

Effective Date: May 1, 2017

## Battelle Advanced Manufacturing Standard Terms and Conditions For Non-Commercial Items and Services

### 1. Entire Agreement/Acceptance:

- a. None of the following terms and conditions shall be construed in a manner that would adversely affect the interests of the United States Government, and in no event shall the terms of this Purchase Order give the Subcontractor the ability to directly pursue a claim or course of action against the United States Government.
- b. These terms, the terms on the face of this Purchase Order and the Battelle's ("Buyer") supplemental terms and conditions attached hereto (if any) constitute the entire agreement between the parties, and no other additional or conflicting terms submitted by Seller shall be deemed a part hereof unless accepted in writing by Buyer's Purchasing Agent.
- c. Seller's commencement of performance shall constitute acceptance of these terms and conditions without modification. Any change, amendment or modification must be in writing and executed by Buyer's authorized Purchasing Agent.
- d. Any inconsistencies in this contract shall be resolved in accordance with the following order of precedence:
  - i. Face of the PO, Purchase Contract, or release document or schedule including any special terms and conditions
  - ii. These Terms and Conditions
  - iii. Any supplementary Terms and Conditions
  - iv. Applicable flow down provisions
  - v. The Statement of Work

### 2. Definitions – The following terms shall have the meaning set forth below:

- a. "Buyer" – Battelle Memorial Institute
- b. "Buyer's Procurement Representative" – A person authorized by Buyer's cognizant procurement organization to administer and/ or execute this contract.
- c. "Contract" – The instrument of contracting, such as "Purchase Order", "PO", "Purchase Contract", "Subcontract", or any other such type designation, including these Terms and Conditions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" Contract that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- d. "DFARS" – Defense Federal Acquisition Regulations Supplement, issued as Chapter 2 of Title 48, Code of Federal Regulations.
- e. "FAR" – Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- f. "FAI" – First Article Inspection is the report submitted by the "Seller" as proof that all Work conforms to drawings and/or specifications.
- g. "Alien" – Any person who is not a lawful, permanent resident of the US or is not a protected individual as defined by 8 U.S.C. sections 1101 and 1324.
- h. "Major Process Change" – As a minimum:

- i. Configuration changes have occurred (First Article Inspection applies only to the specific configuration changes)
  - ii. The part is manufactured at a different facility.
  - iii. There has been more than a 2 year lapse in production.
  - iv. There has been a change in sub-tier suppliers.
  - v. There has been a change in material.
  - vi. There has been a major process change similar to any listed above that is planned or is being planned for implementation by any sub-tier supplier.
- i. "Repair" means the reprocessing of nonconforming material in accordance with approved written procedures and operations to reduce, but not completely eliminate, the nonconformance. The purpose of repair is to bring nonconforming material into a usable condition. Repair is distinguished from rework in that the item after repair still does not completely conform to all of the applicable drawings, specifications or contract requirements.
  - j. "Rework" means the reprocessing of nonconforming material to make it conform completely to the drawings, specifications or contract requirements.
  - k. "Seller" – The party identified on the face of this contract.
  - l. "US" – United States of America
  - m. "Use-as-is" means a disposition of material, exhibiting minor nonconformance that is determined to be satisfactory for its intended purpose.
  - n. "Work" – All required articles, goods, labor, materials, and services constituting the subject matter of this contract.

### 3. Independent Contractor.

- a. It is agreed that in the conduct of the work under this Purchase Order, the Seller is acting in the capacity of an independent contractor and not as an agent or employee of the Buyer.
- b. Seller shall provide immediate notice to Buyer's authorized procurement officer in the event of being suspended, debarred or declared ineligible by any agency or department of the U.S. Government, or upon receipt of a notice of proposed debarment from any agency or department of the U.S. Government or any State Government, during the performance of this Agreement
- c. Seller shall immediately notify Buyer's Procurement Representative if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

4. **Assignment.** This Purchase Order may not be assigned, in whole or in part, nor may any assignment of any money, due or to become due, be made by Seller, without, in each case, the prior written consent of Buyer.

5. **Order Acknowledgment/Delivery Confirmation:** Upon receipt of an order from Battelle with an assigned due date, the supplier shall provide written acknowledgement of receipt of the order. The Seller shall also provide confirmation of its acceptance of the delivery date or provide Battelle with the best possible delivery date that can be expected to be valid.

6. **Defense Priorities Allocation System (DPAS) orders:** For contracts which include a DPAS rating, the Seller is **required** to follow the provisions of DPAS 15 CFR 700 and all other applicable regulations and orders of the U.S. Department of Commerce in obtaining products, materials, and services needed to perform this work.

### 7. Contract Changes:

- a. Buyer may, at any time, by a written order and without notice to the sureties, if any, make changes within the general scope of this Purchase Order in any one of the following areas:
  - i. Drawings, designs, specification, or description of services

- ii. Method of shipping or packing
  - iii. Place of performance of inspection, acceptance, or delivery
  - iv. Delivery schedule
- b. Only Buyer's Procurement Representative has authority on behalf of Buyer to make changes to this contract. All amendments must be identified in writing and executed by the parties. Buyer's engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change and shall not be the basis for an equitable adjustment.
  - c. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Purchase Order, whether changed or not changed by any such order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Seller of a written notification of change from the Buyer. Buyer may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Where the cost of property made obsolete or excess as a result of a change is included in the Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.
  - d. Any change, amendment, or modification to this contract by Seller must be expressly accepted in writing by Buyer's Procurement Representative. No course of dealing, usage of trade, or non-enforcement shall be construed to modify or otherwise alter the terms and conditions of this contract.
  - e. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this contract.
  - f. Nothing in this clause shall excuse the Seller from proceeding with the Purchase Order as changed.
- 8. Contract Direction and Customer Communication:** Buyer shall be solely responsible for all liaison and coordination with its customer, including the U.S. Government, as it affects the applicable prime contract, this **Contract**, and any related contract. Seller shall not act upon direction given by Buyer's Customers or Subcontractors without first notifying Buyer and securing Buyer's consent. Buyer will not be liable for the cost of work done by Seller without written authorization by Buyer's Procurement Representative.
- 9. Stop Work:**
- a. Seller may stop Work for up to ninety (90) days in accordance with any written notice from Buyer, or for such longer period to which the parties may agree. Seller shall immediately comply with the terms of the notice and shall take reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
  - b. Within such period, Buyer shall terminate the Work in accordance with the "Termination" clause of this contract or continue the Work by written notice to the Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Contract Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage provided that the claim for equitable adjustment is made within thirty (30) days after the date of the continuation notice.
- 10. Termination:**
- a. Buyer may at any time, by written notice to the Seller, terminate this Purchase Order in whole or in part either for the convenience of Buyer or for default.
    - i. In the event of termination for convenience:
      - 1. Seller shall immediately stop all Work hereunder and shall immediately cause all of its employees, agents, and subcontractors to stop work.
      - 2. Seller shall deliver to Buyer all deliverables satisfactorily completed up to the effective date of termination and invoice appropriately.

3. Upon Buyer's request, Seller shall deliver any work in progress (WIP). Subject to the terms of this contract, Seller shall be paid a percentage of the price reflecting the percentage of work performed prior to the effective date of termination plus reasonable charges that Seller can demonstrate to the satisfaction of Buyer have resulted from the termination for convenience.
  4. Buyer shall be liable for payments to Seller only for cost for performance rendered up to the effective date of termination.
  5. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided by Seller.
  6. In no event will payments be made for anticipatory profits or consequential damages as a result of a termination of this Agreement.
- ii. Buyer may terminate this order in whole or in part for default if:
1. Seller fails to deliver goods or services conforming to the requirements of this order, or
  2. In the event of the suspension, or debarment of Seller from participation in Federal or state procurement(s).
  3. In the event that this order is terminated for default, Seller shall be liable to pay to Buyer all amounts incurred for re-procurement of items or services provided for in this Purchase Order, in addition to any other remedies provided by law or this Agreement.

## 11. Delivery:

- a. Schedule:
- i. Purchase Orders – Delivery schedules will be provided on the face of the contract.
  - ii. Purchase Contracts - Delivery shall be specified by a Purchase Order Release referencing the purchase contract number. All prices, terms and conditions are governed by the content of the contract; release shall only specify the delivery requirements.
- b. Shipping:
- i. Unless otherwise specified on the PO, all Work is to be packed in accordance with commercially reasonable standards.
  - ii. Special Handling Instructions:
    1. Items requiring special handling must be identified with specific industry standard markings on each package unless other specific requirements are identified by a Battelle controlled drawing or the procurement contract.
    2. **Electrostatic Discharge (ESD) Protection.** Components and assemblies, which are susceptible to electrostatic discharge damage, shall be handled and packaged to prevent ESD damage utilizing MIL-STD-1686, ANSI/ESD S20.20, or EIA/JEDEC JESD625 as a guideline or Buyer-acceptable equivalent. ESD protective containers shall be marked as containing ESD sensitive devices.
  - iii. All deliveries shall be "F.O.B. Destination – Prepaid and Add" unless specified otherwise on the face of the purchase order.
  - iv. Do not ship via parcel post, certified mail or unregistered mail if shipment has value in excess of \$500.00 or via registered mail if in excess of \$5000.00. Send bill of lading, express receipt, packing list or shipping memorandum for each shipment. Show PO/PO release number on all packages, invoices, shipping bills, etc.
  - v. Insurance - No insurance charges which increase shipping cost shall be allowed.

- vi. Each shipment shall be accompanied by the appropriate shipping documentation such as Bill of Lading, Express receipt, Packing List, or Shipping Memorandum and such documentation shall include the Buyer's corresponding PO number.
  - vii. Seller shall mark containers or packages with appropriate lifting, loading, and shipping information including the Buyer's PO number.
  - viii. Before shipping hazardous materials to Buyer, Seller agrees to furnish Buyer with sufficient advance written notice (including appropriate labels on goods, containers, and packaging) of any special handling instructions needed to advise carriers, Buyer, and their respective employees of the standard care required to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers, and packaging.
- c. **On-Time Delivery:** On-Time Delivery is considered as no more than seven (7) days early and zero (0) days late. Deliveries made more than seven (7) working days prior to the designated delivery date will be considered early and may be returned at the Seller's expense for delivery on the designated delivery date, and Buyer will not remit payment for returned material. Any request for extension of time of delivery from that confirmed by the Seller on the original order must be approved by Battelle with such extension applying only to the particular item or shipment affected.
- d. **Late Deliveries:**
- i. When applicable, delivery must be made as ordered or as directed by Battelle and confirmed by the Seller when not in conflict with the original order. The decisions of Battelle as to reasonable compliance with delivery terms shall be final. The burden of proof of delay in receipt of goods by Battelle shall rest with the Seller.
  - ii. Seller must provide Battelle immediate notice, with a minimum of 48 hours-notice, when it is determined that any delivery is expected to be a late delivery.
  - iii. Suppliers with an anticipated late delivery will assume any additional freight or premium cost incurred in the effort to improve a late delivery. Regardless of Supplier's attempts to improve delivery, Buyer reserves the right to seek any and all other rights and remedies under this agreement.

**12. Certificate of Conformance:** If a Certificate of Conformance (COC) is indicated as required on the **purchase** document, the COC must contain at a minimum the Seller's name, manufacturer (if other than Seller), Battelle PO#, Battelle Item Identification (Part) Number with revision level, Manufacturer's part number with revision level (if applicable), serial numbers (if applicable), batch identification of the item such as date code, lot, etc.; quantity of items covered on COC, signature of Seller's representative, and date of certification.

**13. Material Safety Data Sheet:** Seller shall provide to Buyer with each delivery any Material Safety Datasheet applicable to the work in conformance with and containing such information as required by the **Occupational Safety and Health Act of 1970** and regulations promulgated thereunder or its State approved counterpart.

**14. Packing Slips:**

- a. All packing slips must reference the purchase order number, line number, schedule number, Battelle's part number (item ID number), item description, quantity ordered, quantity shipped, name of Seller and any additionally required paperwork.
- b. For Battelle drawing-based items, packing slips for all parts must also contain the drawing revision level.

**15. Invoices –**

- a. Submit in duplicate to "Attention: Accounts Payable" or email to [accountspayable@battelle.org](mailto:accountspayable@battelle.org).
- b. Purchase order number is required on the invoice. Failure to include PO number on invoice may delay payment.
- c. Invoice number is required on all invoices.
- d. Seller is to provide a separate invoice for each purchase order.

US Tax Exemption Status under a Purchase Order or Subcontract - Battelle is currently exempt from sales tax on items delivered to, or taxable services performed in CO, CT, DC, FL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, RI, TN, TX, UT, VT, WV and WI; in NM and VA, Battelle is currently exempt only for purchase of tangible personal property and not purchased services; in UT, Battelle can issue an exemption certificate only if the total invoice exceeds USD \$1,000. Vendors should note that sales tax on such purchase orders will not be paid.

California Form 590 Withholding Exemption Certificate - California Revenue and Taxation Code (R&TC) Section 18662 requires withholding of income tax on payments of California source service income made to nonresidents of California. Withholding is not required for goods and materials. The [CA590](#) is used to certify an exemption from nonresident withholding. Failure to properly complete a [CA590](#) will subject vendor payments to the required withholding which will then be paid directly to the State of California. For partial performance within the State of California by vendors who do not qualify for an exemption, the vendor may complete a Form [CA587](#) to establish the amount of income allocation subject to California withholding by Battelle.

For questions on California Withholding, See FTB Publication 1017.

All subcontractors/suppliers shall be solely responsible and liable for the payment of all current or future federal, state or local taxes, duties, tariffs, fees and any other charges, interest, penalties or assessments imposed by the government of any country or political subdivision thereof on this Agreement or on the wages paid to Subcontractor's employees. Subcontractor shall protect, defend, indemnify and hold Battelle harmless from any claims, actions, assessments or damages, including but not limited to reasonable attorney fees, interest, and penalties, asserted or assessed against Battelle by any person, entity or government of any country or political subdivision thereof or incurred by Battelle relating to Subcontractor's responsibilities under this paragraph.

All payments made to the Subcontractors/Suppliers for services performed under a Subcontract may be subject to the tax withholding requirements of an applicable jurisdiction. Subcontractors/Suppliers shall cooperate with Battelle in completing the appropriate tax withholding forms required by an applicable jurisdiction. If required by an applicable jurisdiction, Battelle will withhold from Subcontractor's payment the applicable tax withholding amount.

**16. Returns:** Parts received at Battelle that do not meet the required specifications will be rejected and returned in accordance with the Battelle RTV process in coordination with the Seller's return process. The freight **costs** associated with the return and replacement of wrong or defective parts shall be the burden of the Seller.

**17. Document Control/Information Control/Flow Down of Drawing Requirements:**

a. Document Control/Information Control:

- i. Information provided by Buyer to Seller, including but not limited to Buyer-supplied drawings, specification, and data, remain the property of Buyer. Seller agrees to comply with the terms of any proprietary information agreement with Buyer and to comply with all proprietary information markings and restrictive legends applied by Buyer to anything provide hereunder to Seller. Seller agrees not to use any Buyer-provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of Buyer. Seller shall maintain data protection processes and systems sufficient to protect Buyer-provided information and comply with any law or regulation applicable to such information.
- ii. Seller shall keep confidential all information, drawings, specifications, or data either:
  1. Furnished by Battelle and marked as confidential or proprietary; or
  2. Prepared by Seller specifically in connection with the performance of this procurement document
- iii. Seller shall not disclose such information, drawings, specifications, or data except to those of its officers, employees (including independent contractors, contract labor employees, and leased employees), third party vendors or subsidiaries who have a "need to know" the information, drawings, specifications, or data for the purposes of performance under this procurement document, and Seller certifies that such officers, employees, third party vendors or subsidiaries, as the case

may be, have previously agreed, either as a condition to employment or in order to obtain the confidential/proprietary information, to be bound by terms and conditions at least as restrictive as the terms and conditions of this provision.

- iv. Seller will immediately give notice to Battelle of any unauthorized use or disclosure of the confidential/proprietary information. Seller agrees to assist Battelle in remedying any such unauthorized use or disclosure of the confidential/proprietary information.
  - v. Except as required for the efficient performance of this procurement, Seller shall not make copies or permit copies to be made without the prior written consent of Battelle. Seller shall thereafter make no further use, either directly or indirectly, of any such information, drawings, specifications, or data, or of any derivation thereof without obtaining Battelle's written consent.
  - vi. This provision shall not apply to information after its entry into the public domain by means other than as a result of a breach of this provision, nor shall it limit any rights the Government may have in such information.
  - vii. At the conclusion of this procurement, Seller shall, at the option of Battelle, either return to Battelle or destroy all confidential/proprietary information
- b. Revision Control:
- i. Seller is responsible to ensure that it has the correct drawing/EO as listed on any contractor release received. All parts being supplied in accordance with a drawing supplied by Battelle must be marked and/or identified in accordance with the specified drawing.
  - ii. The revision level of any component to be delivered to Battelle will be controlled by the Purchase Order or, for those items on a Purchase Contract, the Purchase Order Release. All order acknowledgements and COC (Certificate of Conformance) documents must confirm compliance that the part is manufactured according to the proper revision. Battelle must be notified immediately of any conflict between the revision level of parts being produced/shipped and the revision level on the controlling document. Any change in costs resulting from differences between the revision level of the components on the original quote and the revision level to be delivered will be addressed according to the Changes clause of Battelle's standard terms and conditions and may require a new procurement document for that item.
- c. Requirements Flow Down: Suppliers are required to flow down to sub-tier suppliers all pertinent purchase order requirements including any special characteristics identified in the purchase order or in the Battelle-owned drawing.
- d. This provision survives termination of this procurement document.
- e. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information Contract between the parties.

#### **18. Export Control:**

- a. Seller agrees that it shall comply with all US laws and regulations applicable to export of products, materials, items and/or technical data, and shall not export or transmit any such products, materials, items, technical data, or the direct product of technical data received from Buyer outside the US or to a Foreign Person unless Seller has obtained in advance all required licenses, Contracts, or other authorizations from the US Government. Exports of technical data include, without limitation, disclosing technical data to an Alien whether in the US or abroad.
- b. Any document provided by Battelle may contain technical data whose export is restricted by U.S. law. Violators of export control laws may be subject to severe legal penalties. These documents may not be disseminated outside the United States or the contents disclosed to non-U.S. persons except in accordance with applicable laws and regulation and after obtaining any required authorizations.
- c. Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations.

- d. If Seller is engaging in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishings defense services, Seller represents that it is registered with the Office of Defense Trade Controls as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- e. Where Seller is a signatory under a Buyer export license or export Contract (e.g., TAA, MLA), Seller shall provide prompt written notification to the Buyer's Procurement Representative in the event of circumstances which may include, but are not limited to, ineligibility, violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect Seller's performance under this Contract.
- f. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

## 19. Inspections and Certifications

- a. First Article Inspections (FAI) Submission:
  - i. For a custom item, a supplier must submit a FAI on each individual part and each part within an assembly as listed on drawings/specifications.
  - ii. The FAI report must contain a recording of the actual results on 100% of all characteristics and notes of the drawing/specification. The report must be forwarded to Battelle with the first production lot unless directed otherwise in writing.
- b. When reporting inspection and acceptance data, Seller is required to use the same unit of measurement as specified in the Technical Data Package unless permission is granted by Battelle in writing to do otherwise. The results of the FAI must be submitted using Battelle's First Article Form, which is available through the Point Of Contact provided on the face of the purchase document, or Battelle QA approved equivalent.
- c. A subsequent First Article Inspection is required per Battelle's procedures, as a minimum, whenever there has been a Major Process Change.
- d. The Seller is required to furnish inspection results and/or process certifications with each delivery or lot as described in the Battelle drawing or on the procurement contract. Inspections are to be done in accordance with practices that have been reviewed and approved by Battelle QA. Material and/or process certifications are to be done in accordance with the applicable Battelle drawing(s).

**20. Records Retention.** Seller shall retain records, documents, and supporting information required for the performance of this procurement for a minimum of five years from the last day of the fiscal year in which the document was created or as described on the procurement contract or in the Battelle drawing or specification, **whichever** is longer. Such documents include but are not limited to inspection records, test records (ATP), material and special process certificates, certificates of conformance, financial records, and acquisition and supply records. Seller must include requirements of this paragraph in any lower-tiered purchase order issued by the Seller to support product being sold to Battelle.

**21. Product and Process Change Reporting.** Seller shall immediately notify Battelle's Point of Contact by mail or in writing using Battelle's Supplier Notice of Change Form, available through the Point of Contact provided on the face of the Purchase Contract, whenever it decides to implement any change to its manufacturing process or product after it has submitted a FAI to Battelle. Seller shall offer Battelle the opportunity to participate in all Seller process and product change activities, from initiation through approval and implementation, on a real time basis. Prior to implementing such changes, the Seller shall confirm to Battelle whether the change will adversely affect product performance, system supportability, or any other contractual or **regulatory** requirement. Then, Battelle shall have the opportunity to review the change and approve or disapprove it. If Battelle disapproves of the change, Seller must work with Battelle to develop an agreeable solution, or if possible, continue the previously approved manufacturing process or product. Seller must include the requirements of this paragraph in any lower-tier Purchase Order issued by the Seller to support product being sold to Battelle.



**22. Substitutions:** Substitutions/alternates for **commercial** items and materials are not authorized without prior approval.

**23. Original Equipment Manufacturer (OEM) Sources:**

- a. Unless Battelle provides written pre-authorization approving the use of third-party parts and/or components, Seller may only utilize parts and/or components sold individually or as part of a larger assembly from the OEM or the OEM's franchised distributor in products sold to Battelle. "Third-party" parts and/or components, as used here, refer to any parts and/or components sourced from non-OEM or non-OEM franchised distributors.
- b. Unless the Seller is the OEM or an OEM franchised distributor for the part/component, the Seller must obtain Certificates of Conformance (COC) for all Electronic, Electrical, and Electro-mechanical (EEE) parts/components procured by the Seller for sale to Battelle or for use in the Seller's product sold to Battelle. The Seller must retain all COCs and all documents tracing the purchase back to the OEM or the OEM's franchised distributor for each EEE part/component. The COCs and traceability documents must be maintained on file by the Seller and be available for audit by Battelle for five years after the Seller ships the product containing an EEE part/component to Battelle. Should the Seller be unable to obtain the COC or traceability from their supplier, they must notify Battelle immediately for further guidance.
- c. In order to obtain authorization from Battelle for the use of third-party parts, the Seller must contact Battelle, identify the components being procured from a third-party, and provide specific details of the procedures and/or processes the Seller will use to determine the authenticity, functionality and condition of the components.
- d. In the event that Work delivered under this Contract constitutes or includes components from unauthorized sources, Seller shall, at its expense, promptly replace such unauthorized components with components from authorized sources conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to the removal and replacement of the unauthorized components, including without limitation Buyer's costs of removing the unauthorized components, of reinserting replacement components and of any testing necessitated by the reinstallation of components after the unauthorized components have been exchanged. The remedies in the paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this contract.
- e. This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- f. The Seller shall flow the substance of this clause, including this sentence, in all sub-tier subcontracts or purchase orders for work performed under this procurement document.

**24. Right of Access.** Battelle, Battelle's customer, and the Government (when the relevant order is the result of a government contract and regardless of whether the government is Battelle's direct customer) may at any time inspect the Seller's facilities which will or may be used in the performance of this procurement. This inspection may be conducted at any time and place before, during, or after manufacture or completion. No such inspection shall in any way relieve Seller of its obligation to furnish all goods, materials, and services in strict accordance with the terms and conditions of this procurement document. If inspection and/or testing is conducted on the seller's premises, Seller shall provide inspectors access to all facilities and provide them with assistance to ensure the safety and convenience of the inspectors in the performance of their duties at no additional cost. All inspections and tests shall be performed in such a manner as not to delay the work unduly. All goods are subject to final inspection and acceptance at Battelle's facility (or at any other location specified in writing by Battelle) notwithstanding any payment or prior inspections, and these inspections shall be made within a reasonable time after delivery. Seller must include requirements of this paragraph in any lower-tiered purchase order issued by the Seller to support product being sold to Battelle.

**25. Shelf-Life and Date Coded Items:**

- a. Items with shelf-life recommendations must have a minimum of 2/3rds of the useable life span remaining at the time of receipt at Battelle. For non-shelf-life items that are date coded, they must be in new

(unused) condition and are not to exceed 2-years from the date of manufacture. Battelle will not accept materials in violation of the shelf-life and date code requirements without prior written approval from Battelle.

**26. Nonconforming Product:**

- a. Unless otherwise specified in this Contract, any goods delivered under this Contract shall consist of new materials. Used, reconditioned or remanufactured goods will not be delivered to the Buyer unless the Buyer expressly agrees in writing to accept such goods prior to delivery.
- b. The Seller shall not make a decision to Use-As-Is or Repair except as outlined below if-
  - i. The product is produced to Battelle design, or
  - ii. The nonconformity results in a departure from the contract requirements.
- c. For unshipped product, The SELLER and sub-tier suppliers are delegated authority to rework minor nonconformities provided the reworked material or product is verified to be in full conformance with the material or product requirements. Any major nonconformance to a drawing or specification requirement must be submitted to Battelle's Quality Organization for Buyer material review and approval prior to executing any decision related to the nonconforming product. Copies of all Material Review actions processed as Use-As-Is or Repair for a given unit shall be tendered with the Acceptance Test report and/or final documentation of the product. Shipment of nonconforming material or product is not allowed until Battelle and Seller material review actions have been completed and written approval has been provided by Battelle.
- d. Acceptance of any non-conforming Work shall not bind Battelle to accept future shipments of non-conforming Work, nor deprive it of the right to revoke acceptance and return non-conforming Work. Non-conforming work, if rejected, may be returned to Seller at Seller's expense for transportation both ways, and no substitution or replacement shall be made unless authorized by Buyer.
- e. For shipped product, Seller and sub-tier suppliers are required to notify Battelle immediately of all known nonconforming product which has already shipped to Battelle and/or Battelle's customers. Notification shall be in writing and shall include a clear description of the nonconformity, parts affected, customer and/or Seller part numbers, quantity, and date(s) delivered.

**27. Bar-Coding:** Seller must have or be able to implement bar-coding that meets Battelle's specifications **within** an agreed upon time parameter upon receipt of any purchase order contract.

**28. Consignment Program:** Battelle reserves the right to discuss with the seller the requirements necessary to enter into an inventory consignment agreement before or after the award of any contract. Consignment agreements **require** the Seller to hold inventory of finished goods, WIP, and/or raw material within a Battelle facility at an agreed upon quantity and liability for the duration of the contract

**29. Quality Management System:**

- a. The supplier shall implement and maintain a Quality Management System (QMS) which shall address all products and services covered by this contract that complies with or is equivalent to the quality requirements specified in ISO 9001, ISO 13485, AS9100, or 21 CFR Part 820. Equivalents to these standards requires Battelle's pre-approval.
- b. The supplier shall demonstrate compliance with a Quality Management System by either maintaining an independent registration with an accredited registrar or submitting to semiannual quality management system audits conducted by Battelle Quality Management or its designated representative. The supplier must notify Battelle within 30 days of any change in their certification status.
- c. The Supplier shall demonstrate compliance with this section by providing, upon request, a copy of their current registration certificate or the results of any audit performed to maintain their quality system certification.
- d. Battelle's Quality Department may grant deviations from the requirements of this section. However, the Supplier must notify Battelle in writing immediately of any deviation from this requirement. Battelle will

review deviation requests on a case-by-case basis, and only written approvals issued by Battelle's Quality Department are valid.

**30. Furnished Property:**

- a. Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property).Furnished Property shall be used only for the performance of this Contract.
- b. Title to Furnished Property shall remain with Buyer or its customer. Seller shall keep the equipment free and clear of all liens and shall take all steps necessary to protect and preserve Buyer or its customer's title and right of ownership of the Equipment. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- c. Except for reasonable wear and tear, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice without additional charge.
- d. At Buyer's request, and/or upon completion of this Contract, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as maybe directed by Buyer.
- e. The Seller assumes the risk of loss, theft or damage to the Equipment from the time of delivery to the Seller until it is returned to Buyer or its customer.
- f. Seller shall carry and maintain adequate insurance to cover the Furnished Property, and upon request, Seller shall furnish Buyer with a certificate or other reasonable evidence of such insurance. Additional insurance requirements may be contained in any resulting acquisition.
- g. FURNISHED PROPERTY IS PROVIDED TO SELLER "AS IS" WITH NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY AGAINST INFRINGEMENT.
- h. The Government Property Clause contained in Battelle's B712 or B713 Supplement shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or property to which the Government may take title under this contract.

**31. Warranty and Inspection:** (a) Goods. In addition to the warranties provided for under the Uniform Commercial Code, Seller warrants that all goods furnished under this Agreement will be free from defects, will conform to all requirements of this Order, and, unless manufactured solely in accordance with Buyer-certified manufacturing designs, will be free from defects in design. Any goods corrected or replaced will be covered by this warranty. Seller agrees to notify Buyer immediately upon becoming aware of a potential problem with goods previously delivered to Buyer. (b) Services. Seller warrants that all services will be performed with the highest standard of professional service, be free from defects, conform to the requirements of this Purchase Order, and be performed in strict compliance with any specified regulatory or international standards. Any services corrected or re-performed will be covered by this warranty. Buyer's rights regarding Inspection and acceptance of services under this agreement shall be equivalent to those provided for inspection of goods under the Uniform Commercial Code. Nonconforming goods or services will be replaced, corrected or re-performed at Seller's expense.

**32. Insurance and Indemnity:** Seller shall maintain workers' compensation (statutory minimum) and comprehensive general liability insurance in form and amount(s) reasonable and customary for the industry in which Seller is engaged. Seller's insurance shall not be deemed to limit Seller's liability. Seller agrees to indemnify, defend and hold harmless Buyer, its officers, trustees, agents and employees, from any and all damages, liabilities, claims, suits, demands, and all expenses and costs including reasonable attorney's fees and costs, arising out of the Seller's performance hereunder that are caused, in whole or in part, by the negligent or wrongful acts or omissions of Seller or anyone employed by Seller for whose acts Seller may be liable.

**33. Patent Indemnity.** Seller warrants that the work performed or delivered under this Purchase Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any **foreign** country. Seller agrees to defend, indemnify and hold harmless Battelle and Battelle's Client from and against any such claims.

- 34. Cost Recovery:** Seller shall be responsible for reasonable costs associated with the replacement and/or repair of defective and/or non-conforming items or unapproved substitutions. These costs may include but are not limited to the following: the stop and re-start of production, shipping fees, labor costs (which may include **overtime** premiums), expedited material costs, and re-inspection. Aforementioned costs will be imposed for quality issues determined to be caused by the Supplier's process or workmanship Seller shall promptly remit payment to Battelle upon receipt of a credit memo in which Battelle will detail these associated costs.
- 35. Compliance with Laws:** Seller shall comply with all applicable federal, state and local laws, regulations and ordinances. Seller will indemnify and hold Buyer and its directors, officers, employees and **representatives** harmless from and against any claims, demands, suits, losses, damages, costs and expenses arising out of any non-compliance, violation or alleged non-compliance or violation by Seller of any such laws, regulations and/or ordinances. Seller specifically acknowledges the importance of strict adherence to those laws and professional standards related to doing business for the Federal government, adhering to ethical business practices, complying with anti-fraud requirements and assuring scientific integrity.
- 36. Disputes.** All disputes under this Purchase Order which are not resolved by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall **diligently** proceed with the performance of this Purchase Order as directed by Buyer. Any such dispute must be raised within one (1) year of the event(s) giving rise to the dispute.
- 37. Buyer Rights and Remedies:** The rights and remedies of Buyer set forth herein are cumulative and in addition to any other rights or remedies that Buyer may have at law and/or in equity.
- 38. Applicable Laws:** The agreement shall be construed in accordance with the laws of and enforced within the **jurisdiction** of the State of Ohio, without regard to its principles of conflicts of laws.
- 39. Gratuities:** Seller shall not give any bribe, gratuity, or kickback of any type or nature to any person or entity for the purpose of obtaining or rewarding favorable treatment as Buyer's supplier.
- 40. Access:** If Seller is granted access to Buyer facilities, Seller agrees to execute a Buyer access agreement and shall comply with all Buyer rules and policies regarding conduct, security, and safety. Buyer may, at its sole discretion, have Seller remove any specified employee, agent, or subcontractor from **Buyer's** premises.
- 41. Public Releases:** No public releases including those for news, advertising, information, technical or scientific purposes relating to this Purchase Order shall be issued by Seller or by any second or lower tier contractor. Buyer does not endorse products or services. Accordingly, Seller shall not use or imply Buyer's **or** its client's name, or use Buyer's or its client's information or reports, for advertising, promotional purposes, raising of capital, recommending investments, sale of securities or in any way that implies endorsement by Buyer.
- 42. Survivability:** If this contract expires, is completed, or is terminated; Seller shall not be relieved of those **obligations** contained in the following clauses:
- a. Applicable laws
  - b. Document Control/Information Control/Flow Down of Drawing Requirements
  - c. Export Control
  - d. Independent Contractor
  - e. Insurance and Indemnity
  - f. Public Releases
  - g. Survivability
  - h. Warranty and Inspection
- 43. Compliance:** Failure to comply with any of these terms and conditions shall be considered a breach of contract and a sufficient reason for refusal to accept delivery of the goods.