

TC-2
OPHIR CORPORATION

ORDER TERMS AND CONDITIONS –
COMMERCIAL FIXED PRICE

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 contracting, 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) "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.
- (f) "Seller" means the Party with whom the Buyer is contracting under this Order.
- (g) "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 for deliveries 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

Unless otherwise agreed to in writing, the 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

Goods and/or services purchased herein are **NOT** for resale to the United States Government. Seller shall include taxes accordingly, if any.

11. 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.

12. Termination for Convenience

- (a) Buyer may, by written notice, direct Seller to terminate this Order, in whole or in part and at any time. 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.
- (b) 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.

13. Termination for Default

- (a) Buyer may, by notice in writing, direct Seller to terminate this Order, in whole or in part and at any time, for breach of any one or more of its terms.
- (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.

14. 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.

15. 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.

16. 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.

17. Buyer's Property

- (a) 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 be the property of Buyer. Buyer shall have the right to enter Seller's premises, during normal business hours, to inspect or inventory the property and may remove any such property at any time without being liable for trespass for damages of any sort.
- (b) Seller shall not use Buyer property in the performance of work for any third party without written authorization of Buyer.
- (c) Goods manufactured in accordance with Buyer's drawings, specifications, data, information, software, tools, equipment, fixtures, materials, and other items furnished by Buyer shall not be offered or furnished by Seller to any third party without written authorization of Buyer.
- (d) Seller shall maintain all property furnished by Buyer and shall be responsible for all loss or damage except for normal wear and tear.

18. 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.

19. 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.

20. 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.

21. 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.**

22. 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.

23. 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.

24. 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.

25. 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.

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