

NTS Subcontract Terms and Conditions for Procurement of Goods

1. SCOPE

These Terms and Conditions govern the procurement and delivery of goods by Seller to Buyer for use in fulfillment of Buyer's obligations under its prime contract with the Department of Defense (DoD). The goods shall comply with the specifications, drawings, standards, and requirements stated in the Purchase Order and any incorporated documents.

2. ACCEPTANCE

Seller's acceptance of this Purchase Order means that Seller is contractually obliged to perform in accordance with the Terms and Conditions of this Purchase Order. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected unless Buyer agrees to such changes in writing.

3. PRICING

By accepting this Purchase Order, Seller warrants to Buyer that the prices set forth in this Purchase Order do not exceed those charged by Seller to any other customers purchasing the same or similar items or services in like or smaller quantities, under similar conditions of purchase. Prices are firm-fixed and inclusive of all costs unless otherwise agreed in writing.

4. TAXES

Except as may be otherwise provided in this Purchase Order, the prices shall include all applicable federal, state, or local taxes in effect on the Purchase Order date. Taxes which are invoiced to Buyer shall be stated separately in Seller's invoices. Tax exemption certificates submitted by Buyer shall be accepted by Seller.

5. PAYMENT/INVOICES

Payment terms shall be NET 45 days unless otherwise stated on the face of this Purchase Order. To ensure expeditious payment, the Purchase Order number must appear on Seller's invoice. Seller's invoice must be submitted to Buyer's billing address provided on the face of this Purchase Order, unless otherwise instructed elsewhere within this Purchase Order. Seller shall submit its final invoice within forty-five (45) days of delivery or order completion. In no event will Buyer accept an invoice beyond forty-five (45) days from the completion of the order unless otherwise agreed to in writing. Failure to observe this time

limitation shall constitute a waiver of all claims for payment of the invoice.

6. PACKING, MARKING AND SHIPPING

Seller shall pack, mark, and ship all goods in accordance with the requirements of this Purchase Order, applicable transportation regulations and good commercial practice. No separate or additional charges shall be payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage, or storage unless expressly permitted by this Purchase Order.

7. DELIVERY

Delivery shall be strictly in accordance with the schedule set forth in this Purchase Order. Delays in shipment shall be reported immediately by the Seller to the Buyer. Buyer reserves the right to cancel this Purchase Order in whole or in part if Seller fails to make deliveries in accordance with the terms of this Purchase Order. Unless otherwise specified, delivery shall be Free On Board destination to the location stated in the Purchase Order. Title and risk of loss shall pass to the Buyer at the FOB point, provided however, that the risk of loss shall remain with Seller as to goods which are not accepted by Buyer, or which are rejected by Buyer.

8. TITLE TO SPECIFICATIONS & PROPERTY

Buyer claims and holds title to all tooling, material, artwork, drawings and specifications furnished to the Seller for use in connection with this Purchase Order unless otherwise specified in the Purchase Order. Seller shall not disclose such specifications and property to any person, firm, or corporation other than Buyer or Seller's employees. The Seller shall, upon Buyer's request, promptly return all Specifications and Property to the Buyer and subject to disposition as the Buyer may direct. If this Purchase Order is issued under a Federal Government prime contract, nothing in the foregoing limits the Seller from using information in which the Government has an interest in Seller's direct contracts with the Government.

9. OVERSHIPMENTS/OVERWORK

Buyer will be liable for payment only for quantities of materials and services specified in this Purchase Order. Over shipments will be held at Seller's risk and expense for a reasonable time, until return shipping instructions are received from Seller. Shipping charges for such returns shall be at Seller's expense. Buyer shall have no obligation to pay for Seller's performance of any services more than those specified in this Purchase Order.

10. REPRODUCTION RIGHTS

Buyer does not grant Seller (a) any reproduction rights to the articles ordered or (b) any right to use designs, drawings or other information belonging to or supplied by the Buyer in the manufacture or design of articles or materials for anyone other than the Buyer. If this Purchase Order is issued under a Federal Government prime contract, nothing in the foregoing limits the Seller from using information in which the Government has an interest in Seller's direct contracts with the Government.

11. DEFECTS/NON-CONFORMANCE

If any of the materials or services are defective or otherwise not in conformity with the requirements of this Purchase Order, Buyer shall have the right to either reject them or to require correction at Seller's expense. Buyer may return defective goods to Seller at Seller's risk and expense, including shipping charges.

12. WARRANTY

Unless otherwise specifically stated in the Purchase Order, the Seller warrants that all materials or services delivered hereunder conform strictly to the design, specifications, drawings, samples, or other descriptions referenced in this Purchase Order, and that such deliverables will be free from defects in material and workmanship. Warranty shall remain in effect for a period of one (1) year from the date of delivery or for the period of Seller's standard warranty, whichever is greater, and conform strictly to the published specifications and the specifications listed on the Purchase Order or furnished pursuant thereto. This warranty shall survive any inspection, delivery, acceptance of, or payment by NTS for the Products or Services. Any attempt by Seller to limit, disclaim, or restrict these warranties or any remedies of Buyer will be null, void and ineffective without Buyer's written consent.

13. INDEMNIFICATION

Seller shall indemnify, defend, and hold harmless Buyer, its officers, agents, and employees, and customers from any claims, liabilities, or damages arising from: defective or non-conforming goods; seller's breach of contract or applicable law; or bodily injury, property damage, or intellectual property infringement. Seller shall pay or reimburse Buyer hereunder for all costs and expenses, as incurred by Buyer or such other party in connection with any such claim, demand, litigation, proceeding, loss or damage. Seller shall indemnify, defend, and hold harmless

Buyer, its officers, agents, and employees, and customers from any claims, liabilities, or damages arising from all expenses, liabilities or other losses arising from or caused by any actual or claimed infringement of patents, trademarks, or copyrights, and to defend any suits based thereon, with respect to any materials or services furnished hereunder by the Seller, except where the claimed infringement is caused by the equipment, materials designs or drawings furnished to Seller hereunder by Buyer.

14. CHANGES

Buyer's contractual representative may authorize changes, in writing, to the delivery schedules, drawings, quantities, designs and specifications. Seller is not authorized to follow any other changes requested orally or by any other employee of Buyer, and Buyer shall not be liable to Seller for any additional costs incurred if Seller does so. If any properly requested change affects the cost or delivery schedules of this Purchase Order, an equitable adjustment shall be made, provided Seller notifies Buyer, in writing, and before proceeding with the change, that the requested change will affect the cost or delivery schedule, and makes a written claim for an equitable adjustment within 15 days from the date of Buyer's written notification.

15. PUBLICITY

Seller shall not, without first obtaining written consent of Buyer, in any manner, advertise or publish the fact that Seller has supplied or contracted to supply the Buyer with the materials or services mentioned herein.

16. ASSIGNMENT

Seller shall not delegate any duties or assign any rights or claims under this Purchase Order without the prior written consent of Buyer.

17. SETOFF

All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other transaction with Seller.

18. TERMINATION

Buyer may terminate this Purchase Order for default, in whole or in part at any time by written notice stating the extent and effective date of such termination. In the event of such a termination, Buyer shall be liable to pay Seller only for acceptable goods delivered or services performed before the effective date of termination.

ORDER OF PRECEDENCE

In the event of an inconsistency between any of the provisions and documents of this Subcontract, the inconsistency shall be resolved by giving precedence to the provisions of the Subcontract in the following order:

- (i) Purchase Orders issued and accepted by Seller
- (ii) Subcontract Amendments accepted by Seller
- (iii) The Statement of Work/Technical Specifications/PWS found in Attachment J.1
- (iv) The Special Contract Requirements in Section H
- (v) Contract Clauses in Section I
- (vi) Other documents, exhibits, and attachments;
- (vii) All other terms and conditions

19. BUYER'S REMEDIES

All rights and remedies of Buyer set out in this Purchase Order are cumulative and in addition to any remedies provided by law or equity.

20. WAIVER

The failure of the Buyer to enforce at any time any of the provisions hereof shall neither be construed to be a waiver of such provisions nor of the right of the Buyer thereafter to enforce each such provision.

21. COMPLIANCES WITH LAWS

Seller shall comply with all applicable Federal, State, and municipal laws, ordinances, rules, and regulations. Seller shall comply with any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in any Purchase Order.

22. EXPORT COMPLIANCE

Seller shall comply with all applicable U.S. export control laws and regulations, to include the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Arms Export Control Act, 22 U.S.C. 2751-2794; and the Export Administration Regulations, 15 C.F.R. 730-774. Seller shall notify Buyer if any Product or Service on the Purchase Order is restricted by export control laws or regulations. Seller shall provide the classification for Products and Services on request by Buyer and notify Buyer if the classification changes before shipment of any Product or performance of any Service. If Seller is engaged in exporting, manufacturing, or brokering defense articles or furnishing defense services, Seller represents and warrants to Buyer that Seller is and will continue to be registered with the Directorate of Defense Trade Controls (DDTC), and it maintains an effective export compliance program. Seller shall provide a copy of such DDTC registration on request by

the Buyer Procurement Rep. Seller shall notify Buyer immediately if its export privileges are denied, suspended, or revoked in whole or in part by any U.S. government entity. In accordance with ITAR Section 130, Seller shall notify the Buyer Procurement Rep, at the time of acceptance of the Purchase Order, of any fees, commissions or political contributions that have been paid, or offered or agreed to be made in relation to the Purchase Order pursuant to Section 130.12 of the ITAR if applicable. Seller represents and warrants to Buyer that Seller and its directors, officers, and majority equity owners are not listed on any excluded or denied party lists maintained by the U.S. Government. Seller shall notify Buyer immediately if any such party becomes listed on any such lists.

23. DISPUTES

Irrespective of the place of performance, this Purchase Order will be construed and interpreted according to the laws of the State of Florida, without regard to its conflict of law's provisions. All disputes arising out of or related to this Purchase Order will be subject to the exclusive jurisdiction and venue of the Florida State and Federal courts and the parties hereby consent to such jurisdiction and venue. The parties hereby waive trial by jury with respect to any dispute relating to this agreement. In the event of any litigation arising under or related to this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in such litigation from the non-prevailing party. If this Purchase Order is issued under a Federal Government prime contract, the Seller shall have no right to pursue a claim directly against the Government.

24. INSURANCE

If performing services to Buyer on Buyer's site, Seller will maintain Comprehensive General Liability (including Contractual Liability coverage ensuring the liabilities assumed in these Terms), Automobile Liability and Employers' Liability insurance with limits as reasonably required by Purchaser, as well as appropriate Workers' Compensation insurance as will protect Seller from all claims under any applicable workers' compensation and occupational disease acts. At Buyer's request, Seller will furnish to Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverage is in effect, with waiver of subrogation, naming Buyer as an additional insured, and containing a covenant that such coverage and will not be

canceled or materially changed until ten (10) days after prior written notice has been delivered to the Buyer.

INVALID TERMS

Each provision of this Purchase Order shall be held valid and enforceable to the fullest extent permitted by law. If any term, provision, covenant, and/or condition of this Purchase Order is held by a court or regulatory body of competent jurisdiction to be invalid, void, and/or unenforceable, the rest of the Purchase Order shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. In the event such determination prevents the accomplishment of the purpose of this Purchase Order, the invalid provision shall be restated to conform to applicable law and to reflect as nearly as possible the original intent of the Parties.

- DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting
- DFARS 252.225-7001, Buy American and Balance of Payments Program

Additional flow-downs may apply depending on the nature of the prime contract. Buyer will provide such clauses upon request.

25. CONFLICT OF INTEREST

Seller represents and warrants that its fulfillment of the obligations under the Purchase Order and all modifications thereto, and its performance as a supplier of Buyer, will not breach any agreement or other obligation that Seller may have to any third party, including, but not limited to prior buyers. Seller agrees that during its performance as a supplier of Buyer, Seller will not improperly use or disclose any proprietary information or trade secrets belonging to any non-Buyer person or business and that Seller will not bring onto Buyer's premises any unpublished document or proprietary information belonging to any such person or business unless consented to in writing by such person or business.

26. FLOW-DOWN REQUIREMENTS

If this Purchase Order bears a government contract number, Seller shall comply with all pertinent provisions and Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS), including mandatory flow-down clauses of said government contract and pertinent executive orders and directives to the extent that they apply to the subject matter of the Purchase Order and all such pertinent contract provisions, orders and directives are hereby incorporated by reference into this Purchase Order. A copy of the government contract's pertinent terms and conditions will be given to Seller on request.

The following clauses are incorporated by reference:

- FAR 52.203-13, Contractor Code of Business Ethics and Conduct:
- FAR 52.219-8, Utilization of Small Business Concerns
- FAR 52.222-26, Equal Opportunity

NexTech Solutions LLC