

TERMS AND CONDITIONS OF PURCHASE

The terms and conditions of purchase stated herein govern the entire transaction of purchase between Millitech, Inc. ("Buyer") and Seller for the goods (the "Goods") and services (the "Services") described herein, and negate all prior negotiations, communications, representations and agreements between them as to the subject matter hereof.

1. ACCEPTANCE OF TERMS AND CONDITIONS:

Seller shall be deemed to have accepted the terms and conditions hereof upon the earliest to occur of: receipt by Buyer of a copy hereof executed by Seller; commencement of performance by Seller; delivery of all or any part of the Goods or the furnishing of any of the Services ordered by Buyer; the receipt by Buyer of an invoice from Seller for all or any part of the Goods or Services; or any acknowledgment or other conduct of Seller indicating acceptance. Any terms or conditions of any quotation, invoice or acknowledgment of purchase order or other document of Seller, whenever executed, which are inconsistent with the terms and conditions hereof, shall not be binding on Buyer and shall not be part of the agreement for the purchase of the Goods or Services, notwithstanding any provision to the contrary in any document of Seller. The terms and conditions herein are not subject to partial acceptance by Seller. Buyer may at any time correct its stenographic and clerical errors in its Purchase Order or in any other document in connection with the purchase of the Goods or Services. All specifications, drawings and data submitted to Seller herewith are incorporated herein and made a part hereof.

2. PRICE; PAYMENT; PACKING; SHIPMENT:

- a. Seller shall not bill Buyer at prices higher than those specified herein unless authorized by a change notice signed on behalf of Buyer by a duly authorized officer. Seller represents that the price charged is Seller's lowest price to buyers of a class similar to Buyer. Seller agrees that any price reduction in Goods or Services of the type covered by this order, subsequent to placement of this order, will be applied to this order. Unless otherwise specified herein, the prices include all charges for Seller's boxing, packing, crating, storage and handling and for cartage to the F.O.B. point.
- b. Unless otherwise specified herein, terms of payment shall be net cash 30 days after the later of receipt by Buyer or Seller's invoice, or receipt by Buyer of conforming Goods or Services and verification by Buyer of weight, quantity or grade of any such Goods. Buyer shall be entitled to any cash discount terms indicated on this Purchase Order or any invoice of Seller, or otherwise available to Seller's customers, and such cash discount period shall be calculated from the later of receipt by Buyer or Seller's invoice or of conforming Goods or Services. Rejections, delivery delays, and Seller's errors and omissions shall be cause for withholding payment, and Buyer shall not thereby lose any cash discount privilege.
- c. Seller shall make deliveries without charge for boxing, crating, carting, or storage unless otherwise specified herein. Seller shall suitably pack Goods to insure against damage from weather and transportation and to secure lowest transportation costs and to conform to the requirements of common carriers and any applicable specifications. Buyer may specify the routing of any shipment, but if not specified, Seller shall route shipments to achieve the lowest freight rate. Each notice of shipment shall be delivered to Buyer immediately upon shipment and shall reflect any car number and routing and any other shipment information requested by Buyer. Buyer shall have the right to direct shipments as required by its production, storage and sales. Buyer's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Buyer's count or weight shall be final and conclusive on shipments not accompanied by a packing list.

3. DELIVERY:

Seller shall make deliveries at the times in the quantities specified herein, and Buyer, in addition to any other rights or remedies it may have, may refuse to accept delivery of all or any part of any delivery not made by the scheduled date. Buyer shall have no obligation to purchase any Goods or Services in excess of or different from those specified herein. All Goods shipped in excess of the quantity ordered may, at Buyer's sole discretion, be returned to Seller for full credit or held by Buyer for Seller's instructions as to disposal, in all events at Seller's risk and expense. Buyer's count shall be accepted as conclusive on any shipment not accompanied by a packing list. Seller shall not, without written consent of Buyer, make shipments in advance of schedule. Buyer may order expediting routing in place of scheduled routing, if necessary to meet schedule or recover time lost by failure to meet schedule, in which event any excess transportation costs shall be paid by Seller. Buyer may postpone or cancel without penalty, delivery of any Goods or the provision of Services which are not shipped or provided at the time specified herein. Unless otherwise specified herein, Seller shall deliver Goods F.O.B. Buyer's plant. Seller shall bear the risk of loss until delivery at Buyer's place of business of conforming Goods.

4. COMMITMENTS:

Goods fabricated or Services committed beyond Buyer's releases are at Seller's risk.

5. INSPECTION; REJECTION:

All Goods are subject to inspection and test by Buyer at place of manufacture or at destination or at both, notwithstanding any prior payment therefor. Acceptance of any Goods shall not alter the warranties of Seller contained herein. Seller agrees that the Goods covered hereby shall, at Buyer's option, may be inspected at Seller's plant by a representative of Buyer and a representative of the prime contractor or the government if a government contract number appears on the face of this purchase order. If any of the Goods are found at any time to be defective in material or workmanship (including Goods damaged, due to unsatisfactory packaging

by Seller) or otherwise not in strict conformity with the requirements of the order, including drawings and specifications and approved samples, if any, Buyer, in addition to any other rights which it may have under warranties or otherwise, may (a) reject and return such Goods at Seller's expense and receive full credit for any such rejected Goods, (b) upon written request require replacement of any such rejected Goods without additional cost to Buyer, and (c) retain and use the Goods with an equitable reduction in purchase price.

6. CHANGES:

Buyer may, at any time and from time to time, by written notice to Seller, make changes in drawings, specifications, quantities, delivery schedules and shipping instructions for any Goods or Services. If any such change increases or decreases the cost of performing this order or the time required for its performance, an equitable adjustment in prices or delivery schedules shall be made provided, however, that any claim by Seller for such adjustment, which shall be subject to acceptance by Buyer, shall be presented in writing to Buyer within 30 days from the date the change is ordered by Buyer.

7. WARRANTIES:

Seller warrants that all Goods delivered under this order will be "merchantable" as defined in the Uniform Commercial Code and free from defects in materials and workmanship (including damage due to unsatisfactory packing by Seller), that all Goods and Services will be strictly in accordance with Buyer's specifications, drawings and approved samples, if any, and to the extent that any Goods are not manufactured pursuant to detailed designs furnished by Buyer, that all such Goods will be free from defects in design and suitable for the intended purposes. Seller's warranties shall not be waived or otherwise affected by Buyer's approval of any samples or by Buyer's acceptance of or payment for any Goods or Services.

8. INDEMNIFICATIONS:

- a. Seller shall defend, hold harmless and indemnify Buyer, its successors, assigns, customers and other users of the Goods and Services from and against all liability, loss, damages and expenses including attorney's fees by reason of any and all claims and suits charging injury or charging injury or charging infringement or other misuse of any patent, trademark, copyright, trade secret or other proprietary right arising out of the sale or use of any Goods or Services furnished hereunder except that Seller shall have no liability with respect to patent infringement for Goods as to which Buyer furnishes complete specifications.
- b. Seller shall defend, hold harmless and indemnify Buyer, its successors, assigns, customer and other users of the Goods and Services from and against any and all liability, loss, damages and expenses including attorney's fees resulting from any alleged or claimed defect in any Goods, whether latent or patent, including allegedly improper construction and design, from the failure of any Goods or Services to comply with specifications or with any express or implied warranties of Seller, or from any other breach by Seller of its obligations pursuant to these terms and conditions or arising out of the alleged violation of any statute, ordinance, administrative order, rule or regulation connected with the manufacture or sale of Goods or Services. Seller further agrees to obtain and maintain during the life of this agreement at its expense appropriate liability insurance including, without limitation, product liability insurance, with a vendor's endorsement, in such form and amount and in such company or companies as may be approved by Buyer in writing. Satisfactory evidence of such insurance shall be submitted to Buyer upon request. For the purpose of this paragraph, "Goods" shall be deemed to include any packaging supplied by Seller.
- c. Seller shall defend, hold harmless and indemnify Buyer from and against claims for death or injury to Seller or any of Seller's personnel arising while such personnel are on premises owned or controlled by Buyer in connection with the performance of this order, and Seller shall maintain workers compensation insurance and employer liability insurance in such minimum amounts as may be specified by Buyer from time to time covering all such personnel while on Buyer's premises.
- d. Seller's warranties and indemnities herein shall not be deemed to be exclusive, and together with any other warranties and guaranties, including, without limitation, service warranties, shall survive Buyer's acceptance and payment for any of the Goods or Services and be in addition to any other warranty, indemnity or remedy given to Buyer by Seller or available to Buyer under law. Any attempt by Seller to limit its liability under, or to restrict the application of, its warranties or indemnities herein or provided by the law shall be of no effect.

9. BUYER'S PROPERTY:

Unless otherwise agreed to in writing, layouts, models, tools, gauges, designs, sketches, drawings, blueprints, patterns, dies, specifications, engineering data or other technical proprietary information, special appliances, and other equipment, supplies or material of every description (a) furnished to Seller by Buyer, and (b) any replacement thereof, or any material affixed or attached thereto shall remain the property of Buyer. Such property and whenever practical each individual item, shall be plainly marked or otherwise adequately identified by Seller as "property of Millitech, LLC", shall be safely stored separate and apart from Seller's property and shall be subject to examination by Buyer. Seller shall not substitute any property for Buyer's property and shall not duplicate or otherwise use such property except in filling Buyer's orders. Such property while in Seller's custody or control shall be maintained in good condition at Seller's expense, shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense in the amount equal to the replacement cost with loss payable to Buyer. Seller will furnish Buyer a copy of the insurance policy on request. Such property shall be subject to removal at Buyer's written request in which event Seller shall prepare such property for shipment and shall redeliver the same to Buyer in the same condition as originally received by Seller, reasonable wear and tear expected. Any special tooling the full cost or substantial portion of the cost of which is included in the price of this order shall upon

completion of this order, become the property of the Buyer and Seller shall return the same to Buyer or make such other disposition thereof as may be directed or approved by Buyer.

10. USE OF AND RESPONSIBILITY FOR PROPRIETARY INFORMATION:

Seller shall keep confidential any and all designs, drawings, specifications, engineering data and other technical or proprietary information furnished by Buyer in connection with this order, whether or not labeled "confidential", and shall not, without the written consent of Buyer, use such information except in the performance of this order or other orders from Buyer. Seller shall be responsible for, and hereby assumes the risk of loss or damage to or from misuse of such information and shall make no change or alterations therein without the written consent of Buyer. Upon completion, termination or cancellation of this order, Seller shall return all such information to Buyer or make other disposition as Buyer may direct or approve.

11. BREACH BY SELLER:

In addition to all other remedies and damages available to Buyer at law or hereunder, Seller shall be liable for all losses suffered by Buyer resulting, directly or indirectly, from any failure by Seller to timely fill any order, or from any other breach by Seller of these terms and conditions. Notwithstanding anything herein to the contrary, and in addition to all other remedies and damages available to Buyer at law or hereunder, if Seller fails (i) to deliver conforming Goods or Services at the time specified herein, or (ii) to comply with any other provision of this order, or if Seller becomes insolvent or commits an act of bankruptcy, Buyer may cancel the whole or any part of the Goods or Services ordered without liability to Seller, Buyer may purchase Goods or Services in substitution for those ordered from Seller, and Seller shall pay Buyer, upon demand, any increase in cost above the order price incurred by Buyer thereby, or Buyer may elect to take title to any of Seller's work-in-process and pay Seller its cost thereof.

12. TERMINATION WITHOUT CAUSE:

Notwithstanding anything herein to the contrary, Buyer may cancel this order at any time, without further liability to Seller, notwithstanding Seller's acceptance, in the event that Buyer is unable to use the Goods or Services because of: accident; strike or other labor difficulty; labor shortage; fire; explosion; flood, earthquake or adverse weather conditions; delay in transportation or lack of transportation facilities; federal, state, county or local government or governmental agency laws, rules, regulations, orders, proclamations or decrees; shortage of fuel, power, materials or supplies; or any cause beyond the control of Buyer. Buyer may otherwise terminate this order in whole or in part, without cause, by notice to Seller, provided that Buyer shall be liable for the value of conforming Goods and Services supplied to Buyer as of the date of termination plus any actual costs incurred by Seller required for the timely delivery of Goods scheduled on the order, and provided further that Seller shall notify Buyer of Seller's termination claim for such amount within 30 days after such termination date. IN NO EVENT SHALL BUYER BE LIABLE FOR SELLER'S LOST PROFITS, OR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF SELLER.

13. WAIVER:

The failure of Buyer to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this order or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

14. PATENT RIGHTS:

Any and all discoveries, inventions and designs, whether or not patentable or copyrightable, conceived or reduced to practice by Seller or its employees in connection with the supply, pursuant to this purchase order, of any Goods as to which Buyer furnishes the specifications, shall be promptly disclosed to Buyer and shall become the property of Buyer. Seller and its employees shall, upon request, execute all documents reasonably requested by Buyer to assign such discoveries, inventions, and designs to Buyer and to cause at Buyer's expense patent applications to be filed thereon in favor of Buyer. The decision as to whether to file patent applications and to prosecute same shall be made solely by Buyer.

15. COMPLIANCE WITH APPLICABLE LAWS:

Seller agrees that, in the performance hereof, it will comply with all applicable laws, statutes, rules, regulations, or orders of the United States Government or of any state or political subdivision thereof, which shall be deemed incorporated herein by reference. Without limiting the generality of the foregoing, Seller agrees that it will include on all invoices issued by Seller hereunder the following statement: "The Seller represents that with respect to the production of the articles and/or performance of the services covered by this invoice, it has fully complied with all provisions of the Fair Labor Standards Act of 1938, as amended." Seller shall furnish Buyer, upon its request from time to time, in such form as Buyer may designate certificates of Seller's compliance with any such laws, statutes, rules, regulations and orders.

16. EXPORT/IMPORT CONTROLS:

- a. If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense

Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR").

- b. Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by the Buyer in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of the Buyer and the Seller's obtaining of the appropriate export license, technical assistance agreement or other requisite documentation for ITAR controlled technical data or items. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.
- c. Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked.

17. DEBARMENT:

Seller and/or any of its principals shall not be presently debarred, suspended, proposed for debarment or declared ineligible for the award of contracts by any Federal agency. The seller shall provide immediate written notification to Millitech, Inc. upon any change in status.

18. TAXES:

Seller agrees that, unless otherwise indicated in this order, (a) the prices herein do not include any state or local sales, use or other taxes, from which an exemption is available for purposes of this order, and (b) the prices herein include all other applicable federal, state and local taxes in effect at the date of this order. Seller agrees to accept any use tax exemption certificates when supplied by Buyer if acceptable to the taxing authorities. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Seller, Seller agrees to notify Buyer and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to Buyer.

19. ASSIGNMENT AND SET-OFF:

Seller shall not, without the written consent of Buyer, assign this order or claims for moneys or to become due hereunder. Buyer may set off any amounts due from it to Seller hereunder against any amounts due to Buyer from Seller either hereunder or otherwise. Seller shall not without the written approval of Buyer procure or contract for the procurement of the Goods or Services ordered hereunder in completed or substantially completed form.

20. NOTICE OF LABOR DISPUTES:

Whenever Seller has knowledge that an 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.

21. ADVERTISING ANNOUNCEMENT AND NEWS RELEASES:

Seller shall not without first obtaining written consent of Buyer, in any manner advertise or publish or issue any news releases or make any public announcement or denial or confirmation of same concerning the fact that Seller has furnished or contracted to furnish Buyer any Goods or Services or concerning work done by Seller hereunder.

22. NON-DISCRIMINATION IN EMPLOYMENT:

In accordance with Executive Order 11246, Seller agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, age, color, or national origin. Seller will take affirmative action to insure that equal employment opportunity is implemented in employment, upgrading, promotion or transfer, recruitment or recruitment advertising; layoff or termination; rates or pay or other forms of compensation, and selection for training including apprenticeship. All other applicable provisions of the rules and regulations of the Office of Federal Contract Compliance are incorporated herein by reference.

23. GENERAL:

If any provision hereof is, becomes or is found by a court of competent jurisdiction to be unenforceable or invalid, no other provision hereof shall be affected thereby, and the remaining provisions hereof shall continue with the same effect as if such unenforceable or invalid provision had not been a part hereof. Massachusetts law shall govern the making, construction and enforcement hereof.