified on PO)**

## **S1. APPLICABLE LAWS**

a) any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government Contracts as enunciated and applied by federal judicial bodies, boards of Contracts appeals, and quasi-judicial agencies of the federal Government.

b)(l) SELLER, in the performance of this Contract, shall comply with all applicable local, state, and federal 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.

(2) If: (i) Buyer Contract price or fee is reduced; (ii) Buyer costs are determined to be unallowable; (iii) any fines, penalties, withholdings, or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, Buyer may proceed as provided for in (4) below.

(3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if Seller or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon Buyer's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on Buyer Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) Buyer Contract price or fee is reduced; (B) Buyer's costs are determined to be unallowable; (C) any fines, penalties, withholdings, or interest are assessed on Buyer; or (D) Buyer incurs any other costs or damages; Buyer may proceed as provided for in (4) below.

(4) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (2) and (3) above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other Contract with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded. In the case of withholding(s), BUYER may withhold the same amount from Seller under this Contract.

(c) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(d) Seller shall make available to Buyer all Safety Data Sheets for any material provided to Buyer, or brought or delivered to Buyer or its customer's premises in the performance of this Contract as required by applicable law, such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

## **S2. COMMUNICATION WITH BUYER'S CUSTOMER**



Seller shall not communicate with Buyer's customer or higher tier customer in connection with this Contract, except as expressly permitted by Buyer. This clause does not prohibit Seller from communicating with the Government with respect to (1) matters Seller is required by law to communicate to the Government, (2) an ethics or anticorruption matter, (3) any matter for which this Contract, including a FAR or FAR Supplement clause included in this Contract, provides for direct communication by Seller to the Government, or (4) if Seller is a small business concern, any material matter pertaining to payment or utilization.

### **S3. WARRANTY**

Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance by Times's end customer and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, Seller, at Buyer's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at Seller's expense. If repair, or replacement, or reperformance of Work is not timely, Buyer may elect to return, reperform, repair, replace, or re-procure the non-conforming Work at Seller's expense. All warranties shall run to Buyer and its customers.