

MACOM™

PURCHASE ORDER TERMS & CONDITIONS

September 2016

1. Acceptance

Unless otherwise provided in a separate, signed purchase agreement between MACOM Technology Solutions ("MACOM") and the vendor (the "Seller") whose name appears on the face of this Purchase Order issued by MACOM (the "Order"), acceptance, acknowledgment or shipment of any part of this Order constitutes an agreement to all terms and conditions set forth or referenced herein and on the face hereof and on attachments hereto and such terms and conditions shall constitute the entire agreement between Seller and MACOM. This Order constitutes an offer by MACOM and expressly limits acceptance to the terms and conditions stated herein, and no agent or employee of MACOM is authorized to make any agreement or understanding in any way modifying the terms and conditions of this Order, nor shall any different or additional provisions that may appear in Seller's quotation, acknowledgment, invoice or in any other communication from Seller to MACOM be deemed accepted by or binding on MACOM, such provisions being rejected by MACOM and superseded by the terms and conditions stated herein, unless and until expressly assented to in writing with legal consideration by MACOM's authorized representative. MACOM's failure to expressly object to provisions contained in any communication from Seller shall not be deemed a waiver of the provisions hereof. Typographic and clerical errors and omissions by MACOM are subject to correction.

2. Price

Prices for the goods covered by the Order are stated in U.S. dollars unless otherwise stated on the Order. Seller agrees that the price(s) set forth on the face of the Order is (are) firm and is (are) not subject to increase by Seller for the duration of the Order. In accepting this Order, Seller warrants that the price(s) charged for the goods or services ordered herein are now, and will at the time of each shipment or performance rendered by Seller hereunder, be no less favorable to MACOM than the prices charged to other customers for the same or like goods and services in comparable quantities.

3. Taxes

Except where prohibited by law, MACOM and Seller agree that all customs duties, VAT, turnover taxes, sales tax, and other applicable taxes, social insurance contributions, or fees (those imposed on or measured by the services provided or goods delivered) are included in the prices provided by Seller, and shall not be billed to MACOM as separate items. Seller shall also be responsible for any and all payroll taxes for services performed in country by Seller's personnel. If VAT, sales tax, or other similar taxes are imposed by the country in which the services are performed, unless MACOM has provided an exemption certificate or a direct pay permit, Seller agrees to bill such taxes as separate line items on an invoice, in accordance with the applicable taxing jurisdiction's laws. Where VAT is applicable, Seller agrees to use its reasonable commercial efforts to ensure that its invoices to MACOM are issued in such a way that they meet the requirements for deduction of input VAT by MACOM.

4. Invoicing & Payment Terms

For each shipment of goods or services covered by this Order, Seller shall furnish MACOM with a commercial invoice containing, at a minimum, the following information: port of entry; name and address of Seller and MACOM entity purchasing the goods or services; name of shipper (if different from Seller); country of export; a detailed description of the goods and services (in the *English* language); quantities, sizes, weights and any other similar information that is reasonably pertinent; actual purchase price, including unit prices, extended totals and all other elements of the amount paid or payable by MACOM; the currency in which the sale was made; all charges, costs and expenses associated with the goods and services, including freight, insurance, commission, containerization and packing, unless the cost of packing, containerization and inland freight are already included in the invoice price; all rebates or discounts; and the country of origin (manufacture) of the goods and services. The value of any inputs furnished for the production of the goods and services (e.g., "assists") and chargeable to MACOM that is not included in the invoice price, must be reported on the invoice for the first shipment of the goods or services unless MACOM directs otherwise in writing. Payment Terms governing this Order shall be net 60 days after receipt of correct invoice or date of delivery, whichever is later, unless other payment terms are shown on the face of this Order in which case the payment terms noted there shall apply. Payment of an invoice shall not constitute acceptance of goods or services and shall be subject to adjustment for errors, shortages, defects in the goods or services, or other failure of Seller to meet the requirements of the Order.

5. Packaging and Shipment

Goods are subject to the shipping terms shown on the Order, shall be prepared and packed at no additional charge to MACOM in accordance with standard commercial practice so as to ensure their safe arrival undamaged at the designated destination and will be shipped at the lowest transportation rates. Each shipment shall be accompanied by an itemized packing slip that includes MACOM's part number, purchase order number, Seller part number, the quantity shipped and industry standard bar coding if required by MACOM. Additionally, Seller shall mark all containers with necessary lifting, handling, and shipping information.

6. Delivery, Title and Risk of Loss

The parties agree that time is of the essence. Seller shall deliver the goods and services in strict accordance with the delivery dates, in the exact quantities and at the destination(s) specified on the face of this Order. Unless otherwise specifically provided on the face of this Order, the goods shall be delivered on a *Delivered Duty Paid (DDP)* basis, as defined in Incoterms 2010, to the destination designated by MACOM on the face of this Order. Freight charges invoiced to Buyer, whether by Seller or the carrier, will be charged back to and paid by Seller. If an *Ex Works* or *FCA* Incoterm is designated, MACOM will be responsible for freight charges to the destination designated on the face hereof. Any costs incurred by MACOM as a result of Seller's failure to comply with MACOM's routing instructions shall be borne by Seller. Notwithstanding any prior inspections, and irrespective of the Incoterm point named herein, Seller shall bear all risks of loss, damage and destruction of the goods until final acceptance by MACOM at the designated ship-to destination. Further, Seller shall bear the same risks with respect to any goods rejected by MACOM or as to which MACOM has revoked its acceptance, from the time of such rejection or revocation. Title to and risk of loss of the goods shall pass to MACOM upon final acceptance. No partial or complete delivery shall be made hereunder prior to the delivery date(s) shown unless MACOM has given Seller its prior written consent to do so. MACOM will pay only for maximum quantities ordered. Overshipments will be held at Seller's risk and expense for a reasonable time while MACOM awaits return shipping instructions from Seller.

7. Remedies for Delay

If delivery is not completed as prescribed above, MACOM may, by written notice of default to Seller, without liability to MACOM and in addition to its other rights and remedies: (a) cancel the Order in whole or in part; (b) extend the time for delivery in which event Seller shall ship or otherwise furnish, by the most expeditious means, the goods or services not delivered on time, with Seller responsible for paying any extra costs incurred as a result; and (c) procure upon such terms as MACOM shall deem appropriate, goods or services similar to those so cancelled, in which case Seller shall continue performance of this Order to the extent not cancelled and shall be liable to MACOM for any excess costs for such similar goods or services and any expenses incurred in connection therewith.

8. Inspection

Seller shall maintain an inspection system acceptable to MACOM for all goods ordered hereunder, shall keep records applicable thereto and make the same available for inspection by MACOM or its representative. All goods ordered and all components thereof (including raw materials and constituent subcomponents) are subject to inspection and test by MACOM prior to acceptance, at all times (including the period of manufacture) and places (including Seller's premises), in which case Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspection and test by MACOM. Seller agrees, upon MACOM's written request, to provide access to applicable areas of all facilities involved in performance of the Order and to inspect all records related thereto. This access and inspection shall be provided for the purposes of verifying quality of goods or services and to perform assessments/audits of Seller's facilities and records to determine or verify Seller's capabilities and compliance with MACOM's quality management system requirements. In any event, all goods and services ordered hereunder are subject to final inspection and acceptance at MACOM's premises, notwithstanding any prior payment or prior inspection at source or elsewhere. Acceptance of any goods or services by MACOM shall not be deemed to alter or affect the obligations of Seller or MACOM's rights under Seller's warranties, nor shall such acceptance be deemed to waive any latent defects. Goods that are defective in workmanship or material or otherwise not in conformity with the requirements of the Order may be rejected and returned at Seller's expense or may be accepted at an appropriate reduction in price. MACOM may require Seller to promptly replace rejected

goods and services and, if Seller fails to do so, MACOM may replace them elsewhere and charge to Seller the additional cost, if any. At any time during the progress of the work, MACOM may reject any non-conforming services upon written notice to Seller of such non-conformity. Seller agrees to correct, at its expense, each error or defect leading to such rejection and resubmit the corrected work to MACOM within seven (7) business days, or other mutually agreed upon date, after receipt of notice from MACOM of such error or defect.

9. Warranty

(a) Seller warrants that all goods and services supplied hereunder (i) will conform strictly with applicable drawings, specifications, samples and other descriptions furnished hereunder, (ii) will be new, merchantable and free from defects in design, materials and workmanship and, if not of MACOM's design, be suitable for the purpose intended whether expressed or reasonably implied, and (iii) be free and clear of any lien or other adverse claim against title. The foregoing warranties are in addition to all other warranties, expressed or implied, shall survive any delivery, inspection, acceptance and payment and shall also run to MACOM's customers and the users of its products. (b) Unless otherwise indicated on the face of this Order, Seller's warranties shall be effective for a period of one (1) year from MACOM's receipt of the goods or services. (c) If any goods or services furnished hereunder do not meet the warranties specified herein, Buyer may, at its option: (i) require Seller to correct, at no cost to Buyer, any defective or nonconforming goods or services by repair or replacement; or (ii) return to Seller such defective or nonconforming goods at Seller's expense and recover from Seller the Order price thereof; or (iii) correct the defective or nonconforming goods or services itself and charge Seller with the cost of such correction. The foregoing remedies are in addition to all other remedies at law or in equity or under this Order and shall not be deemed to be exclusive.

10. Non-Disclosure of Confidential Information

Seller agrees that it will, at all times, hold in confidence for MACOM all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, technical requirements, forecasts and similar data, oral, written or otherwise, conveyed by MACOM to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall disclose the Information only to those within its organization having a need to know it for the purpose of providing the goods or services, and shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information of like significance, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of MACOM, reproduce any Information; nor disclose Information to any party; nor use Information for any purpose other than performance for the benefit of MACOM hereunder.

11. MACOM Property

(a) Unless otherwise agreed in writing, all tools, molds, dies, parts, supplies, jigs, fixtures, plans, drawings, specifications and all other equipment, materials and property that are furnished, whether by or for, paid for or charged against MACOM shall be deemed the property of MACOM (collectively, "MACOM Property"). Seller will ensure that, at all times, MACOM Property shall be and remain free and clear of any interest or claim on the part of Seller's creditors or other third parties. Seller waives any and all liens that it has or may acquire with respect to MACOM Property. Seller shall take all measures which MACOM deems appropriate to perfect or evidence MACOM's title to all MACOM Property, including without limitation executing and filing informational financing statements and other documents with respect thereto, and for such purpose, Seller hereby irrevocably appoints MACOM as Seller's attorney-in-fact to execute all such documents in Seller's name and on Seller's behalf. Seller shall clearly mark or otherwise adequately identify all MACOM Property as belonging to MACOM. Seller shall not transfer possession of any MACOM Property to any third party, or delegate or assign any of MACOM's obligations with respect thereto, unless otherwise specifically agreed by MACOM in writing. (b) While any MACOM Property remains in Seller's possession, Seller shall at its expense maintain the same in good operating condition and repair and in compliance with all warranties contained herein. Seller shall be responsible for and shall bear all risk of loss or damage to all MACOM Property while in Seller's care, custody, possession or control, and shall insure such risks with full replacement value fire and extended coverage insurance reasonably satisfactory to MACOM. Unless otherwise agreed by MACOM in writing, Seller will use all MACOM Property solely and exclusively to perform for MACOM's benefit hereunder and not for the benefit of any other party. (c) Seller, as a material part of the consideration hereunder, hereby assumes all risk of damage to property or injury to persons arising from its use of all MACOM Property. Seller shall

maintain such liability insurance with respect to its obligations under this Paragraph as MACOM may from time to time require. (d) MACOM shall have the right to recover immediate possession of all MACOM Property at any time, with or without cause, and without any additional charge or fee being assessed to MACOM by reason of such recovery. Upon MACOM's request, Seller shall deliver all MACOM Property to MACOM, FOB Seller's dock, in good condition and repair, normal wear and tear only excepted. Seller grants to MACOM the unconditional right to enter upon Seller's premises during normal business hours upon twenty-four (24) hours' notice to recover MACOM Property.

12. Patent License

Seller, as an integral part of the bargained-for consideration for this Order and without further cost to MACOM, hereby grants MACOM an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture, and cause to be manufactured and sold products embodying any and all inventions and discoveries made, conceived, or actually reduced to practice in connection with performance of this Order.

13. Changes

MACOM may, at any time, by written notice suspend performance hereunder, increase or decrease the ordered quantities, or make changes within the general scope of this Order in any one or more of the following: (i) the specifications, designs or drawings; (ii) method of shipment, packaging; or (iii) place or time of delivery. If any such changes cause an increase or decrease in the cost of or the time required for performance of this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Order shall be modified in writing accordingly. No claim by Seller for an adjustment shall be valid unless asserted within thirty (30) days of the receipt of any such notice, provided however that such period may be extended upon the written approval of MACOM. Nothing in this clause shall excuse Seller from proceeding with this Order as changed. Seller agrees that it will not make any changes in the processes, methods, or locations of manufacture during the term of this Order without MACOM's prior written consent. Seller further agrees that any contemplated changes in the process or method of manufacture will be submitted to MACOM with sufficient time to allow MACOM a reasonable opportunity to evaluate such changes.

14. Termination for Convenience

(a) MACOM may terminate this Order, for convenience, in whole or in part, at any time by written or electronic notice to Seller. Upon any such termination Seller shall, to the extent specified by MACOM, stop all work on this Order, and cause its suppliers or subcontractors to stop work. Charges for any such termination of this Order shall be limited to actual non-recoverable costs incurred by Seller which Seller can demonstrate were properly incurred prior to the date of termination. In no event will MACOM reimburse Seller for goods, inventory or services in excess of those required to meet MACOM's delivery schedule for binding forecasts. (b) Within thirty (30) days from such termination Seller may submit to MACOM its written claim for termination charges, in the form and with the certifications prescribed by MACOM. Failure to submit such claim within such time shall constitute a waiver of all claims and a release of all of MACOM's liability arising out of such termination. (c) MACOM shall pay Seller the amount due for goods and services delivered prior to termination and, in addition thereto, but without duplication, shall pay the following amounts: (i) the contract price for all goods and services completed in accordance with this Order and not previously paid for; (ii) the cost of unique work in process no more than necessary to meet delivery schedules hereunder; and (iii) the costs of paying claims to Seller's suppliers for work directly allocable to the goods or services terminated. There shall be no charges for terminating this Order with respect to standard goods for which there are alternate customers. MACOM shall not be responsible for any commitments made by Seller in advance of those necessary to comply with the schedules set forth in this Order. Payments made under this subparagraph shall not exceed the aggregate price specified in this Order, less payments otherwise made or to be made. Upon payment of Seller's claim, MACOM shall be entitled to all goods, materials and work in process. (d) IN NO EVENT SHALL SELLER BE ENTITLED TO NOR SHALL MACOM BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, COSTS OF PREPARING CLAIMS, COSTS OF TOOLING OR EQUIPMENT, OR ANY OTHER EXPENSES OR DAMAGES ARISING OUT OF THIS ORDER OR WITH RESPECT TO THE TERMINATED GOODS OR SERVICES.

15. Termination for Default

(a) MACOM may, by written or electronic notice, terminate this Order, in whole or in part, if Seller: (i) fails to make delivery of the goods or perform the services within the time specified herein; or (ii) fails to replace or correct defective goods or services in accordance with the provisions of those Sections hereof entitled

“Warranty” and “Inspection;” or (iii) fails to perform any of the other provisions of this Order or fails to make progress so as to endanger performance in accordance with its terms; or (iv) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors. (b) In the event of such termination, Seller shall transfer title and deliver to MACOM, to the extent directed by MACOM: (i) any completed goods and services, and (ii) such partially completed goods and services and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called “manufacturing material”) as Seller has produced or acquired for the performance of the Order. Prices for partially completed goods and manufacturing material shall be negotiated; however, such prices shall not exceed the Order price per type of goods and services.

16. Indemnification/Insurance

(a) Notwithstanding any other provision of this Order, Seller will defend, indemnify and hold harmless MACOM, its affiliates, directors, officers and employees from and against any and all claims, losses, costs, damages, and expenses, whether direct, indirect or consequential, including, but not limited to, liabilities, obligations, costs, expenses (including without limitation, interest, penalties and attorneys’ fees), fines, taxes, levies, assessments, demands, damages and judgments of any kind or nature, to the extent arising directly or indirectly out of or resulting from: (i) goods or services supplied or the performance of work by Seller hereunder; (ii) Seller’s negligence or willful misconduct; (iii) the breach by Seller of any provisions hereunder; (iv) a claim that the goods or services supplied by Seller infringe any patent, copyright, trademark, trade secret or other intellectual property interest of another; or (v) a claim of mechanic’s lien or other encumbrance made by a third party. (b) Seller, its subcontractors and lower-tier subcontractors shall carry and maintain insurance coverage satisfactory to MACOM to cover its obligations set forth in subparagraph (a) above. At a minimum, however, Seller and its subcontractors shall maintain coverage as follows: (i) Workers Compensation-Statutory Limit(s) for the jurisdiction(s) in which this purchase order is to be performed (or evidence of authority to self-insure); and (ii) Employer’s Liability-\$1,000,000; and (iii) Commercial General Liability (including Contractual Liability, Products/Completed Operations, Independent Contractors, Premises/Operations and Broad Form Property Damage)-\$1,000,000 Each Occurrence, \$2,000,000 Annual Aggregate; and (iv) Automobile Liability (including owned, non-owned and hired vehicles)-\$1,000,000 each occurrence (\$2,000,000 if operating vehicles owned by MACOM and/or agent(s) thereof). At MACOM’s request, Seller shall furnish to MACOM insurance certificate(s) naming MACOM as an additional insured for coverages described in (iii) and (iv). Each certificate of insurance shall have attached to it each applicable policies endorsement ISO Form CG 20 10 07 04 specifically confirming additional insured status. Each certificate shall disclose the applicable deductible and/or self-insured retention and contain a statement of the insurer’s obligation to notify MACOM at least thirty (30) days prior to cancellation, expiration or material change in any covered policy. These policies shall be endorsed to be primary to and noncontributory with MACOM’s insurance and provide a waiver of subrogation rights against MACOM as additional insured. Seller’s purchase of insurance coverage or the furnishing of insurance certificates shall not release Seller of its obligations or liabilities under this Order. In the event of Seller’s breach of this provision, MACOM shall have the right to cancel the undelivered portion of any goods or services covered by this Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

17. Compliance with All Laws

Seller warrants that all performance furnished under this Order shall comply with all applicable International, Federal, State and local laws, regulations and orders in the manufacture and sale of the goods and in the performance of services covered under this Order, including, but not limited to OSHA and the Fair Labor Standards Act of 1938, as amended. Seller agrees to comply with all applicable International, Federal, State and local environmental rules, regulations, and relevant orders of appropriate regulatory agencies, including those related to the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS), the waste electrical and electronic equipment (WEEE) Directives, the EU REACH Regulation and any other legal or regulatory requirements as defined on the face of the Order or otherwise required by law, regulation or standard.

18. Export Control

Seller shall be responsible for the control, disclosure of and access to technical data, information and other items received under this Order in accordance with U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) and the export laws of any

other relevant countries involved. Seller shall comply with all such laws and regulations. Furthermore, Seller is affirmatively obligated to timely disclose to MACOM the export control status of all goods and services furnished under this Order so that MACOM may comply with all of its obligations in that regard, if any.

19. Import

(a) All goods, unless specifically exempted by MACOM in writing in its sole discretion, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, with their respective country of manufacture. Seller agrees to comply with all laws and regulations governing the importation of goods into the customs territory of the United States and any other country of importation. (b) All drawback of duties and rights thereto related to duties paid by Seller or MACOM upon importation of the goods or services into any customs territory if they are subsequently exported from that country shall accrue to the exclusive benefit of MACOM. Seller agrees to provide MACOM with all documents, records and other supporting information necessary to obtain any such duty drawback, and agrees to reasonably cooperate with MACOM to obtain such payment.

20. Supply Chain Responsibility & Security

(a) Seller agrees to comply with MACOM’s Supply chain Code of Conduct, the most recent version of which is available at the following Internet link: <http://www.macom.com/about/sustainability-quality--reliabil>
(b) Seller will not traffic in persons or use any form of slave, forced, bonded, indentured, or prison labor and will contractually prohibit its suppliers from doing so. This includes the transportation, harboring, recruitment, transfer, or receipt of persons by means of threat, force, coercion, abduction, fraud, or payments to any person having control over another person for the purpose of exploitation; (c) Seller agrees to report to MACOM by means of the CFSI Conflict Minerals Reporting Template (CMRT) all materials, parts, sub-components, components, or products supplied to MACOM, whether directly or via third parties, that contain any metals (Tantalum, Tungsten, Tin, Gold) as defined in the Section 1502 of the “Dodd-Frank Wall Street Reform and Consumer Protection Act” and its related laws and regulations and the Conflict Mineral(s) contained therein; (d) Seller will take all necessary measures to ensure that all materials, parts, sub-components, components or products (collectively the “Inputs”) supplied to MACOM, whether directly or via third parties, are new and authentic and are not counterfeit and that each such Input has not been marked or remarked to disguise or falsely represent the identity of the manufacturer, part number, date code, lot or batch code, constituent materials, or completed screening and testing of it. If Seller becomes aware that any Input provided to MACOM does contain or may contain counterfeit content, whether in whole or in part, Seller will immediately notify MACOM. Seller’s notification will include all such information as is reasonably required to trace them through to the specific goods that are or may be tainted by that counterfeit content. Upon MACOM’s reasonable prior written request, Seller shall demonstrate that any Inputs it has provided to MACOM are new and authentic by providing one or more of the following: (i) the original equipment manufacturer’s original certificate of conformance, and/or (ii) records providing unbroken supply chain traceability of the Inputs to the OEM, and/or (iii) test and inspection records demonstrating authenticity of the Inputs; (e) Additionally, Seller agrees to take such reasonable measures as may be required by MACOM to ensure the physical integrity and security of all shipments against unauthorized introduction of harmful or dangerous materials. Such measures may include without limitation physical security of manufacturing, packaging, and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening; and procedures to protect the integrity of shipments.

21. Government Contracts or Subcontracts

If this Order is issued in connection with the performance of a prime contract with the U.S. Government or a subcontract thereunder, whether directly or indirectly, each of the named clauses, as set forth in the Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulations Supplement (DFARS) in effect on the date of this Order, is incorporated herein by reference if such clause (or any earlier edition thereof) is part of said prime contract or subcontract, including without limitation those listed elsewhere in this Order. The clauses thus incorporated herein will apply to Seller as though Seller were a prime contractor and in such manner as will enable MACOM to meet its obligation arising under the government prime or subcontract. Any Federal Acquisition Regulation clause, which by its terms, is required to be included in a purchase order or subcontract is hereby incorporated in this Order if applicable. For the avoidance of doubt, the terms “contracting officer” and “Government” are understood to mean and refer to MACOM when applicable. If a “DO” or

“DX” priority rating is indicated on the face hereof, Seller is required to follow the provisions of the federal Defense Priorities and Allocation System (DPAS).

22. Equal Employment Opportunity and Affirmative Action

This Order incorporates by reference and Seller warrants that its performance hereunder shall comply in all respects with: (i) all provisions of 41 C.F.R. 60-1.4 and 60-2 as implemented by Federal Acquisition Regulation (FAR) 52.222-26(b)(1)-(11) pertaining to the Equal Opportunity clause; (ii) Equal Opportunity for Veterans (38 U. S. C. 2012(a) 48 C. F. R. §52.222.35 and all provisions of 41 C.F.R. 60-250 as implemented by FAR 52.222-37 and 38 pertaining to Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era and other Eligible Veterans; and (iii) Equal Opportunity for Workers with Disabilities (29 U. S. C. §793) 48 C. F. R. §52.222-36. Seller agrees to comply with any and all applicable State and Local Government Equal Employment Opportunity and Affirmative Action laws including any and all applicable statutes, rules, regulations, ordinances and other guidelines. If required, Seller represents that it has submitted Standard Form 100 (EEO-1) compliance reports.

23. Non-Segregated Facilities

Seller certifies its compliance with 41 C.F.R. 60-1.8 as implemented by FAR 52-222-21, and hereby warrants that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Seller agrees that breach of this certification is a violation of the Equal Opportunity clause incorporated herein. Seller further agrees that it will (a) either: (i) obtain certifications of non-segregated facilities from proposed subcontractors for specific time periods, or (ii) obtain certifications of non-segregated facilities from proposed subcontractors before the award of any subcontracts subject to the Equal Opportunities clause; and (b) retain such certification in its files, and forward the notice set forth in FAR 52-222-21 to proposed subcontractors.

24. Limitation of Liability; Statute of Limitations

In no event shall MACOM be liable for punitive, indirect, incidental or consequential damages, including, without limitation, liability for loss of use, loss of profits, capital investment, product development costs, unabsorbed overhead, or interest expenses, however the same may be caused, including fault or negligence of MACOM. MACOM's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. MACOM shall not be liable for penalties of any description. Any action resulting from any breach on the part of MACOM as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

25. Audits

MACOM shall have the right to inspect and audit Seller's books, records, and catalogs pertaining to the performance of this Order, at all reasonable times, with at least five (5) days' advance written notice, for the purpose of confirming Seller's compliance with any or all of its obligations hereunder, including without limitation determining the correctness and propriety of amounts billed by Seller to MACOM.

26. Set Off

All claims for monies due or to become due from MACOM, shall be subject to deduction by MACOM for any set off or counterclaim arising out of this Order or any other between the parties.

27. Assignment and Subcontracting

Seller may not assign or transfer any of its rights, or delegate any of its duties or obligations under this Order without MACOM's prior written permission, provided however that this restriction shall not apply to Seller's purchase of raw materials and standard commercial supplies required in performing its obligations hereunder. Seller may not subcontract for completed articles or major components without MACOM's prior written consent.

28. Force Majeure

A party is excused from performing its obligations under this Order if, to the extent that, and for so long as its performance is prevented or delayed by an act or event (other than economic hardship, changes in market conditions, insufficiency of funds, or unavailability of equipment and supplies) that is beyond its reasonable control and could not have been prevented or avoided by its exercise of due diligence, provided such party gives written notice to the other party, as soon as practicable under the circumstances, of the act or event that

prevents it from performing hereunder. Such acts or events include, but are not limited to acts of God or the public enemy, acts of civil or military authority, acts or omissions of a government authority, civil commotion, terrorist acts, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, and labor disputes. In the event of any of the foregoing or other such act or event, MACOM shall have the option of either: (i) extending the time for performance; or (ii) terminating the uncompleted portion of the Order at no cost to MACOM. Notwithstanding the foregoing, Seller's liability for loss or damage to MACOM Property in Seller's care, custody, possession or control shall not be modified by this clause.

29. Notices

Any notice or demand to be given or made under this Order shall be in writing and shall be duly given only if sent to the other party at its respective address appearing on the Order or such other address as the respective party may advise from time to time in writing and by any one of the following means: in person; by registered or certified mail, postage prepaid, return-receipt requested; or by recognized overnight courier service.

30. Severability

If any of the provisions of this Order shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable this entire Order, but rather this entire Order shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

31. Waiver

All rights and remedies of MACOM set forth in this Order or available at law shall be cumulative and not alternative and shall not be exhausted by any one or more uses thereof. The waiver by MACOM of any term or condition of this Order shall not be deemed a waiver of any subsequent breach of the same or any other term or condition. The failure of MACOM to enforce at any time any of the provisions of this Order, to exercise any election or option provided herein, or to require at any time performance by Seller of any of the provisions herewith shall in no way be construed to be a waiver of any such provisions, or the right of MACOM thereafter to enforce each and every such provision.

32. Applicable Law

This Order shall be governed by, subject to and construed in accordance with and enforced according to the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws principles. Each of the parties hereto irrevocably submits itself to the exclusive jurisdiction and venue of the State and Federal courts in Massachusetts, U.S.A. for the purpose of any action in connection with this Agreement. The Parties do not intend that any agency or partnership relationship be created between them by this Order. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. SELLER HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS ORDER.

33. Order of Precedence

In the event of any inconsistency among this Order, the documents referenced herein and any attachments hereto, the inconsistency shall be resolved by giving precedence in the following descending order: (i) provisions set forth on the face of this Order, (ii) the specifications, (iii) the drawings, (iv) these terms and conditions, and (v) other documents incorporated by reference.