



1. APPLICABILITY OF STANDARD TERMS AND CONDITIONS

These standard terms and conditions (the "Terms") shall be applicable to all Orders and work done on behalf of Buyer by Seller. In the event of a conflict between these Terms and an Order (including any applicable FAR/DFAR clauses, regardless of whether such clauses are properly flowed down), then in that case the terms of the Order shall prevail.

2. DEFINITIONS

Buyer: ES3

Goods/Services: The items or work being purchased by Buyer, and sold by Seller, via an Order

Order: Any purchase order, subcontract, or work authorization allowing Seller to provide the Goods/Services for Buyer which reference or come attached with these Terms and including any Change Orders or Amendments thereto

Seller: The party to whom Buyer issues an Order

3. COUNTERFEIT PREVENTION

Seller agrees and shall ensure that no Counterfeit Parts/Materials/Items/Work are delivered to Buyer. Certificate of Conformance and Traceability may be required by Certain Government and/or Industry Specification intended for use in aviation, space and defense applications. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide Original Equipment Manufacturer (OEM) documentation that authenticates traceability of the affected items to the applicable OEM. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OEM documentation that authenticates traceability of the affected items to the applicable OEM.

4. PAYMENT AND INVOICES

The Buyer shall pay the Seller within thirty (30) days after receipt of a proper invoice. Proper invoices shall contain all backup information necessary for approval of the Goods/Service and in accordance with the mutually agreed upon payments on the face of the Order, as applicable. Invoices shall clearly reference: (i) a unique invoice number, (ii) an invoice date after completion of agreed upon work, services, or milestone, (iii) an Order number for the invoice, and (iv) a line item within the Order as applicable. Invoices shall be approved for payments after all contractual obligations have been met for each invoice. Buyer may refuse to accept Goods/Services delivered under an Order if the Seller fails to comply with the Order assigned requirements.

All invoices shall be sent via mail to:

ES3

ATTN: Accounts Payable

550 West C Street, Suite 1630

San Diego, CA 92101

Or via email to:

AP@ES3inc.com



5. SCHEDULE

(a) Delays: Seller agrees to deliver to the Buyer all items identified in the Order in accordance with the Seller's offer and the Buyer-issued Order. Should a conflict exist between the delivery dates in the Seller's offer and the Buyer-Issued Order, the Buyer-Issued Order shall prevail. Seller shall strictly adhere to the shipment and/or delivery schedules to which they agree. In the event of any actual or anticipated delay the Seller shall (i) inform Buyer in writing the reasons of the delays and actions being taken to rectify the delay as soon as practicable and (ii) provide Buyer a recovery schedule. Other than for DPAS Rated Orders, should Seller fail to deliver on time (not withstanding delays caused by Force Majeure), Buyer reserves the right to assess a late delivery penalty of up to 10% of the total amount of the Order (inclusive of modifications and options) at Buyer's sole discretion.

(b) Buyer may, by written order, suspend all or part of the work to be performed under an Order for a period not to exceed 110 days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order, (ii) terminate for convenience in accordance with the termination clause, (iii) extend the stop work period for the same amount of time, and for the same work, as a stop work order received by Buyer from its customer. After receipt of a Stop Work order, Seller should stop all work and incur no further charges. Seller shall resume work whenever a suspension is cancelled by Buyer. Buyer and Seller shall negotiate an equitable adjustment in price or schedule as necessary.

6. CHANGES

Buyer may direct changes in general scope of an Order in any of the following: (i) technical requirements and descriptions, Statement of Work (SOW), drawings, designs, (ii) shipment or packing methods, (iii) place of delivery, inspection, or acceptance, (iv) reasonable adjustments in quantities or delivery schedules, and (v) terms and conditions of this order to meet Buyer's obligations with its customer including but not limited to any mandatory flow-down clauses. If such a change increases or decreases cost or time required to perform, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule. Seller must provide support or justification that is satisfactory to Buyer and Buyer's customer for the amount of Seller's claim for equitable adjustment. Any changes which affect price, quantity, schedule, statement of work, and/or terms and conditions must be authorized by Buyer's contractual representative. No changes shall be binding upon Buyer unless incorporated in a written modification documented through a Change Order or Amendment and signed by Buyer.

7. COVERAGE SELLER SHALL MAINTAIN:

(a) Employers Liability Insurance with limits of \$1,000,000 for bodily injury by accident and \$1,000,000 for bodily injury by disease, including, if applicable, maritime coverage endorsement.

(b) Commercial General Liability (Standard ISO occurrence form) including products and completed operations coverage, full fire legal liability and contractual liability, with a per occurrence limit of \$1,000,000.

(c) Business Auto Liability coverage for bodily injury and property damage liability for all owned, hired or non-owned vehicles, each with an accident limit of \$1,000,000.

(d) Professional Liability of \$1,000,000 per occurrence and aggregate providing coverage for claims arising out of the performance of professional services, resulting from any error, omission or negligent act of the Seller.

8. LIMITATION OF LIABILITY

In addition to, but not in lieu of, any limitations on liability set forth in an Order, Buyer's total liability for any loss, injury, death, damage, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right or remedy, arising out of or occurring in connection with an Order between Buyer and Seller will be limited to the total price



of the specific Order between Buyer and Seller.

9. ACCEPTANCE AND REJECTION

- (a) Buyer shall accept the Goods/Services or give Seller notice of rejection due to any defect or nonconformance within a reasonable time after the date of delivery. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under these Terms or impair any rights or remedies of Buyer, including revocation of acceptance. Revocation of acceptance by Buyer is allowed when any nonconformity impairs the value of the Goods/Services to Buyer if Buyer first offered their acceptance (i) on the reasonable assumption that its nonconformity would be cured and it has not been reasonably cured or (ii) without discovery of nonconformity if the acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the Seller's assurances. Any rejection or revocation of acceptance must be done within a reasonable time of discovery by Buyer of nonconformance.
- (b) If Seller delivers defective or non-conforming Goods/Services, Buyer may at its option and at Seller's expense: (i) require Seller to promptly correct or replace the Goods/Services; (ii) return the Goods/Services for credit or refund; (iii) or correct the Goods/Services; (iv) have another vendor correct the Goods/Services and charge the difference to Seller.
- (c) Seller shall not redeliver corrected or rejected Goods/Services without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed as Buyer may reasonably direct.
- (d) RIGHT OF ACCESS AND INSPECTION: All goods furnished and services performed pursuant to an Order shall be subject to inspection and test by Buyer, Buyer's agents, and Buyer's customers at any time during the period of performance, at any place, and in all cases, before acceptance. Seller grants Buyer and Buyer's customer right of access to all parts of their facilities which are used in the performance of any Order or work under these Terms.

10. TERMINATION

- (a) Termination for Convenience – Buyer may terminate all or part of an Order for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to stop work. Subject to these Terms, within sixty (60) days after the effective date of termination, Seller may submit to Buyer a claim reflecting the percentage of the work performed prior to the effective date of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Buyer using its standard record keeping system that have been incurred as a result from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Further, Seller shall not be paid, and in no event shall Buyer be obligated to pay, lost or anticipated profits or unabsorbed indirect costs or overhead. In no event shall Buyer be obligated to pay Seller any amount in excess of the purchase price. The provisions of these Terms shall not limit or affect the right of Buyer to cancel this order for default. Seller shall continue all work not terminated.
- (b) Termination for Default –
- (1) Buyer may, by written notice to Seller, cancel all or part of an Order if: (i) if Seller fails to deliver the Goods or Services within the time specified by the Order or any written extension; (ii) if Seller fails to perform any other provision of these Terms, the Order, or fails to make progress, so as to endanger performance of the Order, and, in either of these two circumstances, within seven (7) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate in Buyer's sole discretion to cure the failure if such failure reasonably cannot be cured within such seven (7) days, and such plan is acceptable to Buyer's Authorized Representative; or (iii) in the event of Seller's bankruptcy, suspension of business,



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insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

- (2) Seller shall continue all work not canceled.
- (3) Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods that adhere to order requirements, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and rights that Seller has specifically produced or acquired for the canceled portion of this order so long as they adhere to order requirements. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has an interest. Buyer shall pay the purchase price for completed Goods accepted. In addition, any payment for manufacturing materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" clause of these Terms, except that Seller shall not be entitled to profit.
- (4) If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as per Termination for Convenience.

11. WARRANTY

- (a) Seller warrants that:
 - (1) The Goods/Services furnished under an Order shall conform to all specifications and requirements of such Order and shall be free from defects in materials and workmanship;
 - (2) To the extent the Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects;
 - (3) The Goods/Services shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party;
 - (4) The Goods shall be free from liens or encumbrances;
 - (5) The Goods shall not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and
 - (6) The Goods shall not contain any third-party software (including software that may be considered free software or open-source software) that: (a) may require any software be published, accessed or otherwise made available without the consent of Buyer; or (b) may require distribution, copying or modification of any software free of charge.
- (b) This warranty shall begin upon Buyer's final acceptance of freight on board at receiving location and shall survive inspection, test and payment for the Goods/Services. The warranty shall extend for a period of 12 months or such other period as set forth elsewhere in the Order, and Buyer shall give Seller notice after discovery of a defect or nonconformance in the Goods/Services. The warranty shall run to Buyer and Buyer's customers. In the event of any defect or nonconformance in the Goods/Services, Buyer may, at its option and at Seller's expense: (i) require prompt correction or replacement of the Goods/Services, or (ii) return the Goods for credit or refund. Any return to Seller of defective or non-conforming Goods/Services and redelivery to Buyer of corrected or replaced Goods/Services shall be at Seller's expense. Goods/Services required to be corrected or replaced shall be subject to the requirements of the Order in the same manner and to the same extent as Goods originally delivered under this Order, but only as to the corrected or replaced part or parts thereof. Even if the Parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the Goods/Services, or (ii) furnish any Goods or parts and installation instructions required to successfully correct the defect or



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nonconformance. If the Parties later determine that Seller did not breach this warranty, the Parties shall equitably adjust the purchase price.

13. OWNERSHIP AND INVENTIONS

To the extent that Seller prepares or provides any Goods/Services in any state of completion under an Order, Seller hereby assigns to Buyer all rights, title and interest (including, but not limited to, all IP rights) that Seller may have in and to such Goods/Services. Such Goods/Services shall be considered to be "works made for hire" as defined in the United States Copyright Act of 1976 (the "Act"). Further, if Seller, by amendment to the Act, by adjudication, or otherwise is held or deemed to be the owner of any rights of copyright in and to any Goods/Services, then Seller hereby irrevocably assigns to Buyer all of such rights, title and interest, and agrees to execute all documents necessary to confirm the letter and intent of this provision and Buyer's sole ownership rights. Furthermore, Seller agrees to provide all other assistance reasonably requested by Buyer in the establishment, preservation and enforcement of Buyer's copyright, patent, trade secret, and other proprietary interests in the Goods/Services such as by executing documents, testifying, and all similar activity, such assistance to be provided at Buyer's expense but without any additional compensation to Seller. Seller shall, at the expense of Buyer, assist Buyer or its nominees to register copyrights or trademarks and obtain patents for the Goods/Services in any countries throughout the world. Seller hereby irrevocably appoints Buyer, and its duly authorized officers and agents, as Seller's agent and attorney-in-fact to act for and on behalf of Seller in filing all patent applications, applications for copyright or trademark protection and registration amendments, renewals, and all other appropriate documents in any way related to the Deliverables. "Intellectual Property" or "IP" shall mean any proprietary rights, title and interest in patents, patent applications, extensions, supplementary protection certificates, design rights, data rights, copyrights, trade secrets, trademarks, service marks, trade names, trade dress, know-how, business processes, technology and all other intellectual property rights, derivatives thereof, and any forms of protection of a similar nature anywhere in the world. The term "Intellectual Property" or "IP" may also be used herein to refer to the embodiments (e.g., computer software or data) that are protected by the foregoing IP rights. For any information or data that falls outside the Goods/Services yet provided by Seller to Buyer pursuant to an Order ("Work Data"), Seller agrees to grant and does hereby grant Buyer a non-exclusive, worldwide, perpetual, irrevocable, sublicensable, royalty-free, freely transferable right and license to use, copy, modify, create derivative works of, delete, transmit, publish, display, perform, translate, and distribute the Work Data without any obligation, restriction, or consideration to Seller. Seller agrees that it has no right to seek any royalty payments from Buyer or its clients in connection with any Goods/Services delivered under an applicable Order.

14. TRADE CONTROL COMPLIANCE

The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Order, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").

15. CONFLICT MINERALS

Seller acknowledges and shall comply with Section 1502 of the United States Dodd-Frank Wall Street



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Reform and Consumer Protection Act (“the Dodd-Frank Act”), which includes requirements related to the use of tin, tantalum, tungsten, and gold (“Conflict Minerals”). Seller shall not source product containing conflict minerals originating in the Republic of Congo and the adjoining countries. At Buyers request, Seller shall provide written certification indicating the origin of the product contents and that the product complies with Section 1502 of The United States Dodd-Frank Act.

16. FLOW DOWN CLAUSES FROM U.S. GOVERNMENT PRIME CONTRACT:

As per the face of the Order and/or Appendix thereto.

17. DISPUTES

Any dispute arising under or related to an Order must first be attempted to be settled through good-faith negotiations between Management level staff members of the parties. If such talks fail, then a party may choose to pursue such dispute through an applicable local, State, or Federal court.

18. APPLICABLE LAW and NON-WAIVER OF RIGHTS

Any disputes arising under or relating to an Order shall be governed by laws of the State of California, without regard to its “conflict of laws” provisions, and shall be resolved in a mutually agreed upon location, or in a court of competent jurisdiction. Any failures or delays of Buyer in insisting upon or enforcing any rights it may have shall not constitute a waiver of rights or remedies.

