



## TERMS AND CONDITIONS FOR FIXED-PRICE PURCHASE ORDERS

### 1. ACCEPTANCE

This Purchase Order is Buyer's offer to purchase and may be modified or cancelled by Buyer at any time prior to Seller's acceptance without any cost or liability to Buyer. Acceptance of the offer represented by this Purchase Order is expressly limited to the terms of this Order. All previous offers by Seller are expressly rejected in their entirety. Signing and returning the acknowledgment document of this Purchase Order by Seller (if included herewith) or, in any event, any shipment of Articles, ordering of Supplies, or commencement of performance hereunder shall constitute acceptance of this Order. **The Order is the entire contract and no changes are binding on the Buyer unless they are in writing and signed by Buyer's Purchasing Representative.** This Purchase Order is limited to the terms and conditions contained therein or incorporated. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. Any shipment of Articles shall be deemed to be shipped only according to the terms and conditions herein.

### 2. PACKING AND SHIPMENT

Unless otherwise specified in this Order all Articles shall be delivered F.O.B. destination. The Buyer's Order number and part numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Shipping memos or packing lists must accompany Articles. The Buyer's count or weight shall be final and conclusive on shipments not accompanied by shipping memos or packing lists.

Unless otherwise specified, all Articles are to be shipped in accordance with best commercial practices. All Articles are to be boxed, crated, and/or stored at no cost to Buyer prior to shipment.

Notwithstanding anything to the contrary herein or contained within the Order, the risk of loss of or damage to Articles which fail to conform to the Order shall remain with seller until cure or acceptance.

### 3. OVERSHIPMENTS AND REJECTED MATERIAL - RETURN TO SELLER

The Buyer's needs are for the quantities of Articles specified within the Purchase Order. Articles delivered in excess of the quantity ordered result in substantial administrative expense to the Buyer. Therefore, Articles delivered under this Purchase Order in excess of the quantity specified may be retained by the Buyer at no additional cost. The Buyer is under no obligation hereunder to notify Seller of any over-shipments.

Seller shall be liable for handling charges and return shipment costs for:

- (a) Any excess quantities shipped by Seller and returned by the Buyer, and
- (b) For any Articles which are rejected and returned to Seller for noncompliance with the specified requirements.

The Buyer shall have, in addition, any other rights and remedies provided by law, equity or under this Order, the right to a set off against any unpaid invoice/Purchase Order.

### 4. DELIVERY

The Parties have agreed to the delivery dates established herein and the Buyer's schedules have been based thereon. Buyer may at its sole discretion agree to accept deliveries after the date established herein for delivery has passed. Acceptance of late deliveries shall not

relieve Seller of the obligation to make future deliveries in accordance with the delivery schedule set forth in this Order.

### 5. INVOICING AND PAYMENT

Seller shall be paid the prices set forth herein less deductions, if any, after delivery and acceptance by the Buyer and upon the submission of proper invoices. Payment will be made on partial deliveries accepted by the Buyer. In case of conflict between unit prices and total price, unit prices shall prevail. Invoices shall be sent by the Seller to the Buyer's Accounts Payable Department at the address shown on the Purchase Order. Invoices are not to be enclosed with goods or submitted to individuals or other addresses. Any payments made for Articles delivered prior to final acceptance of the Articles shall not constitute final acceptance of the Articles. Payment will only be due upon Seller's full and faithful performance in accordance with the terms of this Order, and a properly submitted invoice.

### 6. CHANGES

The Buyer may at any time prior to final delivery under this Purchase Order by notice in accordance with Clause 30, make changes within the general scope hereof in any one or more of the following: (1) drawings, designs or specifications where the Articles to be furnished are to be specially manufactured for the Buyer in accordance therewith; (2) method of shipment or packing; (3) description of services to be performed, (4) time of performance of the services (e.g.), hours of day, day of the week and place of performance of the services, and (5) the delivery schedule.

If any such change causes an increase or decrease in the cost or time required for performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both, and the Order shall be modified accordingly. Any claim by the Seller for adjustment under this clause must be asserted within fifteen (15) days from the date of notification of the change; provided, however, that the Buyer, if the Buyer decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment of this Order. Failure to agree to an adjustment shall not excuse the Seller from proceeding with this Order as changed. If this Order is placed under a Government prime contract, the cost principles set forth in Federal Acquisition Regulation (FAR), Part 31, and the Department of Defense (DoD) FAR Supplement (DFARS) Part 231 shall be applicable in the determination and negotiation of any equitable adjustment of price hereunder.

Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon the Buyer unless directed in writing by a member of the Buyer's Purchasing Department. The issuance of information, advice, approval, or instructions by the Buyers' technical personnel or other representative shall not affect the Buyer's and Seller's rights and obligations hereunder unless the same is in writing and signed by an authorized member of the Buyer's Purchasing Department and it is expressly stated therein that it constitutes an amendment to this Order.

### 7. INSPECTION AND REJECTION

All Articles called for hereunder or portions thereof shall be subject to inspection and test by the Buyer and authorized Government representatives, if applicable, at any point during the procurement or manufacture thereof and in any event prior to acceptance. Final inspection and acceptance shall be after delivery in accordance with this Purchase Order. If any inspection or test is made on the premises of Seller, Seller shall provide reasonable facilities and assistance for the safety and convenience of inspection personnel. The Buyer shall have the right to reject Articles found upon inspection not to conform to this Purchase Order, to require their correction

(either in place or at Seller's location, at the Buyer's option), or to accept nonconforming Articles at a reduction in price which is equitable under the circumstances. If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to be conformity with this Order, the Buyer may reject and return the entire shipment or lot without further inspection, or, at its option, complete inspection of all items in the shipment or lot, reject and return any or all nonconforming units (or accept them at a reduced price) and charge Seller the cost of such inspection. Items once rejected shall not thereafter be tendered for acceptance unless the former rejection is made known. The Buyer's acceptance of any nonconforming Articles shall not constitute a waiver of specification requirements for any additional Articles required to be delivered hereunder.

The Buyer shall not be required to inspect or test Articles hereunder. It shall be the Seller's responsibility to adequately test and inspect the Articles to be tendered for acceptance to assure that such Articles are in strict conformance with all the requirements of this Order. By such tender Seller assures the Buyer that such Articles offered so comply.

## 8. WARRANTIES

- (a) The Seller warrants that all Articles to be delivered hereunder shall be free from defect in workmanship and material and shall conform to the specification. If Buyer notifies Seller of any defect or nonconformity (whether latent or patent) of any Articles affected thereby, Seller shall, at no cost to the Buyer and with all possible speed, repair or replace Articles thereof. Warranties shall then continue for a one-year period as to the repaired or replaced goods. Warranties shall survive the Buyer's inspection, delivery, acceptance, or payment by the Buyer and shall together with Seller's service guarantees, if any, run to the Buyer and its customer.
- (b) Seller warrants that each and every chemical substance delivered hereunder shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act (Title 15 USC Para. 2601, et. seq.).
- (c) The above warranties shall be in addition to any other rights and warranties available to the Buyer. The waiver of a warranty by Buyer for all or part of a shipment will not affect or waive any other warranties for other shipments or Articles.

## 9. TERMINATION

At any time, Buyer may terminate for its convenience or terminate for Seller's breach all or any part of this Order. If this Order is terminated for Seller's breach or if Seller is in breach of this Order when it is terminated for convenience, or the Articles are not custom made for Buyer, Seller shall have no claim against Buyer for any costs incurred or any profit with respect to the terminated or cancelled portion of the Order. If this Order is otherwise terminated by Buyer, and involves Articles custom made for Buyer, Seller shall be paid an equitable amount to cover the effort actually expended by Seller plus a reasonable profit thereon; provided, however that no amount shall be paid for any anticipatory profits and the total amount shall not exceed the prices contained within the Order for the Articles terminated. In addition to Buyer's right to cancel at any time for Seller's breach of any of the provisions of this Order, including the failure to meet their delivery schedule, all or any portion of this Order may be cancelled by Buyer, if Seller, in Buyer's judgment, is failing to make sufficient progress as to endanger performance of this Order in accordance with the terms, and Seller fails to furnish Buyer adequate assurance of due performance within ten (10) days (or such further period as Buyer may grant) after receipt of Buyer's written request for assurances.

The rights and remedies provided herein shall not be exclusive, but are cumulative and in addition to any other rights and remedies provided by law or covered under this Order.

## 10. BUYER PROPERTY

Unless otherwise expressly agreed in writing, all material, tooling, designs, data, documents and any other property furnished to the Seller by the Buyer or paid for by the Buyer in connection with this Purchase Order: (1) shall be and remain the property of the Buyer; (2) shall be subject to delivery to the Buyer upon request; (3) shall not without the Buyer's written permission be used for or disclosed to anyone other than the Buyer; (4) shall be held at the Seller's risk; and (5) shall be kept insured by the Seller at the Seller's expense while in its custody or control in an amount equal to replacement cost thereof, with loss payable to the Buyer. Copies of policies or certificates of such insurance shall be furnished to the Buyer upon request.

## 11. INDEMNIFICATION

**Seller will indemnify, hold harmless, and defend Buyer, its subsidiaries, agents, consultants, affiliates, employees, officers, and directors from any and all costs, losses, claims, damages, liabilities, causes of action, court costs, settlement expenses, and other expenses of any kind, including attorneys' fees, arising from or in any way connected or related to this Purchase Order, including any act, omission, or performance by Seller or Seller's officers, employees, agents, third parties under Seller's control, suppliers, or subcontractors at any tier (collectively, the "Seller Parties"). Further, the obligations and responsibilities of the Seller Parties under this Clause specifically include (1) Seller's default, including breach of warranty; (2) the negligent or deliberate acts and/or omissions of the Seller Parties or anyone the Seller Parties are responsible or liable for; (3) any and all actions or proceedings charging infringement of any patent, trademark, copyright, or mask work by reason of sale or use of any Articles furnished under this Order; and (4) bodily injury to or property damage of any person including the Seller's Parties, arising out of performance of any work hereunder, including the Seller Parties' use of premises or equipment. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or the Seller Parties.**

## 12. CONFIDENTIALITY

Seller shall keep confidential all information, drawings, specifications, or data, and return to the Buyer upon request all documents furnished by the Buyer, and shall not divulge or use such information, drawings, specification, or data for the benefit of any other Party except as required for the efficient performance of this Order, Seller shall not make copies or permit copies to be made without the prior written consent of the Buyer. Except for the performance of its obligations under this Order, Seller shall make no use, either directly or indirectly, of any such data or any information derived therefrom without obtaining the Buyer's written consent; provided, however, the foregoing limitation shall not apply to items produced for direct sale to the U.S. Government in the event that, and to the extent that the U.S. Government has properly authorized the use of the Buyer's information, drawings, specifications or data for such purpose and the Seller so notifies the Buyer in writing.

## 13. GRATUITIES/KICKBACKS

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, to any employee of Buyer with a purpose or intention of securing, obtaining, or rewarding favorable treatment as a supplier.

**By accepting this Purchase Order, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference.**

## 14. PATENTS AND DATA

- (a) Patent Rights

Seller agrees to promptly disclose and upon request to assign to Buyer each invention conceived or first actually reduced to practice during the performance of this Order.

(b) Rights in Data

Upon completion or termination of this Order, all intellectual property, designs, drawings, ideas, data, or other information that is collected, received, produced, or developed by Seller under this Order ("Purchased Data") will become the sole and exclusive property of Buyer, and Buyer will own all right, title, and interest in the Purchased Data.

Seller shall not use or disclose any Purchased Data, except as required in the performance of this Order. Upon completion or termination of this Order, all Purchased Data shall be returned to Buyer, except that Seller may retain one copy of non-confidential Purchased Data for archival purposes, subject to Buyer's exclusive ownership rights. In addition, upon request from Buyer, Seller must provide and surrender to Buyer any or all Purchased Data in its possession or control (including from any subcontractors, vendors, or agents), without reservation of right, title, or license.

**15. SUBCONTRACTING**

Seller shall not subcontract under this Order without the prior written consent of the Buyer. This limitation does not apply to the purchase of standard commercial supplies or raw materials.

**16. ASSIGNMENTS**

Seller may not assign or delegate any rights or obligations under this Purchase Order or any portion thereof, except that claims for money due hereunder may be assigned by Seller to a bank, trust company or other financial institution including any federal lending agency. Any payment by Buyer to an assignee of any monies due or to become due hereunder shall be subject to set off or recoupment for any present or future claim or claims which Buyer may against the Seller arising under this and any other contract or Purchase Order. Any purported assignment or delegation in violation of the forgoing provisions shall be void.

**17. ADVERTISEMENTS AND PUBLICITY**

Seller shall not advertise or make public in any manner the existence of this Purchase Order or any contents hereof without the Buyer's prior written consent.

**18. COMPLIANCE WITH LAWS**

Seller represents that it has and will continue during the performance of this Order to comply with the provisions of all applicable federal, state, and local laws and regulations. Seller agrees to furnish the Buyer upon request, satisfactory evidence of compliance.

**19. EXPORT AND TRADE CONTROLS**

Seller agrees to comply with all U.S. export and import control laws regulations, orders, policies, and decrees of United States Government and the Government of any country in which the Parties conduct business pursuant to this PO, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control. Without limiting the foregoing, Seller agrees that it will not transfer any export-controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of export authorization, including obtaining any export license, if applicable.

(a) Seller agrees to notify Buyer if any Articles or service to be delivered under this Purchase Order is restricted by export control laws or regulations.

(b) Seller shall immediately notify the Buyer's Purchasing Representative if Seller is listed in the Denied Parties List or if Seller's export privileges are otherwise denied, suspended, or

revoked in whole or in part by any Governmental entity or agency.

**20. DISPUTES**

The Buyer and Seller agree that all claims, controversies, or disputes arising out of or relating to this Purchase Order (hereinafter, the "Dispute") shall first be resolved by good faith negotiation and mutual agreement between the Parties. If the Dispute is not resolved by negotiation, the Dispute shall be resolved solely as indicated in this clause. Either Buyer or the Seller may invoke the procedures specified in this clause.

(a) The Dispute shall be submitted in writing to a senior executive at each Party (hereinafter, "Executives") and those Executives shall attempt to resolve the Dispute within thirty (30) days after such submittal.

(b) If the Executives are unable to resolve the Dispute within the thirty (30) day period provided above, the Parties shall endeavor to settle the Dispute by mediation under the then current commercial mediation rules of the American Arbitration Association (AAA). If the Parties are unable to agree on a mediator within thirty (30) days after a request for mediation, the mediator will be selected pursuant to the rules and procedures of the AAA.

(c) Any Dispute which remains unresolved thirty (30) days after the appointment of a mediator shall be settled by binding arbitration by a sole arbitrator in accordance with the then current commercial arbitration rules of the AAA. If the Parties are unable to agree on an arbitrator within thirty (30) days of the filing of the Demand for Arbitration, an arbitrator shall be selected pursuant to the rules and procedures of the AAA. The place of arbitration will be Erie County, New York. All proceedings will be conducted in English. The Parties shall bear their own costs and expenses, including attorney's fees, but the arbitrator may, in the award, allocate all the administrative costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and mediator, against the Party who did not prevail. The arbitration award shall be in writing and shall specify the factual and legal bases for the award. Judgment on the award may be entered in any court having jurisdiction. The arbitrator is not empowered to award damages in excess of compensatory damages and each Party hereby irrevocably waives any right to recover such excess damages. **Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under, or in connection with this Order.**

(d) Notwithstanding the above, if this Purchase Order has been issued in support of a US Government prime contract or higher tier subcontract, and the cognizant Government Contracting Officer issues a final decision relating to this Order or to the Articles to be delivered hereunder, such decision, if binding on Buyer, shall in turn be binding upon Seller and Seller shall not be entitled to additional compensation or reimbursement for compliance therewith.

(e) The Parties will continue to perform under this Purchase Order during the Dispute resolution process.

**21. APPLICABLE LAW**

This Order is to be construed and interpreted in accordance with the laws of the state of New York, except for its conflict of laws rules (if any).

**22. WAIVER**

No waiver by the Buyer of any breach of this Purchase Order shall be held to be a waiver of any other or subsequent breach. All rights and remedies available to the Buyer shall be taken and construed as cumulative, that is, in addition to any other rights and remedies provided herein or by law.

**23. TAXES**

The prices set forth in the Purchase Order include all applicable federal, state, and local taxes.

#### 24. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Purchase Order shall accrue solely to the benefit of Buyer. Seller agrees to cooperate with Buyer in the fulfillment of any foreign offset/countertrade obligations.

#### 25. PARTS OBSOLESCENCE

Buyer may desire to place additional Orders for Articles purchased hereunder. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Articles purchased under this Purchase Order.

#### 26. PRIORITY RATING

If so identified, this Order is a "rated order" certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 CFR Part 700). The full text of this regulation can be found <http://www.dema.mil/DPAS>.

#### 27. QUALITY CONTROL SYSTEM

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 Purchase Order.

Records of all quality controls inspection work by Seller shall be kept complete and available to Buyer and its customers.

#### 28. SEVERABILITY

Each paragraph and provision of this Order is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Purchase Order will remain in full force and effect and will be read and constructed so as to give the same or similar meaning as much as possible.

#### 29. SURVIVABILITY

If this Purchase Order expires, is completed or is terminated, Seller shall not be relieved of the obligations in the following provisions:

(a) Clause 8 (Warranty); Clause 10 (Buyer's Property); Clause 11 (Indemnification); Clause 12 (Confidentiality); Clause 14 (Patents and Data); Clause 17 (Advertisement); Clause 18 (Compliance with Laws); Clause 19 (Export Controls); Clause 20 (Disputes); Clause 21 (Choice of Law); Clause 25 (Parts Obsolescence); Clause 34.

(b) Those U.S. Government flowdown provisions that by their nature should survive.

#### 30. NOTICES

Any notice to be given under a Purchase Order issued under the Terms and Conditions hereunder must be in writing. Notices may be sent via certified or registered mail; via fax with a conforming copy; or via electronic means provided an electronic signature confirms its authenticity, in a manner agreed to in advance. Notice will be deemed to have been given when received. All notices from Seller to Buyer should be mailed to the attention of the Purchasing Director, at the facility from which the specific Purchase Order was issued.

#### 31. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Buyer" means "Avarint, LLC" or "Avarint" acting through its companies or business sites as identified on the face of the Purchase Order.
- (b) "Buyer's Purchasing Representative" or "Buyer's Procurement Representative" means the person authorized by Avarint's cognizant procurement organization to administer and/or execute this Purchase Order.

- (c) "PO" or "Purchase Order" or "Order" as used in any document constituting a part of this contract shall mean this "Contract."
- (d) "Seller" means the party identified on the face of the Purchase Order with whom Avarint is contracting.
- (e) "Articles(s)" means all required materials, supplies, goods, and services constituting the subject matter of this Purchase Order.
- (f) Buyer and Seller may be referred to individually as a "Party" or collectively as the "Parties."

#### 32. SUPPLEMENTAL FAR/DFAR CLAUSES FOR PURCHASE ORDERS ISSUED UNDER GOVERNMENT PRIME CONTRACT(S)

Should this Purchase Order incorporate (or reference) a U.S. Government Prime contract, the following Federal Acquisition Regulation (FAR) and Defense FAR Supplement (DFARS) provisions are incorporated and made part of this order by reference with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation during the performance of the Order.

**In accepting this Order, Seller agrees to be bound by these clauses. Where necessary to derive proper meaning, the terms "Government" and "Contracting Officer" shall mean "Avarint" or "Buyer", and the term "Contractor" shall mean "Seller". Clauses that are not applicable to the type of procurement, scope of work and/or dollar value of this Order are self-deleting.**

#### [ X ] SUPPLEMENTAL FAR CLAUSES FOR COMMERCIAL PURCHASE ORDERS (CLAUSE DATE IN EFFECT AS OF THE DATE OF THIS ORDER)

- 52.203-6 Restrictions on Subcontractor Sales to the Government (Alternate 1);
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (applies to orders in excess of \$150,000);
- 52.204-21 Basic Safeguarding of Covered Contractor Information Systems;
- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment;
- 52.204-26 Covered Telecommunications Equipment or Services-Representation;
- 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use
- 52.211-15 Defense Priority and Allocation Requirements;
- 52.212-1 Instructions to Offerors-Commercial Items;
- 52.212-3 Offeror Representations and Certifications—Commercial Items (Alternate 1 & 2);
- 52.212-4 Contract Terms and Conditions-Commercial Items;
- 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (Alternate 1 & 2);
- 52.216-24 Limitation of Government Liability;
- 52.216-25 Contract Definitization;
- 52.219-8 Utilization of Small Business Concerns;
- 52.222-26 Equal Opportunity;
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (applies to orders in excess of \$150,000);
- 52.222-36 Affirmative Action for Workers with Disabilities;
- 52.222.37 Employment Reports on Veterans (applies to orders in excess of \$150,000);
- 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees;
- 52.222-41 Service Contract Act of 1964;
- 52.222-50 Combating Trafficking in Persons;
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving;
- 52.225-1 Buy American Supplies;
- 52.225-13 Restrictions on Certain Foreign Purchases;
- 52.225-25 Prohibition on Contracting with Entities Engaging in Sanctioned Activities Relating to Iran-Representations and Certifications;
- 52.247-64 Preference for Privately-Owned U.S. Flag Commercial Vessels;

252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services;  
252.225-7008 Restriction on Acquisition of Specialty Metals  
252-225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals  
252.225-7014 Alt I Preference for Domestic Specialty Metals

**[ X ] SUPPLEMENTAL FAR/DFARS FLOW-DOWN CLAUSES FOR NON-COMMERCIAL PURCHASE ORDERS PER ATTACHED EXHIBIT "A" – PRIME CONTRACT CLAUSES (if applicable)**

The intent of the Parties is for these clauses to govern the respective rights and responsibilities of the Parties to this Order to enable Buyer to carry out its contract responsibilities to the Government.

**33. SUPPLIER REPRESENTATIONS AND CERTIFICATIONS**

The Seller's profile at [www.sam.gov](http://www.sam.gov) and the Representations and Certifications contained therein are current, complete, and accurate as of the date of this Order. If the Seller does not have a profile on [www.sam.gov](http://www.sam.gov), then Seller will complete and sign Buyer's Representations and Certifications form. These Representations and Certifications shall be either re-completed or re-certified every 12 months.

**34. COUNTERFEIT PARTS PREVENTION**

(a) Definitions for purposes of this Purchase Order:

(i) "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to, (A) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (B) defective parts and/or surplus material scrapped by the original manufacturer, and (C) previously used parts pulled or reclaimed and provided as "new".

(ii) As used herein, "authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

(iii) "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by an Original Component Manufacturer ("OCM") to sell or distribute the OCM's products but which purports to sell, broker, and/or distribute such OCM products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers.

(b) Seller represents and warrants that only new and authentic materials are used in products required to be delivered to Buyer and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by Buyer's Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs")/OCMs or through the OEM's/OCM's authorized distribution chain. Seller must make available to Buyer, at Buyer's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by Buyer's Procurement Representative. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. Buyer's approval of Seller request(s) does not relieve Seller's responsibility to comply with all Order requirements, including the representations and warranties in this paragraph.

(c) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to the Buyer's Procurement Representative and his/her written approval before parts/components are procured from sources other than

OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request. In addition, Seller will maintain and utilize counterfeit risk mitigation processes in accordance with industry recognized standards.

(d) If the Seller is providing electronic components/devices only, the following certification applies:

Certification of Origin of Product: Acceptance of this Purchase Order constitutes confirmation by the Seller that it is either the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If the Seller is not the OEM/OCM or a franchised or authorized distributor, the Seller confirms by acceptance of this Purchase Order that each product supplied to Buyer has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The Seller further warrants that OEM/OCM acquisition traceability documentation is accurate and available to Buyer upon Buyer's request.

(e) Seller will immediately notify Buyer with any and all pertinent facts if Seller becomes aware that it has delivered or will deliver Counterfeit Parts or suspected Counterfeit Parts. Seller, at its expense, will reasonably cooperate with Buyer in conducting any investigation regarding the delivery of Counterfeit Parts or suspected Counterfeit Parts under this Order.

(f) In the event that materials delivered under this Order constitutes or includes Counterfeit Parts, Seller will, at its expense, promptly replace such Counterfeit Parts with authentic materials conforming to the requirements of this Order. Notwithstanding any other provision in this Order, Seller will be liable for all costs relating to the removal and replacement of Counterfeit Parts, including without limitation Buyer's costs of removing Counterfeit Parts, of installing replacement materials, and of any testing necessitated by the reinstallation of materials after Counterfeit Parts 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.

(g) This paragraph 34 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 goods or materials.

(h) Seller shall comply with and flow down the requirements of this paragraph 34 and DFAR 252.246-7007, as applicable, to its subcontractors and suppliers at any tier for the performance of this Purchase Order.

**35. INSURANCE FOR ON-SITE SERVICES**

The Seller shall purchase and maintain at a minimum the following types of insurance coverage and limits of liability:

- 1) Commercial General Liability (CGL) with limits of insurance of not less than \$1,000,000 each Occurrence and \$2,000,000 Annual Aggregate. CGL coverage shall be written on ISO Occurrence form CG 00 01 10 93 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent Sellers, products-completed operations, and personal and advertising injury. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

BUYER shall be included as Additional Insureds on the Seller's CGL policy using ISO Additional Insured endorsement CG 20 10 11 85, or CG 20 10 10 93 and CG 20 37 10 01, or CG 20 33 10 01 and CG 20 37 10 01, or an endorsement providing equivalent coverage to the Additional Insureds. This insurance for the Additional

Insureds shall be as broad as the coverage provided for the named insured Seller. This insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds.

- 2) Business Automobile Liability (AL) with limits of insurance of not less than \$1,000,000 each accident.  
AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

BUYER shall be included as Additional Insureds on the Seller's AL policy. The AL coverage for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds.

- 3) Workers Compensation (WC) & Employers Liability (EL) with limits of insurance of not less than \$100,000 each accident for bodily injury by accident and \$100,000 each employee for injury by disease.
- 4) Commercial Umbrella Liability (UL) with limits of insurance of not less than \$5,000,000.

UL coverage must include Avarint LLC as an Additional Insured.

- 5) Waiver of Subrogation:

Seller waives all rights against BUYER and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by CGL, AL, WC & EL or UL insurance maintained per the requirements stated above.

- 6) Certificate of Insurance:

A Certificate of Insurance acceptable to BUYER shall be filed with the BUYER prior to commencement of the Seller's work. A copy of the General Liability Additional Insured endorsement shall be attached to the Certificate of Insurance.

- 7) Notice of Cancellation or Coverage Modification:

No insurance policy required above will be cancelled, allowed to expire or reduced in coverage without at least 30 days prior written notice to the BUYER.

### **36. STOP WORK ORDER**

Buyer may, in its sole discretion, direct Seller to Stop Work in accordance with the provisions of this Purchase Order. The Parties shall take all reasonable steps to minimize the incurrence of costs allocable to the Purchase Order during the Stop Work period. During such Stop Work period, Buyer may authorize Seller to resume work or terminate this Purchase Order in accordance with the provisions of this Order.

### **37. LIMITATION OF LIABILITY**

**IN NO EVENT WILL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF OPPORTUNITY, LOSS OF REPUTATION OR GOODWILL, OR INCREASED COST OF OPERATION OR BY REASON OF SHUTDOWN, HOWEVER CAUSED, ARISING OUT OF, FROM, OR RELATING TO THIS ORDER. BUYER'S MAXIMUM TOTAL LIABILITY WILL NOT EXCEED THE AMOUNT PAID TO SELLER BY BUYER PURSUANT TO THE TERMS OF THIS PURCHASE ORDER, EVEN IF BUYER HAS BEEN ADVISED, AT ANY TIME, OF THE POSSIBILITY OF**

**SUCH DAMAGES. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION, REVOCATION, OR EXPIRATION OF THIS PURCHASE ORDER.**

### **38. ORDER OF PRECEDENCE**

Any inconsistencies in this Order shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order (and any continuation sheets), including any special terms and conditions in the text of the Purchase Order (such as, without limitation, a Liquidated Damages clause); (2) these Purchase Order Terms and Conditions; and (3) the Buyer provided statement of work, specifications, and drawings.