



# Federal Defense Industries, Inc.

## STANDARD TERMS AND CONDITIONS OF PURCHASE

### DEFINITIONS

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As used throughout this purchase order, the following terms shall have the meanings set forth below.

- "BUYER" means the party contracting with SELLER for Goods and/or services and identified as the purchasing entity on the face of this purchase order.
- "FAR" means the Federal Acquisition Regulation.
- "FAR Supplement" means authorized supplements to the FAR, including the DOD FAR Supplement (DFARS).
- "Goods" means the product(s) or material(s) supplied by SELLER under this purchase order, including without limitations all components, raw materials, and intermediate assemblies thereof.
- "Government" means the government of the United States of America or any department or agency thereof.
- "SELLER" means the party contracting to perform the work hereunder.
- "Subcontract", unless provided otherwise in this purchase order, means all contracts placed by the SELLER or lower-tier subcontractors for the specific purpose of performing any portion of the work under this purchase order, and includes but is not limited to purchase orders and changes, or modifications thereto.
- "DPAS" means the Defense Priorities and Allocation System Program used to prioritize national defense-related contracts/orders throughout the U.S. supply chain in order to support military and critical infrastructure requirements.



## **1. ACCEPTANCE/ACKNOWLEDGEMENT**

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This order is not binding upon BUYER until accepted by SELLER. Acceptance of all terms and conditions to this order shall take place when (a) BUYER receives this acknowledgement copy of this order properly executed by SELLER within three (3) days after the date appearing on the face hereof, or (b) SELLER delivers to BUYER the goods ordered within such period. ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS HEREOF BY MAKING ANY DELIVERY UNDER THIS PURCHASE ORDER. SUPPLIER THEREBY EXPRESSES ACCEPTANCE OF EACH AND EVERY TERM AND CONDITION SET FORTH HEREIN AND THE FAILURE TO ACKNOWLEDGE OR ANY ACKNOWLEDGEMENT OFFERING TERMS INCONSISTENT WITH THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER SHALL HAVE NO BINDING EFFECT WHATSOEVER ON BUYER OR THE TERMS AND CONDITIONS HEREOF.

A signed order acknowledgement must be sent to [orders@fdi.us.com](mailto:orders@fdi.us.com).

## **2. PRICE**

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SELLER agrees that (a) the per unit price or total price set forth on the face of this order is firm, not subject to increase, and includes all applicable taxes [if any, goods supplied under Federal Contracts are exempt from most taxes, including Federal Excise Tax (FET) for tires] on goods covered herein (b) the price as herein stated shall include all costs for marking, packaging, preservation, quality assurance, transporting and insuring the terms ordered to BUYER's dock, or the designated location and appearing on the PO face thereof.

## **3. EXTRA CHARGES**

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BUYER shall not be liable for extra charges of any kind including charges for design, test, inspection, packing, and cartage or insurance unless specifically ordered and agreed to by BUYER in writing in advance.

## **4. DELIVERY**

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Time is of the essence for this order. If delivery, of goods or services, is not completed within the time specified within the Purchase Order, BUYER reserves the right without liability in addition to its other rights and remedies to terminate this order by notice effective when received by SELLER as to stated goods not yet shipped or services not yet rendered. Early Shipments of complete line goods are normally approved. If early shipment is not approved, goods shipped to BUYER in advance of the schedule, as herein set forth, may in BUYER's sole discretion, be returned to the SELLER at SELLER's expense. Any provisions herein for delivery of goods by installment shall not be construed as rendering the obligation of the SELLER. Title and risks remain with SELLER until delivery.

SELLER shall give BUYER advance notice of shipment containing the BUYER's order number, description and quantity.

## **5. DELAY AND DEFAULT**

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In the event SELLER for any reason anticipates any difficulty in complying with the required delivery date or any of the other requirements of this purchase order, SELLER shall promptly notify BUYER in writing or by electronic mail system. In the event of a delivery delay, non-delivery or any other default by SELLER in meeting the requirements of this purchase order, BUYER may terminate this purchase order without further compensation to SELLER. If progress payments have been made under this purchase order, and the Purchase Order is terminated for default, BUYER shall have the rights of the U.S. Government set forth in FAR 52.232-16



Progress Payments, including paragraph (h), "Special Terms Regarding Default."

## **6. SELLER'S WARRANTY**

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By accepting this order SELLER warrants that the goods to be furnished under this order will be (i) in full compliance with approved manufacturer's or BUYER's specifications, drawings, blueprints, and data or SELLER's samples, if any; (ii) fit for the use intended by BUYER; (iii) free from any actual or claimed patent copyright or trademark infringement; (iv) shall be of good quality and free from defects in materials and workmanship; (v) SELLER warrants title to the goods. Such warranty shall begin from the date item(s) are shipped from Vendor facility and shall remain valid for one (1) year.

Any certifications, Certificates of Compliance (C of C), test results, MSDS or other such documents required per the BUYER's order must be forwarded to BUYER prior to or at actual time of shipment.

BUYER shall have the right to reject goods, materials and services because of SELLER's breach of warranty, delay in performance, or nonconformity of delivery, packaging, or performance and to revoke any acceptance if use of goods, materials, or services reveals defects not apparent upon receipt or inspection.

## **7. INVOICES & DOCUMENTATION**

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Each invoice issued as a result of this Purchase Order shall conform to the following:

- Shall be rendered separately for each delivery.
- Shall not cover more than one Purchase Order.
- Shall contain the Purchase Order number under which it is issued, the part numbers and identifying data.
- Shall be rendered to the proper Accounts Payable department as set forth on this Purchase Order.
- Each invoice payment term will be calculated from the date the invoice is received by the proper Accounts Payable department.

Vendor is required to provide clear and legible documentation in performance of its obligations under this purchase order.

## **8. MATERIAL TO BE FURNISHED**

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The condition of the material must be NEW, of current production, unless otherwise stated on the Purchase Order. SELLER may not assign BUYER's order without prior written consent of BUYER.

## **9. INSPECTION / ACCEPTANCE**

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Each and every item purchased hereunder is subject to BUYER's inspection and approval at the place designated by the BUYER. BUYER expressly reserves the right to inspect, test and/or reject and refuse acceptance of goods or services performed which do not conform in all respects to (a) any instructions contained herein, (b) BUYER's part numbers, specifications, drawings, blueprints, and data and (c) SELLER's warranties and each of them whether such warranties be expressed or implied. With respect to any goods which do not so conform, BUYER may in BUYER's sole discretion, hold such goods for SELLER's instructions at SELLER's risk upon notification to SELLER or return such goods to SELLER at SELLER's expense. Payment for any goods shall not be deemed an acceptance thereof. BUYER's to hold for disposition non-conforming products for a period not to exceed 30 days or as agreed by BUYER. At time of delivery of supplies or completion of services, SELLER



shall provide to BUYER a duly signed Certificate of Conformance (CoC) with each shipment of goods on the purchase order.

No partial shipments are allowed unless expressly authorized by BUYER.

#### **10. TITLE**

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Unless specified elsewhere in this Order, title to items furnished under this Order shall pass to BUYER upon acceptance, regardless of when or where BUYER takes physical possession.

#### **11. CHANGES**

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BUYER reserves the right upon written notice to SELLER at any time to change any one or more of the following: (a) specification, drawings, blueprints and data incorporated in this order where the goods to be purchased are to be specifically manufactured for the BUYER, (b) method of packaging, packing or method/mode of shipment and (c) place and/or time of delivery. If any such changes causes an increase or decrease in the cost of or the time required for the performance hereunder, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim for adjustment by the SELLER shall be deemed waived unless asserted in writing within thirty (30) days from the receipt by SELLER of the change. Nothing contained in this clause shall relieve SELLER from proceeding without delay in the performance of this order as changed.

#### **12. EXCUSABLE DELAYS**

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SELLER shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of SELLER and without its fault or negligence as represented in FAR 52.212-4(f) – Commercial Items. SELLER shall notify BUYER's representative in writing as soon as reasonably possible after the commencement of any excusable delay; however, no less than 14 days prior to Expected Ship Date (ESD).

#### **13. INDEMNIFICATION**

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SELLER shall indemnify and hold BUYER harmless from any claim, demand, libel, cause or action or damage for which BUYER might become liable arising from or in connection with SELLER's performance hereunder. In addition to any indemnification as provided hereunder, if by virtue of a patent infringement suit and injunction shall issue against BUYER which prohibits or limits the use of any goods purchased hereunder, SELLER at BUYER's request shall supply BUYER with non-infringing replacement goods of a similar kind and quality.

#### **14. BUYER'S PROPERTY**

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Unless otherwise agreed in writing, all tooling, equipment, or material of every description furnished to SELLER by BUYER or specifically paid for by BUYER and any replacement thereof, or any materials affixed thereto, shall remain in the property of BUYER. Such property, and whenever practical, each individual item thereof, shall be plainly marked by SELLER or otherwise adequately identified as "Property of Federal Defense Industries, Inc." and shall be safely stored separately and apart from SELLER's property. BUYER reserves the right, but not the obligation, to affix any tag, sticker or other such label that identifies tooling, equipment or materials as property of BUYER. SELLER shall not substitute any property for BUYER's property and shall not use such



property except in filling BUYER's orders. Such property while in SELLER's custody or control shall be kept insured by BUYER at BUYER's expense upon written notice to SELLER by BUYER, and SELLER must be notified 30 days prior to requested shipment, unless shorter notice is acceptable to SELLER. Such property shall be prepared for shipment and delivered in good condition, normal wear and tear excepted, to BUYER, F.O.B. SELLER's Plant.

#### **15. COMPLIANCE WITH LAW**

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Upon acceptance of this order, SELLER warrants and represents that it has and will continue during the performance hereunder to comply with all relevant provisions of Federal, State and local laws and regulations. Without limiting the generality of the foregoing, SELLER in accepting this order, represents that the goods to be furnished or the services to be rendered hereunder were or will be produced or performed in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and all valid and applicable regulations and orders of the Administration of the Wage and Hour Division issued under Section 14 thereof, SELLER also warrants and represents that every chemical substance delivered hereunder shall be on the list of chemical substances, or have been submitted for inclusion on such list, as compiled by the Administrator, Environmental Protection Agency, pursuant to the Toxic Substances Control Act.

#### **16. CONFIDENTIAL RELATIONSHIP**

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SELLER shall treat as confidential all specifications or drawings, blueprints and data supplied by BUYER. SELLER shall not disclose any information relating to this order to any third party not entitled to receive it.

#### **17. NON-PUBLICITY**

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Unless otherwise stated, this order is placed in support of a U.S. Government contract. Respecting the government's right to confidentiality, SELLER shall not, without the prior written consent of BUYER (a) make any news release, public announcement, denial or confirmation of this Purchase Order or this subject matter Nor (b) in any manner advertise or publish the fact that BUYER has placed this Order.

#### **18. TERMINATION**

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This Contract/Order is made pursuant to a U.S. Government contract. As such BUYER shall have the right to cancel this Order or any part thereof for its convenience at any time in accordance with FAR 52.249-2, Termination of convenience. As such, SELLER is entitled to such cost reimbursement as may be authorized under the details of this FAR.

#### **19. DISPUTE RESOLUTION**

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Notwithstanding any provision in this order to the contrary, in the event SELLER and BUYER are unable to resolve any dispute arising under this order and any suit or other judicial proceeding is instituted or had with reference hereto, the successful party in any such suit or other judicial proceedings shall be paid promptly by the other party an additional amount equal to the successful party's reasonable attorney's fees and costs incurred.



## **20. COUNTERFEIT DETECTION AND AVOIDANCE**

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Unless otherwise stated, this order is issued pursuant to a U.S. Government Contract. FDI participates in active Counterfeit Detection and Avoidance programs with the U.S. Government. FDI encourages all SELLER/Vendors to embrace the concepts of ensuring quality materials, and detecting and avoiding counterfeit materials.

In order to prevent current and subsequent acts of counterfeit materials/parts from entering the supply chain; during the performance of and for this Purchase Order the SELLER/Vendor is REQUIRED to manage materials provisioning and/or sub-tier supply in a manner which ensures suspected or actual Counterfeit materials are not introduced into the supply chain. SELLER/Vendor is REQUIRED to promptly report any detection of Counterfeit parts to FDI and Government Industry Data Exchange Program (GIDEP) and/or Industry reporting programs.

## **21. GENERAL**

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- (a) SELLER shall not assign this order nor delegate its performance hereunder without the written consent of BUYER. Performance to a SELLER's Subcontractor or Representative of SELLER not meeting the quality systems of theSELLER.
- (b) Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any or all other default(s).
- (c) SELLER shall not change this order nor ship non-conforming items without first obtaining the written consent of BUYER.
- (d) If at BUYER's request, any research and development is performed with respect to any of the items sold hereunder or in anticipation hereof which results in any patents, trademarks or copyrights, title hereto shall vest in BUYER.
- (e) SELLER shall notify the BUYER of changes in product and/or process, changes of suppliers, changes of manufacturing facility location and, where required, obtain organization, approval and flow down to the supply chain the applicable requirements including customer requirements.

## **22. QUALITY MANAGEMENT SYSTEM REQUIREMENTS**

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SELLER shall employ and maintain a Quality Assurance System, which assures that supplies furnished meet the requirements of this purchase order and the drawings and revisions of the parts to be supplied. BUYER reserves the right, with agreement of SELLER, to inspect, test, compare to specification drawings, etc. any production in process to ensure compliance with BUYER's order. SELLER's Quality Assurance System will statistically track pass/fail data, root cause, failure analysis, and continuous improvement. SELLER's quality system will maintain records suitable to support inside and outside audits.

## **23. RECORD RETENTION REQUIREMENTS**

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SELLER shall retain Purchase Orders, Designs, Drawing, Test Data and any documentation pertaining to the sale; for a minimum of 4 years.

#### **24. RIGHT OF ACCESS / AUDIT**

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SELLER to grant BUYER, and/or representatives of BUYER and BUYER's Customer, and Regulatory Authorities reasonable right of access to applicable areas, for any facilities including where work is subcontracted to third parties, at any level of the supply chain or SELLER's agent where product or services are produced or performed.

#### **25. APPLICABLE FAR CLAUSES**

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As indicated on the attached Purchase Order from BUYER, the following Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) regulations shall apply and SELLER shall comply with the clauses set forth below, as applicable, and any FARs cited as a flowdown requirement in the BUYER's Purchase Order. SELLER agrees to flow down FAR/DFARS clauses to all parts of its supply chain, as applicable.

Any clauses incorporated herein and in BUYER's Purchase Order by reference, will carry the same force and effect as if they were given in full text. Upon request, the BUYER will make the full text of applicable FAR clauses available to SELLER. All FAR clauses may be accessed electronically at <http://farsite.hill.af.mil> (Please ensure both the FAR clause # **AND** the clause date match when referencing the FARs below).

NOTE: Defense Priorities and Allocations System Program (DPAS) provisions may apply depending on contact type. Please reference the follow website for information on DPAS:

<https://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/defense-priorities-a-allocations-system-program-dpas>

#### **25.1 For purchase orders in support of a U.S. Army contract , apply the following (DPAS rating does not apply):**

- 52.209-6 Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015) (only acquisitions >\$35,000 AND non-COTS items)
- 52.222-26 Equal Opportunity (Apr 2015)
- 52.222-36 Affirmative Action for Workers with Disabilities (July 2014) (only acquisitions >\$15,000)
- 52.222-50 Combating Trafficking in Persons (March 2015)
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (only acquisitions >\$5,000)
- 52.225-1 Buy American – Supplies (May 2014) (only acquisitions >\$5,000)
- 52.225-13 Restriction on Certain Foreign Purchases (Jun 2008)
- 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)





- 52.244-6 Subcontracts for Commercial Items (Oct 2015)
- 52.247-4016 Heat Treatment and Marking of Wood Packing Materials (such as pallets and crates) (Dec 2014) (Full text available here: <http://www.fdi.us.com/fdi-supplier-forms>)
- 252.203-7002 Requirement to Inform Employees of Whistleblower Rights (Sep 2013)
- 252.204-7000 Disclosure of Information (Aug 2013)
- 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (Sep 2015)
- 252.204-7015 Disclosure of Information for Litigation Support (Feb 2014)
- 252.211-7003 Item Unique Identification and Valuation (Dec 2013) (only acquisitions >\$5,000)
- 252.223-7008 Prohibition of Hexavalent Chromium (Jun 2013)
- 252.225-7001 Buy American and Balance of Payments Program (Nov 2014)
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (Jun 2011)
- 252.225-7048 Export - Controlled Items (Jun 2013)
- 252.229-7011 Reporting of Foreign Taxes – U.S. Assistance Programs (Sep 2005) (>\$500)
- 252.244-7000 Subcontracts for Commercial Items (Jun 2013)
- 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (May 2014)

**25.2 For purchase orders in support of a U.S. Air Force contract (DPAS DO-C9 rated contracts), apply the following:**

- 52.203-6 Restrictions on sub-contractor sales to the government (Sep 2006) (only acquisitions >\$150,000)
- 52.203-7 Anti-Kickback Procedures (Oct 2010) (only acquisitions >\$150,000)
- 52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010) (only acquisitions >\$5,000,000)
- 52.203-16 Preventing Personal Conflicts of Interest (Dec 2011) (only acquisitions >\$150,000)
- 52.209-6 Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013) (only acquisitions >\$33,000 AND non-COTS items)
- 52.215-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (Jan 2014)
- 52.215-12 Subcontractor certified cost or pricing data. (Oct 2010) (only acquisitions >\$750,000)
- 52.215-19 Notification of ownership changes (Oct 1997) (only acquisitions >\$750,000)
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999) (only acquisitions >\$10,000)
- 52.222-26 Equal Opportunity (Mar 2007) (only acquisitions >\$10,000)
- 52.222-35 Equal Opportunity for Veterans (Sep 2010) (only acquisitions >\$100,000)
- 52.222-36 Affirmative action for workers with disabilities ( Oct 2010) (only acquisitions >\$15,000)
- 52.222-37 Employment Reports on Veterans (Sep 2010) (only acquisitions >\$100,000)
- 52.222-50 Combating Trafficking in Persons (Feb 2009)
- 52.225-13 Restrictions on certain foreign purchases (Jun 2008)
- 52.227-1 Authorization and Consent (Dec 2007)





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- 52.227-2 Notice and assistance regarding patent and copyright infringement (Dec 2007) (only acquisitions >\$150,000)
- 52.244-6 Subcontracts for Commercial Items (Dec 2013)
- 52.245-1 Government Property (Apr 2012)
- 252.203-7001 Prohibition on persons convicted of fraud or other defense-contract-related felonies (Dec 2008) (only acquisitions >\$150,000)
- 252.203-7002 Requirements to inform employees of whistleblower rights (Sep 2013)
- 252.204-7000 Disclosure of Information (Aug 2013)
- 252.211-7003 Item Unique Identification and Valuation (Dec 2013) (only acquisitions >\$5,000)
- 252.225-7001 Buy American and Balance of Payments Program (Dec 2012)
- 252.225-7009 Restriction on acquisition of certain articles containing specialty metals (Jun 2013) (only acquisitions >\$150,000)
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (Jun 2011)
- 252.227-7013 Rights in technical data-noncommercial items (Feb 2014)
- 252.227-7014 Rights in noncommercial computer software and noncommercial computer software documentation (Feb 2014)
- 252.227-7015 Technical data-commercial items (Feb 2014)
- 252.227-7026 Deferred delivery of technical data or computer software (Apr 1988)
- 252.227-7027 Deferred ordering of technical data or computer software (Apr 1988)
- 252.244-7000 Subcontracts for Commercial Items (Jun 2013)
- 252.246-7003 Notification of potential safety issues (Jun 2013)
- 252.246-7007 Contractor Counterfeit Electronic Part Detection and avoidance System (Aug 2016)
- 252.247-7023 Transportation of supplies by sea (May 2002)

**25.3 For purchase orders in support of the Defense Logistics Agency (DLA) contracts or any other type of contract, the specific FAR/DFARS that are applicable will be flowed down to the SELLER with the Purchase Order, or in advance upon request.**

END