1. None of the instructions, terms and conditions contained in this Purchase Order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Purchaser. Each shipment received by Purchaser from Seller shall be deemed to be only upon the instructions, terms and conditions contained in the Purchase Order notwithstanding any instructions, terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Purchaser’s act of accepting or paying for any shipment or similar act of Purchaser.
2. No charges of any kind, including but not limited to charges for freight, boxing or cartage, will be allowed unless specifically agreed to in writing by an authorized representative of Purchaser.
3. Time is of the essence of the agreement between Seller and Purchaser as evidenced by this Purchase Order. Seller is liable for any and all damages Purchaser incurs, without limitation, due to any failure or delay in Seller’s delivery or performance. Seller may not allocate, defer, delay, or cancel the shipment of all or any part of Purchase Order without liability to the Purchaser.
4. If any of the goods are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Purchaser, in addition to all other rights and remedies available to Purchaser, shall have the right to reject and return such goods at Seller’s expense.
5. The Seller shall not assign this Purchase Order or delegate the Seller’s responsibilities under this Purchase Order without the prior written consent of the Purchaser.
6. Seller shall comply with all applicable federal, state and local laws, regulations, and rules.
7. Seller agrees to indemnify, protect and defend Purchaser with respect to any claims, action, proceeding or judgment for patent infringement arising out of the purchase or use of the goods covered by this Purchase Order.
8. This Purchase Order and all matters connected with the performance of the parties under this Purchase Order shall be governed and interpreted in accordance with the laws of the State of Massachusetts.
9. Seller hereby represents and agrees that all goods shipped to Purchaser under this Purchase Order will be produced in compliance with the federal Fair Labor Standards Act.
10. Seller hereby expressly warrants that all the goods, materials, and articles covered by the Purchase Order or other description or specification furnished by Purchaser will be in exact accordance with such order description or specification and free from defects in material and/or workmanship, shall be merchantable and shall be fit for the purpose for which the goods, materials, and articles are purchased. This warranty shall survive delivery and shall not be deemed waived either by reason of Purchaser’s acceptance of said goods, materials, and articles, or by payment.
11. Seller assumes all liability and/or obligation to Purchaser for any claim, loss, damage, or expense caused in whole or in part by (a) any inadequacy, deficiency, or defect in goods or services (whether or not covered by any warranty), (b) the use or performance of any goods or services, or (c) any failure or delay in Purchaser’s performance hereunder, or for any special, indirect, incidental, cost of replacement of goods or services, rework, loss of data, consequential, exemplary or punitive damages, howsoever caused, including Seller’s negligence, whether or not Seller has informed Purchaser of the possibility or likelihood of any such damages. In no event will Seller’s liability be waived regardless of basis.
12. Purchaser reserves the right to cancel all or any part of the undelivered portion of this Purchase Order if Seller does not make deliveries as specified, time being of the essence of this agreement, or if Seller breaches any of the terms hereof.
13. Purchaser’s rights and remedies will be cumulative and not exclusive. Seller is responsible for all losses, costs, and expenses, including attorney’s fees, incurred by Purchaser in collecting any sums Seller owes. Purchaser shall be entitled at all times to set-off any amount owing at any time from Seller to Purchaser against any amount payable at any time by Purchaser to Seller. Purchaser further reserves the right to suspend or terminate Seller’s access to any goods or services, and such suspension or termination by Purchaser does not modify the amounts due under the transaction.
14. Federal Subcontractors: The Reporting Requirements Clause of 41 CFR 61-300.10 and the Employee Notice Clause of Appendix A to Subpart A of 29 CFR 471 apply to this contract. dataCon, is committed to affirmative action for minorities, females, individuals with disabilities, and protected veterans and requests that the Seller take appropriate action regarding its own employment practices.
15. Federal Subcontractors: This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4, 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans, qualified individuals on the basis of disability, and individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. These regulations also require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities and to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.
16. If F.O.B. point on face of this Purchase Order is shipping point, please prepay and add freight charges to your invoice, provided that preapproval from the Purchaser is obtained.
17. EXPORT CONTROL
18. Supplier shall comply with all applicable United States export and import control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, the International Traffic in Arms Regulation (ITAR), the Export Control Reform Act of 2018, the Export Administration Regulations, and the regulations of the Office of Foreign Assets Control. Supplier shall obtain all required export licenses and agreements necessary to perform under this Contract, as applicable.
19. Supplier shall comply with all applicable United States anti-boycott laws and regulations, including but not limited to, the requirements of the Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government. Within 30 Days of submittal of any anti-boycott report made to the U.S. Government that involves this Contract, Supplier shall provide a copy to dataCon.
20. Without limiting the foregoing, Supplier shall not transfer any export-controlled item, data, or provide a controlled service, to include transfer to a person who is not a “U.S. Person” as defined in the ITAR (22 C.F.R. §120.62), without the authority of a U.S. Government export license, agreement, or other authorization. The restrictions on the transfer of export-controlled data apply equally to data furnished by dataCon and to any such export-controlled data incorporated in documents generated by Supplier. Additionally, Supplier will not disclose any export-controlled data furnished to it by dataCon, to a non-U.S. Person until Supplier meets all regulatory and contractual requirements. Supplier will strictly comply with the conditions in any such approval and in the export license or other U.S. Government authorization for such disclosure.
21. Further, a U.S. Government export license, agreement, or applicable license exemption or exception shall be obtained by Supplier prior to the Supplier’s transfer of any export-controlled item, data or services to any U.S. Person that is employed by any “Foreign person” within the meaning of 22 C.F.R. §120.63.
22. Supplier must make any electronic transmissions of unclassified export-controlled data or technology in accordance with 32 Code of Federal Regulations, Part 2002 and other applicable law. The transmission of classified export-controlled data must adhere concurrently with the applicable export regulation and the requirements outlined in the National Industrial Security Program Operating Manual at 32 Code of Federal Regulations, Part 117.
23. Supplier shall immediately send written notification to the dataCon Procurement Representative, of any limitations that would hinder the use, sale, import, or export, of work, tasks, or deliverables under this Contract due to restrictions imposed by any export control laws or regulations.
24. Supplier shall immediately notify the dataCon Procurement Representative in writing if Supplier is on any Denied Parties List or if Supplier’s export privileges are denied, suspended, or revoked in whole or in part by any government entity or agency.
25. Where Supplier is an authorized party under a dataCon export license, export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement, Distribution Agreement), or other U.S. Government written authorization, Supplier shall provide immediate written notification, to the dataCon Procurement Representative, in the event of any changed circumstances affecting said license, agreement, or other authorization.
26. Failure of the U.S. Government or any other government to issue any required export or import license, or revocation or termination of a required export or import license by the U.S. Government or any other government, relieves dataCon of its obligations under this Contract. If Supplier has diligently pursued obtaining such license and, through no fault of Supplier, such license has been denied, revoked, withdrawn, or terminated, Supplier also will be relieved of its obligation under this Contract. In either event, dataCon may terminate this Contract without additional cost or other liability.
27. All export-controlled data or technology must contain markings identifying the relevant regulatory jurisdictions prior to export, transmittal to, and receipt from, the Supplier and dataCon. Such markings are required regardless of the mode of transmittal (e.g., hard copy or electronic).
28. Under this Contract, the Supplier acknowledges and confirms that the sale, manufacture, export, or brokerage of defense articles or provision of defense services, as those articles and services are defined in the ITAR and enumerated on the U.S. Munitions List (22 C.F.R. 121), mandates registration with the Directorate of Defense Trade Controls (DDTC), U.S. Department of State. If Supplier is engaged in the business of either selling, exporting, manufacturing, or brokering of (whether exporting or not) defense articles or furnishing defense services, Supplier represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered as such with the United States Department of State’s Directorate of Defense Trade Controls.
29. Supplier shall flow down export and import compliance requirements by contract to its suppliers, Suppliers, and subcontractors who support dataCon Contracts and purchase orders. Supplier shall, on request, provide information to dataCon on the country of origin of any Goods supplied to dataCon, including any and all components, subcomponents, and raw materials contained therein.
30. Export Classification (when specifically requested by dataCon)
31. Supplier shall notify dataCon if any deliverable under this Contract, for which dataCon is not the design authority, is subject to export and import control laws and regulations described in the Export Control section of this Contract). Before providing dataCon any deliverable, Supplier shall provide, in writing to the dataCon Procurement Representative, the relevant export classification to include the following:
    1. Dual use goods and technology subject to the EAR, including any embedded or related ITAR-controlled, or EAR 500 or 600 series’ item or technology;
    2. Defense article (which includes both hardware and technical data) or defense service, controlled by the ITAR;
    3. Item or technology controlled by the UK or EU Lists of Dual Use or Military Goods, or by other applicable government published export control lists.
    4. Identify uncontrolled classifications, such as EAR99, when applicable.
       1. Subsequent to the initial disclosure above, Supplier shall timely notify the dataCon Procurement Representative, in writing, of any changes to the export classification information of the item or controlled data.
       2. Supplier represents and certifies that it has properly determined the relevant export classification of the deliverable.