

TC-1
OPHIR CORPORATION

ORDER TERMS AND CONDITIONS – BUYER FIRM FIXED PRICE
ORDERS UNDER A U.S. GOVERNMENT CONTRACT

1. Definitions

- (a) "Buyer" means Ophir Corporation.
- (b) "Data" means all financial/business information, designs, dimensions, specifications, drawings, patterns, computer files or software, know how, or other information, including but not limited to Technical Data used in the design and manufacture of Products or the provision of services. Data may be recorded in a written or printed document, computer or electronically stored, or any other tangible form of expression.
- (c) "Order" means the instrument of contacting, including these terms and conditions and all other referenced documents, and any subsequent changes or modifications.
- (d) "Party/Parties" means Buyer and Seller individually/collectively.
- (e) "Prime Contract" means the contracting instrument issued to the Buyer or the Buyer's higher tier customer by the United States Government (U.S.G.) for the acquisition of goods and/or services.
- (f) "Product(s)" means those goods, services, reports, computer software, Data, materials, articles, items, parts, components, or assemblies, and any incidental services described in this Order.
- (g) "Seller" means the Party with whom the Buyer is contracting under this Order.
- (h) "Service(s)" means Seller's time and effort, including and items, Data, or similar materials provided to the Buyer which are incidental to the performance of the service.

2. Acceptance of Order

Delivery of the goods or services ordered (in whole or in part) or the commencement of work authorized shall constitute acceptance by Seller of the Order and these Terms and Conditions. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of Order contained herein shall not be binding unless specifically agreed to in writing by Buyer. These Terms and Conditions, together with the Order language, drawings, specifications or attachments referenced therein, constitute the entire agreement between the parties and supersedes all prior written or oral agreements.

3. Packaging, Delivery and Shipping Instructions

- (a) Seller shall ensure the proper packaging of all goods. Buyer shall not be responsible for loss or damage resulting from improper packaging.
- (b) Unless otherwise stated in the Order, delivery shall be F.O.B Destination. Any freight related charges must be listed on the invoice, as a separate item for reimbursement.
- (c) Seller shall attempt to ship the order complete, consolidate packages and arrange for shipments by commercial carriers to achieve the most reasonable freight costs. Buyer shall authorize all expedited delivery services.
- (d) Seller shall be responsible for processing all loss or damage claims with commercial carriers.
- (e) Office hours are 8 AM – 4 PM Mountain Standard Time.**
- (f) Any deliveries after office hours will have to be directly coordinated and approved by the Buyer's Purchasing Department prior to shipment.
- (g) The Order number must appear on all correspondence, shipping labels, packing lists, shipping documents and invoices.

4. Ship to and Bill to Address:

Ophir Corporation
10184 West Belleview Avenue, Suite 200
Littleton, CO 80127
(303) 933-2200

5. Notice of Delay

Time is the essence of the Order. Seller shall notify Buyer immediately of any actual or potential delay to the delivery or performance of the Order. Such notice shall include a revised schedule and shall not constitute a waiver or change to any other provision of the Order.

6. **Over Shipments**

Buyer reserves the right to refuse excess quantities or over shipments and to return the excess to Seller and at Seller's expense.

7. **Early Delivery**

For deliveries made more than 30 days in advance of required schedules, Buyer reserves the right to defer payment on advance deliveries until scheduled delivery dates.

8. **Acceptance at Destination**

(a) Buyer shall inspect and accept the goods at destination, unless otherwise specified in the Order. Buyer reserves the right to reject the goods (in whole or in part) that do not conform to the requirements of the Order, its drawings, specifications and attachments, or to Military, Industry or Commercial Specifications or Standards incorporated by reference in the Order.

(b) Buyer shall promptly notify Seller of the non-conformance and Seller shall promptly provide corrective action. All goods returned will be shipped at Seller's expense.

9. **Source Inspection**

When Source Inspection is specified in the Order, Seller shall allow Buyer and/or Buyer's customer access to facilities during normal business hours, provide inspection tools and test equipment, as necessary, and assist with the inspection process. Seller shall also coordinate the same access with lower tier subcontractors, if required.

10. **Taxes**

The goods purchased herein are for resale to the United States Government under a prime or sub-tier subcontract, therefore, no taxes at any level shall be assessed on the invoice(s) for this order.

11. **Subcontracting**

(a) Seller shall not subcontract the entirety or any part of this Order without the prior written authorization of the Buyer, and Seller shall require an agreement with conforming performance requirements from immediate and lower-tier suppliers. The restriction on subcontracting shall not apply to authorized distributors, dealers, jobbers or industrial suppliers, nor shall it apply to the purchases of standard commercial items on which the seller will perform additional work.

(b) If approved, Seller agrees to select subcontractors/suppliers on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Order.

12. **Invoicing and Payment Terms**

(a) Seller shall submit a correct and accurate invoice, in accordance with the Order, for all goods and services provided. The invoice shall contain the Order number and prepaid freight charges shall be added as a separate line.

(b) Buyer shall pay Seller Net 30 Days (**or as otherwise stated in the Order**), after the receipt of a proper invoice, for all goods and services received and accepted, except:

(1) Buyer may delay payment of goods received more than 30 days ahead of schedule until scheduled delivery date.

(2) Buyer may delay payment of rejected goods until they are repaired or replaced.

(3) Buyer will not pay for over shipments, if returned.

13. **Defective Work**

(a) Notwithstanding any prior acceptance, Buyer may reject or require prompt correction of any Products or services which are, in Buyer's judgment, defective in material or workmanship or otherwise fail to meet the drawings, designs, statement of work, specifications or other technical documents, or other requirements of this Order.

(b) If Seller delivers defective or nonconforming Products or services, Buyer may:

(1) Accept all or part of the defective or non-conforming Products or services at an equitable price reduction or credit against any amounts that may be owed to Seller under this Order or otherwise; or

(2) Reject all or any part of a delivery or performance of defective or non-conforming Products or services and demand delivery of conforming Products or re-performance of services. All rejected Products shall be shipped back to Seller at Seller's expense and any re-performance of defective or nonconforming services shall be at no cost to Buyer; or

(3) Make or perform, or have a third party make or perform, all repairs, modifications, or replacements necessary to enable such Product or Service to comply in all respects with Order requirements and charge the expense incurred to Seller; or

(4) Terminate this Order for default in whole or in part.

(c) Any rejected or corrected Products or services shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed. All repair, replacement and other correction and redelivery shall be completed within the original delivery schedule unless otherwise directed by Buyer.

- (d) Seller shall immediately notify Buyer upon discovery of actual or potential defects or non-conformance affecting delivered goods or performed services.

14. Termination for Convenience

- (a) Buyer may, by written notice, direct Seller to terminate this Order, in whole or in part and at any time in accordance with the contract clause entitled "Termination for Convenience of the Government (Fixed price)" set forth at 52.249-2, which clause is hereby incorporated herein and made a part hereof by this reference, except that the term "contract" therein shall mean this "Order", the terms "Contracting Officer" and "Government" therein shall mean "Buyer", the term "Contractor" therein shall mean "Seller", paragraphs (e) and (j) thereof are deleted, the period "120 days" in paragraph (d) is changed to "45 days", the period "1 year" in paragraph (f) is changed to "2 months"; provided, however, that if this Order is a first-tier subcontract under a U.S. Government Prime Contract, the period "1 year" in paragraph (f) is changed to "90 days".
- (b) Such termination for convenience shall not constitute default. Buyer and Seller shall have all rights and obligations including Buyer's rights to title, possession and warranty.
- (c) Seller shall be reimbursed for actual and allowable costs, plus a reasonable profit for work performed up to the date of termination but, not more than the total price of the Order or, in the case of partial termination, the price of the Line Items or quantities terminated. Buyer may take possession of all, material, work in process or completed goods paid for by reimbursement.

15. Termination for Default

- (a) Buyer may, by written notice, direct Seller to terminate this Order, in whole or in part and at any time in accordance with the contract clause entitled "Default (Fixed price Supply and Service)" set forth at 52.249-8, which clause is hereby incorporated herein and made a part hereof by this reference, except that the term "contract" therein shall mean this "Order", the terms "Contracting Officer" and "Government" therein shall mean "Buyer", the term "Contractor" therein shall mean "Seller".
- (b) In the event of Seller's default, the Buyer reserves any and all rights under the Order and at Law.
- (c) Seller's obligations under the warranty, intellectual property, and confidentiality provisions of this Order shall survive such termination.
- (d) Except for defaults of lower-tier subcontractors for which the Seller has responsibility for its source of supply, Seller shall not be liable for any failure to perform due to any cause beyond its control and without its fault or negligence. Such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

16. Disputes

- (a) Any dispute arising under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties.
- (b) If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon in writing, either Party may bring suit only in the state or federal court located in the state of Colorado. Seller consents to personal jurisdiction for this purpose in the state of Colorado.
- (c) Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, both Parties shall proceed diligently, with their respective obligations under this Order.
- (d) To the maximum extent permitted by law, the Parties waive any right to a jury trial.
- (e) In no event shall Buyer be liable for anticipated profits, incidental or consequential damages. Buyer's liability on any claim, of any kind and for any loss or damage arising out of, connected with or resulting from this Order, or from the performance or breach thereof shall, in no case, exceed the price allocable to the goods and/or services, or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods and/or services delivered hereunder must be commenced within one year after the cause of action has accrued.
- (f) In no event shall Seller acquire any direct claim, or direct course of action against the U.S.G. except as approved by Buyer pursuant to this clause or as otherwise authorized by law.

17. Remedies

- (a) The rights of both parties hereunder shall be in addition to their rights and remedies at law. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.
- (b) In no event shall Seller be entitled to anticipatory profits or to special (including multiple or punitive), incidental, or consequential damages.

18. Proprietary Rights

- (a) Unless otherwise expressly stated to the contrary in writing, all drawings, specifications, data, information, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction.
- (b) Unless otherwise expressly stated to the contrary in writing, all drawings, specifications, data, information, software and other items which are supplied to Seller by Buyer, directly or indirectly, shall be maintained as proprietary and shall only be used for purposes of providing goods or services pursuant to this Order. Seller shall not disclose any information to a third party without Buyer's express written consent. All such items supplied by Buyer shall be promptly returned upon request or upon completion of this Order.

19. Government or Buyer Property

- (a) Title to all drawings, specifications, data, information, software, tools, equipment, fixtures, materials, and other items furnished by Buyer or acquired and paid for by Buyer in the performance of this Order, shall remain with the Buyer. If Buyer agrees to pay Seller for acquisition of tooling and equipment, either separately or as a stated part of the unit price of Products purchased herein, title to the same shall pass to Buyer or U.S.G., as applicable, upon (i) commencement of processing for use in performance of this Order, or (ii) Buyer payment therefore, whichever occurs first.
- (b) Seller shall assume the risk of, and be responsible for, any loss, theft, destruction of or damage to Buyer or U.S.G. property while in Seller's possession or control. If Seller damages any property, Seller shall be responsible for making repairs at no cost to Buyer. Upon Buyer's written request to Seller for any property under this clause, if Seller cannot locate Buyer or U.S.G. property within five (5) days, Seller shall notify Buyer that the item was not located and Seller subsequently has twenty (20) days to find the misplaced property. After such period, if it has not been located, the property shall be deemed "lost" and at Buyer's election, Seller shall either reimburse Buyer for the replacement and all related delay costs, or remake the lost property at no cost to Buyer.
- (c) Seller shall return all such property in a condition as good as when received except for reasonable wear and tear. Seller shall establish and maintain a property control system approved by Buyer and in accordance with the provisions of FAR 52.245-1 for the control of U.S.G. or Buyer owned property. Seller shall also notify Buyer if its property system is deemed inadequate by the U.S.G. At all times, Buyer and the U.S.G., as applicable, shall have access to Seller's facilities for the purpose of reviewing its compliance with the management of U.S.G. or Buyer property related to this Order.

20. Release of Information

Seller shall not publish or distribute any information provided or developed under this Order nor make any news release about Buyer, Buyer's customer or this Order without prior written approval of Buyer.

21. Order of Precedence

- (a) In the event of any inconsistency between the Order and these Terms and Conditions, the typed provisions of the Order will prevail.
- (b) In the event of conflict between drawings, specifications and attachments, either included or incorporated by reference, Seller shall, before proceeding, notify Buyer and Buyer shall provide written clarification and direction.

22. Warranty

- (a) Seller warrants the goods to be free from defects in materials and workmanship, and to be in accordance with all the requirements of this Order, its drawings, specification, attachments and references. These warranties shall extend beyond final inspection, acceptance and payment for 12 months.
- (b) This warranty covers both Buyer and Buyer's customer.
- (c) Seller shall be liable for and save Buyer harmless from defects in Seller's design, materials and workmanship, and shall repair, replacement or reimburse Buyer for the purchase price of defective goods, at Buyer's election.

23. Changes

- (a) Buyer shall have the right to make changes to the Order, drawings, specifications, attachments and references or to the time and place of delivery. If such changes cause an increase or decrease in the price the Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be made in writing within fifteen (15) calendar days from the date of notification of change by Buyer and shall include supporting cost, schedule and technical data. Seller shall proceed in accordance with Order, as changed, pending resolution of the claim.
- (b) Buyer's technical personnel or other representatives may provide information or clarification but shall not affect Buyer's and Seller's rights and obligations under the Order. **Buyer's Purchasing representative is the only person on behalf of the Buyer that is authorized to amend or direct changes to the Order.**

24. Intellectual Property

- (a) Seller warrants that all goods or services provided under the Order shall be free and clear of infringement of any valid patent, copyright, trade mark, or other proprietary rights. Seller shall indemnify and save Buyer and Buyer's customer

harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits, or other actions alleging infringement.

- (b) Any invention or intellectual property derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto.

25. Assignment

- (a) Seller shall not assign any rights or obligations under this Order without the prior written consent of Buyer.
- (b) Buyer may assign this Order to any successor in interest, or Buyer's customer.

26. Compliance with Law

- (a) Seller warrants that the goods and services delivered under this Order are in compliance with all applicable federal, state, local laws and regulations.
- (b) Seller warrants that the goods and services delivered under this Order comply with the latest OSHA requirements, as applicable.
- (c) The Seller warrants that all packaging and shipments of goods under this Order comply with all applicable U. S. Department of Transportation regulations for hazardous materials and any other applicable federal, state, or local transportation regulations. Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense that Buyer may suffer as a result of Seller's failure to comply with these regulations.
- (d) Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986 with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions, or performance of any contract with or Order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- (e) Seller shall control the distribution of and access to technical data, information and other items received under this Order in accordance with U.S. export control laws and regulations, and shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed Buyer in connection with any violations of such laws and regulations by Seller.

27. Indemnity against Claims

- (a) Seller shall defend, indemnify, hold harmless and save Buyer, Buyer's directors, officers, employees and agents from any personal injury or property damage claim, suit, action, expense, loss, or damage, including court costs and attorney's fees, as a result of Seller, Seller's directors, officers, employees, agents or subcontractor's failure to perform in accordance with the Order.
- (b) Seller shall defend, indemnify, hold harmless and save Buyer, Buyer's directors, officers, employees and agents from all claims, suits, or any liability whatsoever (including attorneys' fees), arising out of or in connection with the Seller's violation of any applicable laws, executive order or regulation.

28. Suspect/Counterfeit Parts

- (a) This clause is applicable to all Orders. The provisions of paragraphs (a)-(e), including its definition of "electronic parts," are incorporated in this paragraph by reference and "Contracting Officer" shall mean "Buyer". Seller shall establish and maintain a material authenticity process that ensures the requirements of these clauses or other authenticity requirements in this Order are met. Seller's obligation to substantiate authenticity shall survive acceptance of and payment for Products delivered under this Order.
- (b) Seller shall not furnish suspect counterfeit or counterfeit parts to Buyer under this Order. All material delivered under this Order shall be authentic and traceable to the original manufacturer. Seller shall provide authenticity and traceability records to Buyer upon request. Seller shall immediately notify Buyer if Seller cannot provide electronic parts, components, and/or assemblies traceable to the original component manufacturer or the original equipment manufacturer. Upon receipt of such notification, Buyer reserves the right to terminate this Order at no cost to Buyer or require specific material validation test and inspection protocol requirements to Seller.
- (c) If suspect counterfeit or counterfeit parts are furnished under this Order and are found in any of the Products delivered hereunder, such items will be impounded by Buyer. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer. Seller shall be liable for all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such suspect/counterfeit parts, of reinserting replacement parts and of any testing or validation necessitated by the reinstallation of Seller's Products after suspect/counterfeit parts have been exchanged. Buyer's remedies described herein shall not be limited by any other clause agreed upon between Buyer and Seller in this Order and are in addition to any remedies Buyer may have at law, equity or otherwise under this Order. At Buyer's request, Seller shall return any removed suspect counterfeit or counterfeit parts to Buyer in order that Buyer may turn such parts over to its U.S.G. customer for further investigation. For purposes of this clause, Seller agrees that any U.S.G. directive/information or GIDEP alert, indicating that such parts

are suspect counterfeit or counterfeit, shall be deemed definitive evidence that Seller's Products contain suspect counterfeit or counterfeit parts.

(d) Seller agrees to insert the substance of this clause, including this sentence, in any lower tier subcontract.

29. FAR/DFARS Clauses

The FAR and DFARS clauses cited below are incorporated herein by reference at the effective version found in Buyer's Prime Contract, or higher-tier subcontract under which this Order is a subcontract. Seller shall include the appropriate FAR and DFARS clauses as required in any lower-tier subcontract. Where necessary to derive proper meaning in a subcontract situation from these clauses, "Contractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, (2) when title to property is to be transferred directly to the Government.

FAR/DFARS Reference	Title	Clause
52.203-6	Restrictions on Subcontractor Sales to the Government	NOTE: Applicable to Orders at any tier greater than \$150,000.
52.203-7	Anti-Kickback Procedures	NOTE: The substance of this clause, except subparagraph (c)(1), is applicable to any Order and all lower-tier subcontracts which exceed \$150,000. Seller shall immediately notify Buyer of any alleged violations involving any of Buyer's or Seller's employees.
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment	NOTE: Applicable to Orders at any tier greater than \$35,000 for non-commercial items.
52.211-15	Defense Priority and Allocation Requirement	NOTE: Applicable to all Order, the DPAS rating will be listed on the Order.
52.222-21	Prohibition of Segregated Facilities	NOTE: Applicable if Equal Opportunity clause has been determined to apply to this Order.
52.222-26	Equal Opportunity	NOTE: Applicable only (i) if this Order is not exempted by Secretary of Labor under Executive Order 11246 as amended per FAR 22.807, and (ii) then only with respect to provisions of subparagraphs (b) (1) through (b)(11) [binding Seller thereto].
52.222-35	Equal Opportunity for Veterans	NOTE: Applicable to Orders at any tier greater than \$150,000.
52.222-36	Equal Opportunity for Workers with Disabilities	NOTE: Applicable to Orders at any tier greater than \$15,000.
52.222-37	Employment Reports on Veterans	NOTE: Applicable to Orders at any tier greater than \$100,000.
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	NOTE: Applicable to Orders at any tier greater than \$10,000.
52.222-50	Combating Trafficking in Persons	NOTE: Applicable to Orders at any tier greater than \$500,000.
52.222-54	Employment Eligibility Verification	NOTE: Applicable to Orders at any tier greater than \$3,500.
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	NOTE: Applicable to Orders at any tier.
52.225-13	Restrictions on Certain Foreign Purchases	NOTE: Clause is applicable if purchased item is other than commercial item or component per clause at FAR 52.244-6.
52.244-6	Subcontracts for Commercial Items	NOTE: Applicable to Orders at any tier.
52.245-1	Government Property	NOTE: Applicable to any Order if Government property is furnished to Seller. NOTE: In the phrases "Government Property," "Government-furnished property," and in references to title to property, "Government" shall not mean "Buyer." The following is added as paragraph (n): "Contractor shall provide Buyer immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system."
52.249-2	Termination for Convenience of the Government (Fixed-Price)	NOTE: Applicable to Orders at any tier. NOTE: Reference paragraph 14 above.
52.249-8	Default (Fixed-Price Supply and Service)	NOTE: Applicable to Orders at any tier. NOTE: Reference paragraph 15 above.
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	NOTE: Applicable to Orders at any tier.
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	NOTE: Applicable to all Orders at any tier unless the Order is solely for commercially available off-the-shelf items.
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	NOTE: Applicable to Orders at any tier.
252.225-7001	Buy American and Balance of Payments Program	NOTE: Applicable to Orders at any tier.
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	NOTE: Exclude paragraphs (d) and (e)(1); paragraph (c)(6) is hereby deleted. Applicable to Orders at any tier.
252.225-7048	Export Controlled Items	NOTE: Applicable to Orders at any tier.

FAR/DFARS Reference	Title	Clause
252.227-7013	Rights in Technical Data – Noncommercial Items	NOTE: Applicable to Orders at any tier.
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	NOTE: Applicable to Orders at any tier.
252.227-7015	Technical Data - Commercial Items	NOTE: Applicable to Orders at any tier.
252.227-7016	Rights in Bid or Proposal Information	NOTE: Applicable to Orders at any tier.
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System	NOTE: This clause is applicable to all orders for electronic parts or assemblies containing electronic parts. "Contracting Officer" Shall mean "Buyer". Applicable to Orders at any tier.
252.246-7008	Sources of Electronic Parts	NOTE: This clause is applicable to all orders for electronic parts or assemblies containing electronic parts. Applicable to Orders at any tier.

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