



TERMS & CONDITIONS OF PURCHASE

All purchases by Buyer are subject to the following terms and conditions (“Conditions”) and those on the face of any Order. In event of a conflict, the terms on the face of an Order shall have precedence over the provisions in these general Terms and Conditions of Purchase.

1. Definitions. The following definitions apply unless otherwise specifically stated.

“Buyer” – Intervala, LLC

“Seller” – the legal entity which contracts with the Buyer

“Order” – a purchase order or the purchase order schedule releases issued by Buyer or any other contract signed by Buyer and Seller for the purchase by Buyer and sale by Seller of goods or services, including changes thereto.

2. Acceptance. The Seller’s acknowledgment of an Order, commencement of work on the goods ordered or shipment of such goods, whichever occurs first, shall be deemed Seller’s acceptance of the Order. Any acceptance of the Order is limited to acceptance of the express terms of the Order and these Conditions. Any proposal for additional or different terms or any attempt by Seller in Seller’s acceptance to vary in any degree any of the terms of the Order or these Conditions is hereby objected to and rejected and shall be null and void, but such additional terms shall not operate as a rejection of the Order unless such variances are in the terms of the description, quantity, price, or delivery schedule of the goods. Instead, any such additional terms shall be deemed a material alteration thereof, and the Order shall be deemed accepted by the Seller without said additional or different terms. However, if there is an irreconcilable conflict, the following order of precedence applies: (a) the terms on the face of an Order, then (b) any Supply Agreement, including any supplemental terms included or incorporated by reference in the Supply Agreement, and then (c) these Conditions.

3. Prices. The Buyer shall not be required to pay for the goods at prices higher than those specified in the Order. Unless otherwise indicated on the face of the Order, the prices specified in the Order include all taxes, duties, fees and assessments by any governmental authority. No charge by Seller for extras or for transportation, storage, drayage, insurance, boxing, packing, or carting will be allowed unless specified in the Order or agreed to by the Buyer in writing. The Seller warrants that the prices for the goods sold to the Buyer under the Order are not less favorable than those currently extended to any other customer for comparable or like goods in equal or lesser quantities. In the event Seller reduces its price for such goods during the term of the Order, Seller agrees to reduce the prices under any Order accordingly.

4. Delivery. The terms of delivery are as stated in the Order. Time is of the essence and the obligation of Seller to meet the delivery dates, specifications and quantities set forth in the Order is of the essence. Deliveries are to be made both in quantities and at times specified in the Order or if not, such quantities and times are as specified pursuant to Buyer’s written instruction. Shipments in greater or lesser quantities than ordered may be returned at Seller’s expense unless written authorization is issued by Buyer. If Seller’s deliveries fail to meet schedule, Buyer, without limiting its other rights or remedies, may either direct expedited routing or charge excess cost incurred thereby to Seller or cancel all or part of the Order. Goods which are delivered in advance of schedule are delivered at the risk of Seller and may, at Buyer’s option, be returned at Seller’s expense for proper delivery and/or have payment therefore withheld by Buyer until the date that the goods are actually scheduled for delivery.

5. Invoices and Payment. Upon delivery of the goods or the performance of services ordered, Seller shall issue an invoice for each such Order containing such information as the Buyer may reasonably request. Invoices shall be paid by the Buyer, net sixty (60) days from the date of invoice receipt, on its next regularly scheduled accounts payable payment date following such net terms.

6. Risk of Loss. The Seller shall bear all risk of loss of all goods until such goods are unloaded at Buyer’s facility, unless specifically indicated to the contrary in the Order.

7. Modification of Order. No change in terms of the Order shall be binding upon Buyer unless in writing and signed by Buyer’s authorized purchasing agent. Buyer reserves the right to change the Order at any time by submitting a written change Order or a new Order to Seller. If any such change affects the Seller’s cost or time of performance, Seller must submit a written claim for an equitable adjustment within ten (10) days after receipt of notification of change. Seller shall continue its performance under the Order while the parties negotiate an equitable adjustment.

8. Inspection. Payment for the goods and services delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and services and to reject any or all of said goods and services which are in Buyer’s judgment defective. Buyer and/or its customers also reserve the right to verify and inspect work-in-process at Seller’s facility during Seller’s normal working hours. Goods rejected and goods supplied in excess of quantities called for in the Order may be returned to the Seller at Seller’s expense. Buyer may charge the Seller all expenses of unpacking, inspecting, repacking and reshipping such Goods. In the event Buyer receives defective or non-conforming goods or services, without limiting Buyer’s remedies, if directed by Buyer, Seller shall provide replacement goods or services on an expedited basis at Seller’s expense. Delivery of replacement goods shall be accompanied by a written notice specifying that such goods are replacements. If Supplier fails to deliver replacements promptly, Buyer may correct any defective or nonconforming goods or services at Seller’s expense, replace them with goods or services from another supplier and charge the Seller the cost thereof and any incidental costs.

9. Warranties. Whether or not Seller is a merchant of goods and services provided by it, Seller warrants that all goods and services provided by it shall:

- a. Be of good quality and workmanship and free from defects, latent or patent.
- b. Conform to all specifications, drawings and descriptions, furnished, specified or adopted by Buyer or its customers.
- c. Be merchantable, suitable and sufficient for their intended purpose.
- d. Be free of any claim from any third party.
- e. Comply with all applicable laws.
- f. Be free and clear of any and all liens, restrictions, reservations, security interest or encumbrances.
- g. Not infringe any patent, published patent application, or other intellectual property rights of any third party existing as of the date of delivery, and not utilize or misappropriate third party trade secret information.

Services shall be performed in accordance with the highest standards in the industry. The warranty period shall be for a period of five (5) years from the date of delivery to the end user or such longer period of time as may have been provided by Buyer to its customer or the date on which any longer or broader government requirement covering the goods ends. None of the remedies available to Buyer for the breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed upon by Buyer in a separate agreement specifically designating such limitation and signed by an authorized representative of Buyer. Buyer's inspection and/or acceptance of and payment for goods and services shall not constitute a waiver by it of any warranties. Buyer's approval of any sample or acceptance of any goods shall not relieve Seller from responsibility to deliver goods and to perform service conforming to specifications, drawings and descriptions.

10. Confidentiality. All information relating to the Buyer and all information disclosed by the Buyer to Seller shall be considered "Confidential Information" unless the Seller can prove by written documentation that such information (i) is or becomes part of the public domain through no act, omission or fault of the Seller, or (ii) is disclosed to the Seller after receipt thereof from the Buyer by a person other than the Buyer, the Buyer's customers or any of their affiliates, that has the right to disclose such information to the Seller without restriction. The Seller shall hold all Confidential Information in confidence, shall not disclose the Confidential Information to any other person, shall not use the Confidential Information for its own benefit or the benefit of anyone except the Buyer, and shall not use the Confidential Information for the purpose of developing, improving, marketing or commercializing a product or method for anyone except the Buyer. The Seller agrees not to copy or otherwise reproduce any Confidential Information without the Buyer's prior written consent. All Confidential Information and all reproductions, copies and embodiments thereof, in whole or in part, shall be the sole property of the Buyer. Nothing in this Agreement shall be deemed, by implication or otherwise, to convey to the Seller any rights under any patents, patent applications, copyrights, trademarks, trade secrets, inventions or any other intellectual property owned by the Buyer, and the Buyer makes no representation or warranty as to the accuracy or completeness of any Confidential Information. If the Parties have signed a separate Confidentiality Agreement, the provisions of such Confidentiality Agreement replace entirely this Section 10.

11. Rights In Intellectual Property. If the Order provides for Seller to perform any design, engineering, analytical or similar work for Buyer or provides for the delivery of any software, firmware, copyrightable materials or derivative works thereof, all such work and deliverables shall constitute "works made for hire" under the Copyright Act, and all right, title and interest that Seller has in and to any patentable invention, know-how and trade secrets, copyrightable materials and derivative works thereof that Seller shall conceive, originate or reduce to practice, either individually or jointly with others, in connection with its performance of an Order are hereby assigned to Buyer and shall be the sole and exclusive property of Buyer. Seller shall promptly execute any documents and perform any other tasks required by Buyer that are reasonably necessary to perfect Buyer's ownership of any intellectual property rights therein. To the extent that any pre-existing intellectual property rights of Seller are contained in the goods or services delivered by Seller, Seller hereby grants to Buyer an irrevocable, worldwide, unlimited, royalty-free license to use, publish, reproduce, display, distribute copies of, prepare derivative works based upon, assign, transfer, and sublicense through multiple levels of sublicenses such preexisting intellectual property rights and derivative works thereof. Except for such pre-existing intellectual property rights Seller has no right or license to use, publish, reproduce, prepare derivative works based upon, distribute, perform, or display any goods or services prepared for Buyer under any Order. Seller agrees not to assert any claim, including, without limitation, breach of confidentiality or misappropriation of trade secrets, against Buyer, its customers, its affiliates, or each of their respective suppliers with respect to any technical information that Seller disclosed or may disclose in connection with the goods or services provided by Seller to Buyer.

12. Indemnification and Insurance. Seller shall defend, indemnify and hold Buyer harmless from all causes of action, damages, liabilities, claims, losses and expenses (including attorneys' fees) arising out of or resulting in any way from: (i) any defect in the goods or services purchased hereunder; (ii) any act or omission of Seller, its agents, employees or subcontractors; (iii) any claim that the manufacture, sale, or use of the goods or services infringes the intellectual property rights of any third party. Seller shall maintain such public liability insurance, including products liability, completed operations, contractors liability, automobile liability insurance (including non-owned automobile liability) and worker's compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including attorneys' fees), provided that all such liability insurance policies shall be in an amount of not less than \$5,000,000. Seller agrees to submit certificate of insurance, evidencing its insurance coverage when requested by Buyer.

13. Relationship of the Parties. The relationship of Seller and Buyer is that of independent contracting parties. Nothing in these Conditions or any Order creates any form of joint venture, partnership, principal-agent, or employer-employee relationship between Seller and Buyer. Seller has no authority to assume or create any obligation on behalf of or in the name of Buyer.

14. Compliance With Law. Seller warrants that the goods to be furnished and the services to be rendered under any Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local and international laws, orders, rules, ordinances, and regulations. Without limiting the foregoing, Seller warrants and certifies that the goods and the production of the goods and/or the performance of the services covered by the Order fully comply with (i) the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the United States Department of Labor relating thereto, (ii) all laws, orders, rules, ordinances and regulations relating to occupational safety and the protection of the environment, including, but limited to, those involving hazardous waste, hazardous materials, air and water pollution, and natural resources, and (iii) the Foreign Corrupt Practices Act and the Anti-Kickback Act of 1986 and the regulations relating thereto. Seller further warrants and certifies that it has not offered or given and will not offer or give to any employee, agent or representative of Buyer, or any of their family members, any gratuity, payment or kickback. Any breach of any warranty contained in this section shall be a material breach of each and every Order and contract between Buyer and Seller. Seller shall defend and indemnify Buyer against all damages, liabilities, claims, losses and expenses (including attorneys' fees) arising out of or resulting in any way from Seller's failure to comply with this section.

15. Export / Import Controls. 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 has complied and will comply with its obligations under export control laws and regulations, including, but not limited to, the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). Seller shall control the disclosure of and access to technical data, information and other items received under the 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 the Order shall be provided to any foreign subsidiary of Seller or any other foreign person, 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 defend and indemnify Buyer from any loss, damage, fine, penalty, or expense (including attorneys' fees) that Buyer may suffer as a result of Seller's failure to comply with this section.

16. Remedies; Remedies Cumulative. If the goods or services provided by Seller do not comply with the requirements of any applicable Order or the warranties contained in these Conditions, in addition to other remedies available in these Conditions, at law or in equity, Seller shall, at Buyer's election: (a) repair or replace such defective goods or services, or (b) credit or refund the price of such defective goods or services plus any incidental and consequential damages, including but not limited to inspection, test, transportation or customer charges incurred or paid by Buyer. If Seller delivers defective goods or services, Buyer shall also have the right to obtain cover goods or services from a third party, and to collect from Seller the difference between the cost of such cover goods or services and the Order price for the defective goods and services, and all incidental and consequential damages related thereto, including but not limited to costs or charges imposed on Buyer by its customers. Any return by Buyer of defective goods and services shall be at Seller's expense and risk of loss. Buyer's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law. Waiver of any breach by Buyer shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any goods or payment therefor by Buyer shall not waive any breach.

17. Governing Law; Jurisdiction. These Conditions, any Order, and all acts or omissions of the parties related to these Conditions or any Order shall be governed exclusively by the laws of the Commonwealth of Pennsylvania, without regard to its or any other jurisdiction's conflicts of laws principles that may cause the law of another jurisdiction to govern. The federal and state courts situated in Allegheny County, Pennsylvania shall have sole and exclusive jurisdiction over any dispute arising from these Conditions, any Order, or any act or omission of either party related to these Conditions or any Order, and each party hereby irrevocably consents and submits to the exclusive jurisdiction of these courts.

18. Buyer Furnished Property. Seller shall not use, reproduce, appropriate or disclose to anyone other than Buyer any material, samples, tooling, dies, drawings, designs, specifications, software, technical information and other property or data furnished by Buyer, nor shall Seller use the same to produce or manufacture articles other than those required hereunder without prior written authorization from Buyer. Title to such Buyer-furnished property shall be and remain with Buyer at all times. Buyer does not guarantee the accuracy of any tooling or the quality or suitability of any material supplied by it. Seller shall bear the risk of all losses, related to use of property furnished by Buyer, including without limitation personal injury (including death), damage to other goods or materials, or damage to or destruction of the property furnished by Buyer, and shall promptly replace or repair without expense to Buyer any property which is lost, damaged or destroyed, unless such loss, damage or destruction is solely, directly and proximately caused by Buyer's negligence. All Buyer-furnished property, together with spoiled and surplus materials shall be returned to Buyer at termination or completion of the Order unless Buyer shall direct otherwise in writing. Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies or services by Seller for use in the performance of Buyer's Order, Seller shall insert the substance of this provision in its subcontracts.

19. Delay. Time is of the essence in performing the Order. Should Seller experience or anticipate any delay in performing the Order, Seller shall immediately notify Buyer of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgement by Buyer shall constitute a waiver of the Order's delivery schedule. The delivery schedule shall not be modified unless the parties agree in writing.

20. Specifications. Unless otherwise directed in the Order, Seller shall manufacture the goods in accordance with the current specifications, drawings and designs for the goods. Seller is responsible for verifying that the Order's specifications, drawings and designs are the current revisions. If Seller determines that any of the specifications, drawings or designs contain an error or are not the most current revision, Seller shall so notify Buyer immediately in writing.

21. Setoff. Buyer may set off any amount due to Seller, whether or not under the Order, against any amount owed by Seller to Buyer.

22. Assignment. Neither the Order, any other agreement between the parties, nor any interest therein may be assigned by Seller without the prior written consent of Buyer. If Buyer consents to any such assignment, (i) payment to an assignee of any such claim shall be subject to set off or recoupment for any present or future claim or claims which Buyer may have against Seller except to the extent that any such claims are expressly waived in writing by Buyer, and (ii) Buyer reserves the right to make direct settlements or adjustments in price with Seller notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee. As used herein, any merger, consolidation or other combination involving Seller, any sale of more than 25% of the outstanding voting securities of Seller and any other change in control of Seller, whether in one or a series of transactions shall be considered an "assignment" subject to this section.

23. Termination.

- a. If either party is in material default of any of its obligations under the Order and such default is not cured within fifteen (15) days after written notice thereof by the party not in default, then such non-defaulting party may terminate this Agreement and/or any Orders, in whole or in part, provided, however, that in the event of Seller's failure to meet the delivery schedule or quality requirements of Buyer, Seller shall be given the opportunity to cure a default only once and thereafter Buyer may terminate any Order, in whole or in part, immediately by written notice to Buyer. In the event that the Buyer disputes the basis for the Seller's termination, the Seller shall continue its performance under this Agreement and any Orders until the dispute is finally resolved.
- b. The Buyer may, at any time, terminate any Order for convenience and without cause, in whole or in part, upon written notice to Seller. In such event, Seller shall be entitled to reasonable termination charges equal to (i) the portion of the Order price reflecting the services performed or goods delivered prior to termination, plus (ii) Seller's actual direct costs (excluding overhead, SG&A and similar allocated costs) resulting from termination, minus (iii) the reuse or resale value of the work terminated. In no event shall the termination charges be greater than the unit price on the order. Seller shall submit any claim for termination costs in writing within thirty (30) days of receipt of the notice together with documentation to substantiate such costs satisfactory to the Buyer. Notwithstanding the foregoing, no termination charges shall apply if the goods are not custom goods (i.e. goods unique to the Buyer) specially manufactured to the Buyer's specifications pursuant to an Order, and notice of termination is provided to the Seller at least thirty (30) days prior to the required delivery date. The foregoing termination charges state the entire liability of the Buyer for termination for convenience by the Buyer of any Agreement and/or Order.
- c. In the event of termination of an Order, the terms hereof shall continue to apply to any Orders to the extent performed prior to the effective date of termination and shall continue to apply to any Orders to the extent such Orders have not been terminated.

24. Release of Information. Seller shall not advertise, publish or otherwise release any information relating to the Order, including the fact that Buyer has issued the Order, without Buyer's prior written permission.

25. Nonwaiver. No waiver of any provision or failure to perform any provision of the Order shall be effective unless consented to by Buyer in writing nor shall any such waiver constitute a waiver of any other provision or failure to perform.

26. Severability. If any provision of the Order, or part thereof, shall be invalid or unenforceable, such provision or part shall be deemed severed and the remainder hereof shall be given full force and effect.

27. Entire Agreement. Except when issued under, or to carry out, a written contract between the parties, the Order constitutes the entire agreement of sale and purchase of the goods specified in the Order.

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