

## **Purchasing Terms & Conditions**

### **General Contract Terms and Conditions**

#### **1) Definitions**

**Buyer:** Systema Technologies Inc. Procurement entity.

**Seller (AKA Supplier, Subcontractor):** The legal entity that is the contracting party with the Buyer with respect to the procurement document.

**Procurement Document:** The Purchase Order or subcontract between the parties.

**Item:** The product or service contracted for by the procurement document.

#### **2) Assignment, Delegation and Subcontract**

- a. No assignment of any rights, including right to moneys due or to become due hereunder, or any delegation of duties, obligations or liabilities under this order shall be binding upon Buyer until Buyer's written consent has been obtained. No goods to be delivered under this order shall be procured by Seller from a third party in complete or substantially completed form without Buyer's prior written consent. This does not include raw material (i.e. – bar stock, plate stock, etc.).
- b. Should Seller sub-contract any work on this purchase order, Sellers system shall assure that the applicable purchase order flow down of quality and technical requirements and sub-contractors capability to produce items and adequate methods of assuring compliance. Seller's suppliers shall be required to flow down and verify requirements of supplies/services they sub-contract.

#### **3) Changes**

- a. Changes in the PO requirements, quality clauses, terms and conditions of this contract may be made only by written agreement of the parties.

#### **4) Disputes**

- a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613). Failure of the parties of this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Seller shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

#### **5) Excusable Delays**

- a. The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as: acts of God or the public enemy, acts of Systema in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, terrorist activities, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, detailing the justification, and shall remedy such occurrence with all reasonable speed, and shall promptly give written notice to the Buyer of the termination of such occurrence.

#### **6) Invoice**

- a. The Seller shall submit an original invoice (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. And invoice must include:

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- i. Name and address of the Seller;
- ii. Invoice date;
- iii. Contract number, contract line item number and, if applicable, the order number;
- iv. Description, quantity, unit of measure, unit price, and extended price of the items delivered;
- v. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- vi. Terms of any prompt payment discount offered;
- vii. Name and address of official to whom payment is to be sent; and
- viii. Name, title, and phone number of person to be notified in event of incorrect invoice.

## 7) Patent Indemnity

- a. The Seller shall indemnify Systema and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of performance of this contract, provided the Seller is reasonably notified of such claims and proceedings.

## 8) Payment

- a. Payment shall be made for items accepted by Systema that have been delivered to the delivery destinations set forth in this contract. Systema shall make payments under this contract by check or electronic funds transfer at the option of Systema. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the date on which an electronic funds transfer was made.

## 9) Risk of Loss

- a. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Seller, only passing to Systema upon:
  - i. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - ii. Delivery of the supplies to Systema at the destination specified in the contract, if transportation is f.o.b. destination.

## 10) Taxes

- a. The contract price includes all applicable Federal, State, and local taxes and duties.

## 11) Termination of Contract

- a. **Termination for Systema's Convenience**
  - i. Systema reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such a termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of Systema using its standard record keeping system, have resulted from the termination. The Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

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b. Termination for Cause

- i. Systema may terminate this contract, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any contract terms and conditions, or fails to provide Systema, upon request, with adequate assurances of future performance. In the event of termination for cause, Systema shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to Systema for any and all rights and remedies provided by law. If it is determined that Systema improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

## 12) Title

- a. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to Systema upon acceptance, regardless of when or where Systema takes physical possession.
- b. All work performed or created by contractor pursuant to this Purchase Order shall be "work for hire" and owned in its entirety by Systema.

## 13) Warranty

- a. The Seller warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

## 14) Limitation of Liability

- a. Except as otherwise provided by and express or implied warranty, the Seller shall not be liable to Systema for consequential damages resulting from any defect or deficiencies in accepted items. The Buyer shall indemnify and hold harmless Seller and its officers, directors, agents, subsidiaries, and employees from any liabilities, losses, and damages including costs, expenses, and damages incurred by Seller in defending or assisting the Buyer in its defense against any and all claims for damages, including, without limitation, any such claims for damage, destruction, loss, or loss of use of property or for any bodily injury or death caused by or arising out of use, transportation, handling, testing, or storage of articles delivered under the contract after final inspection and acceptance.

## 15) Supplier Code of Conduct

- a. The Seller shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract. We expect our suppliers to comply with applicable safety and health laws, regulations, policies, and procedures. Suppliers should provide for the health, safety, and welfare of their people, visitors, and others who may be affected by their activities
- b. The Seller shall have a system in place that **prohibits the sale of counterfeit materials** and a mitigation policy where the source of materials is always maintained and disclosed should there ever be a legal or counterfeit issue. See PC-1004 for more info defining those controls.
- c. Any product which contains conflict minerals (tin, tantalum, gold and tungsten) that originate from the Democratic Republic of the Congo (DRC) or adjoining countries shall be reported per the Dodd-Frank Wall Street Reform and Consumer Protection Act, HR 4173 Section 1502.
- d. We expect our suppliers to provide equal employment opportunity to employees and applicants for employment without regard to race, ethnicity, religion, color, sex, national origin, age, military veteran status, ancestry, sexual orientation, gender identity or expression, marital status, family structure, genetic information, or mental or physical disability, so long as the essential functions of the job can be performed with or without reasonable accommodation.

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- e. We expect our suppliers to operate in a manner that actively manages risk, conserves natural resources, and protects the environment. We expect our suppliers to apply environmental management system principles in order to establish a systematic approach to the management of risks/hazards and opportunities associated with the environment, including potential risk from regulatory non-compliance, reputational loss, and opportunities for business growth through operational and product stewardship.
- f. We expect our suppliers to ensure that employees may perform their work in an environment free from physical, psychological and verbal harassment, or other abusive conduct.
- g. We expect our suppliers to maintain a workplace free from illegal drugs.
- h. We have a zero-tolerance policy for corruption, and prohibit anyone conducting business on our behalf, including suppliers, from offering or making any improper payments of money or anything of value to government officials, political parties, candidates for public office, or other persons. This includes the offer and/or receipt of any bribe or kickback to and/or from any customer, supplier or others. Our policy specifically prohibits facilitating payments (payments made to expedite or secure performance of a routine governmental action like obtaining a visa or customs clearance), but allows personal safety payments where there is an imminent threat to health or safety. Our suppliers must comply with the anti-corruption laws that govern operations in the countries in which they do business, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.
- i. We compete on the merits of our products and services and do not use the exchange of business courtesies to gain an unfair competitive advantage. We expect the same of our suppliers in the offering or receipt of any gift or business courtesy, including cash and cash equivalents. In particular, note that our employees who are in any way involved in procurement decisions are subject to even more strict limitations, and may not accept any business courtesies, with the exception of very low value promotional items. In any business relationship, our suppliers must ensure that the offering or receipt of any gift or business courtesy is permitted by law and regulation; does not violate the rules and standards of the recipient's organization; is consistent with reasonable marketplace customs; and will not adversely impact the reputation of Systema Technologies.
- j. Our suppliers should take proper care to protect all sensitive information, including confidential, proprietary, and personal information. Information should not be used for any purposes beyond the scope of the business arrangement with our company, without prior authorization.
- k. We expect our suppliers to not engage in the use of forced, bonded (including debt bondage) or indentured labor, involuntary prison labor, slavery, or trafficking of persons. This includes transporting, harboring, recruiting, transferring, or receiving vulnerable persons by means of threat, force, coercion, abduction, or fraud for the purpose of exploitation.
- l. We expect our suppliers to ensure that child labor is not used in the performance of work. The term "child" refers to any person under the minimum legal age for employment where the work is performed.

## 16) Order of precedence

- a. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:
  - i. Typed provisions set forth on this order
  - ii. Buyers purchase order attachments
  - iii. These purchase order terms and conditions
  - iv. Statement of Work (SOW)
  - v. Documents/Data attached

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**Note; Use of documents sent to supplier for quoting purposes is strictly forbidden. Supplier shall demand new documents at time of PO release if they have not been supplied. Supplier shall review PO/contract to insure revisions match the document.**

### **17) Confidentiality**

- a. It is understood that the information developed by or communicated to the Seller in the performance of the Services is of a highly confidential nature. Seller agrees that, without the prior written approval of Systema, Seller will not, either during or after the term of this Agreement, use any such information except to perform contract duties under this Agreement or disclose such information in any manner to third parties except to person, including employees of Systema or affiliated companies, who may be designated by Systema. This restriction does not apply to information that is in the public domain.

### **18) Supplier Requirements**

- a. Seller agrees to maintain strict controls to assure that, after the item(s) successfully pass the qualification, no changes will be made to any design, material, part, process, procedure, critical personnel, tooling, or test equipment without prior written approval of the Buyer. The definition of change does not include the following: editorial or administrative changes such as spelling or typographical errors, clarifications, maintenance, or equipment changes not affecting the qualified product. In addition, the items shall not be produced at a facility other than the Seller's original facility which produced the acceptable items, without prior written approval of the Buyer. Upon receipt of such notice from the Seller, the Buyer shall have the right to direct the Seller to repeat all or part of the qualification at Seller's expense and to obtain from the Seller all data necessary to prove the acceptability of the proposed change.

Notwithstanding the above provisions, Seller agrees that the items to be supplied hereunder will conform to all applicable procurement specifications and drawings, as amended.

### **19) Left Intentionally Blank**

### **20) Conformance Certification**

The Seller shall provide certification with each shipment that all quality, configuration conformance, and other applicable requirements have been met in accordance with the specification(s) stated in the item description/part number appearing on this Purchase Order. The certification must be signed (or duly authenticated via approved alternate means) by the corporate officer with management responsibility for the production of the product, or other designated responsible individual. At a minimum, the following information shall be included in the conformance certification:

- Purchase Order Number (Systema PO number)
- Purchase Part Number (as shown on the PO)
- Manufacturer's P/N, if different from above
- The Revision level that the product was made to
- The serial numbers delivered, if applicable.
- Mfg lot#
- OEM/OCM (NOT distributor)
- Authorized company representative signature per the above

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## 21) Flow Down of Federal and Defense Clauses

- a. See Addendum A for a full list of DFAR clauses that apply to this contract.
- b. Reference FAR Matrix 52.301 to determine which FAR's apply to this contract, i.e. commercial items, fixed price supply, engineering services, etc. <https://acquisition.gov/content/52301-solicitation-provisions-and-contract-clauses-matrix> & <https://www.acquisition.gov/far-smart-matrix>
- c. Supplier must meet the requirements of all required and applicable clauses in the normal operation of their business.
- d. Full text of FAR clauses can be found in links in FAR 52.301 listed above
- e. and ; <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>
- f. Conflict minerals final rule @ <http://www.sec.gov/rules/final/2012/34-67716.pdf>.

Revision History			
Revision	Date	Author	Change
F	4/6/11	Peter Hayden	Added paragraphs f –i in section 19.
8/15/11		Jasmine Cordell/ Peter Hayden	Added flow down of requirements to the supply chain including Systema requirements see 19 f. NC material reporting and approval. See 4. b. 3.
11/30/11		Peter Hayden	Added 16 b. for counterfeit materials control.
8/14/12		Peter Hayden	Added Sec. 20 and addendum A for FAR and DFAR flow down.
4/09/13		Tom Prenzlów	Added Indemnity to the Liability Clause 15
9/05/13		Tom Prenzlów	Added 13b.
9/30/13		Peter Hayden	Added reference to PC-1004 in section 16 b. Also, bolded paragraph sections. Bolded the note following section 17.
3/11/15		Peter Hayden	Added section 16c, Conflict minerals. Added 21e, link to final rule.
11/19/15		Peter Hayden	Removed the FAR clauses from Addendum A. Inserted section 21 b to reference FAR matrix 52.301 and direct suppliers to that link to read full text of required and applicable FAR clauses
03/09/16		Taylor Banks	Added DFAR 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2015) to Addendum A
9/28/16		Peter Hayden	Added section 3b for flow down of requirements
7/25/18		Peter Hayden	Added Code of Conduct to replace FAR's and DFAR's. Removed reference to FAR's and DFAR's. Removed quality type requirements that would be in new quality clause document.
8/28/18		Peter Hayden	Returned sections 19 and 20 after they were removed prematurely at previous revision. New quality clause document still not released.
8/5/19		Peter Hayden	Returned section 21.

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## Addendum A

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference

### DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT CONTRACT CLAUSES

- 252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (JAN 2009)
- 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (DEC 2008)
- 252.203-7002 REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JAN 2009)
- 252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)
- 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)
- 252.204-7004 ALTERNATE A, CENTRAL CONTRACTOR REGISTRATION (SEP 2007)
- 252.204-7005 ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)
- 252.204-7008 EXPORT-CONTROLLED ITEMS (APR 2010)
- 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2015)
- 252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)
- 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)
- 252.215-7000 PRICING ADJUSTMENTS (DEC 1991)
- 252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS (MAY 2011)
- 252.216-7006 ORDERING (MAY 2011)
- 252.222-7006 EXTENSION OF RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEVIATION) (MAY 2011)
- 252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)
- 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)
- 252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (OCT2010)
- 252.225-7008 RESTRICTION ON ACQUISITION OF SPECIALTY METALS (JUL 2009)
- 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JAN 2011)
- 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (JUN2010)
- 252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (DEC 2010)
- 252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2011)
- 252.225-7030 RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (DEC 2006)
- 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)
- 252.227-7013 RIGHTS IN TECHNICAL DATA-NONCOMMERCIAL ITEMS (MAR 2011)
- 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011)
- 252.227-7018 RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE-SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (MAR 2011)
- 252.227-7030 TECHNICAL DATA-WITHHOLDING OF PAYMENT (MAR 2000)
- 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 1999)

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252.227-7039 PATENTS-REPORTING OF SUBJECT INVENTIONS (APR 1990)  
252.228-7001 GROUND AND FLIGHT RISK (JUN 2010)  
252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)  
252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS  
(MAR 2008)  
252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)  
252.235-7010 ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)  
252.239-7000 PROTECTION AGAINST COMPROMISING EMANATIONS (JUN 2004)  
252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)  
252.245-7001 TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY  
(FEB2011)  
252.245-7002 REPORTING LOSS OF GOVERNMENT PROPERTY (FEB 2011)  
252.245-7003 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (MAY 2011)  
252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)

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