

# **ADVANCED IT CONCEPTS' STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS FOR COMMERCIAL PRODUCTS AND SERVICES, INCLUDING COTS, IN SUPPORT OF U.S. GOVERNMENT CONTRACTS**

## **1. ACCEPTANCE OF ORDER:**

The following terms and conditions apply to all purchase orders submitted by Advanced IT Concepts, Inc (AITC). to its suppliers of products and services ("Seller"), unless otherwise specifically agreed to in writing, and in addition to any terms set forth on the face of an individual purchase order, or in any plans, specifications, or other documents incorporated by reference (each, collectively an "Order").

Acceptance by AITC, Inc. ("Buyer") of any offer from Seller is expressly limited to the terms and conditions of the Order, and these Standard Terms and Conditions and Buyer hereby objects to and shall not be bound by any additional or different terms, whether printed or otherwise, in any other communication between the parties (including on any of Seller's forms, letter, or papers); it being understood that these terms and conditions shall prevail notwithstanding any such additional, different or conflicting terms.

## **1.0 DEFINITIONS:**

- (a) "Days" means calendar days unless otherwise expressly noted.
- (b) "F.O.B. Destination, Freight Prepaid" means title and risk of loss pass to Buyer at Destination Point; Seller bears and prepays freight charges; and Seller must file claims for loss, damage, or overcharges (if any) for Items in transit.
- (c) "Government" means the United States Government.
- (d) "Items" as used herein includes goods (e.g., materials, equipment, products, hardware, software, or information) and any part thereof.
- (e) "Order" as used herein includes the Fixed-Price Purchase Order, these Terms and Conditions, and other documents incorporated by reference or attached hereto.
- (f) "Prime Contract" means the contract existing between Buyer and Buyer's customer.

## **2. ASSIGNMENT:**

Neither party shall assign or transfer any Order or any interest therein or monies payable there under without the written consent of the other party, and any assignment made without such consent shall be null and void, except that Buyer may assign an Order and its interest therein to any affiliated corporation, or to any corporation succeeding to Buyer's business without the consent of Seller.

## **3. CHANGES:**

The Buyer reserves the right at any time to change by written notification any of the following:

- (a) specifications, drawings, and data incorporated in an Order where the items to be furnished are to be specially manufactured for Buyer,
- (b) quantity
- (c) methods of shipment or packing
- (d) place of delivery
- (e) time of delivery, or
- (f) any other matters affecting an Order.

If any change by Buyer causes an increase or decrease in the cost of or the delivery schedule for an Order, Buyer shall make, in writing, an equitable adjustment in the contract price of delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from Seller's receipt of the change.

#### 4. COMPLETE AGREEMENT:

An Order, including the Standard General Terms and Conditions set forth herein, represents the entire agreement between Seller and Buyer with respect to the items sold to Buyer under such Order and the performance of services by or on behalf of Seller for Buyer under such Order. All prior agreements, representations, statements, negotiations, and undertakings, whether oral or written, are superseded hereby. Additionally, this agreement may be subject to mandatory government clauses, where applicable, as mandated by relevant regulations.

#### 5. DISCLOSURE OF INFORMATION; CONFIDENTIALITY OF ORDER:

(a) Seller shall not use or disclose any data, designs, or other information belonging to, supplied by, or on behalf of Buyer. Upon completion by Seller of its obligations under an Order or upon Buyer's request, such data, designs, and other information or any copies thereof shall be returned to Buyer. Where in accordance with Buyer's written authorization, Buyer's data, designs, or other information is furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of an Order, Seller shall insert the substance of this provision in its own Purchase Order. Each Order is confidential, and Seller shall not, without prior written consent of Buyer, disclose any information relative to or derived under any Order, except as may be required to ensure performance. Unless otherwise authorized by Buyer, Seller shall not advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services.

#### 6. DEFAULT BY SELLER:

In the event of default by Seller in the performance of any obligation hereunder, including, but not limited to, time of delivery and/or completion, or in the event it becomes apparent that delivery or completion cannot be accomplished within the time specified, Buyer may, in addition to its other rights or remedies, cancel the applicable Order without penalty and/or liability, except for goods previously received and accepted, charging Seller for losses and damages sustained by reason of such delay or failure when not caused by force majeure.

#### 7. DELIVERY OR PERFORMANCE SCHEDULE; QUANTITIES:

- (a) Time is of the essence in the performance of any Order and delivery of products or services under any such Order.
- (b) Buyer may cancel any Order for any nonconformity in any lot or installment delivered or services performed under such Order, including, without limitation, failure of Seller to deliver the goods or perform services when due, delivery of defective or otherwise nonconforming goods, delivery of an insufficient quantity of goods, or deficient, defective, or incomplete performance of services.
- (c) Seller shall promptly advise Buyer of any delay or anticipated delay in delivery or performance and shall pay Buyer for any losses sustained or costs incurred by Buyer because of a late delivery.
- (e) (d) Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time to meet forecasted demand or deliver goods or perform services in advance of schedule. In the event of termination or change in the terms of an Order, no claim by Seller will be allowed for any such manufacture or procurement of performance of services in advance of such normal flow time without the prior written consent of Buyer. Unless specified otherwise on the face of an Order, such Order shall not be deemed separable as to the goods and services ordered therein.

#### 8. EXCESS GOODS:

Except for customary quantity variations recognized by trade practice, goods in excess of those specified will not be accepted, and such goods will be held at Seller's risk. Buyer may, and at Seller's direction shall, return such goods at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller.

#### 9. INSPECTION AND TESTING:

All goods and services are subject to inspection and rejection by Buyer at any time, including during their manufacture, construction, or preparation, notwithstanding any prior payment or inspection. Goods or services may at any time be rejected for defects or defaults revealed by inspection, analysis or by manufacturing operations or use after delivery even though such goods or services may have previously been inspected and accepted. Without limiting any of the rights it may have, Buyer may reject and return at Seller's risk and expense any portion of a shipment that is defective or fails to conform to specifications without invalidating the remainder of the Order. Buyer's payment of any bill before actual inspection and acceptance of Materials shall not waive Buyer's rights under such Order. In addition, Buyer at its option may require Seller, at Seller's expense:

- (a) to promptly repair or replace any or all rejected goods, or to cure or re-perform any or all rejected services, or
- (b) to refund the price of any or all rejected goods or services. All such rejected goods will be held for Seller's prompt instruction and at Seller's risk. Nothing contained herein shall relieve in any way Seller from the obligation of testing, inspection, and quality control.

#### 10. DISPUTE RESOLUTION:

Any claim, controversy, or dispute concerning questions of fact or law arising out of or relating to an Order shall be decided by Buyer. The decision of Buyer shall be final and conclusive unless, within thirty (30) days of receipt of such decision, Seller mails or otherwise furnishes to the American Arbitration Association, with a copy to Buyer, a written demand for arbitration of the claim, controversy, or dispute pursuant to the rules of said Association.

Any such arbitration shall be held at such places as the parties shall agree upon and, in the absence of such agreement, within the state in which the place of issuance of this Order is located. Costs and expenses of the arbitration shall be borne equally by the parties unless otherwise provided by the arbitrator. Judgment upon an award rendered by the arbitrators may be entered in any court of competent jurisdiction. Any terms resulting from arbitration, judicial determination, or voluntary settlement between the Seller and Buyer shall not be binding on the Government.

#### 11. FORCE MAJEURE:

Neither party shall be liable for delay in its performance of its obligations and responsibilities under any Order due to causes beyond its control, such as, but not limited to, war, embargo, national emergency, insurrection or riots, acts of the public enemy, terrorist activity, fire, flood, or other natural disaster, provided that said party has taken reasonable measures to notify the other, in writing, of the delay. Failure of subcontractors and inability to obtain materials shall not be considered as an excusable delay. If due to such cause, Seller should be unable to meet all of its delivery commitments for items ordered under an Order as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such items. However, if Buyer believes that the delay or anticipated delay in Seller's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operation, Buyer may, at its option and without liability to Seller, cancel outstanding deliveries under an Order wholly or in part.

#### 12. GRATUITIES:

Seller warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities to Buyer's employees, agents, or representatives with a view toward securing any Order

or securing favorable treatment with respect thereto.

If it is found that gratuities (in the form of entertainment, gifts, or otherwise) are offered by the Seller, or any agent or representative of the Seller, to any employee of Buyer with a view toward securing favorable treatment with respect to the awarding or the performing of any order, the Buyer may, by written notice to the Seller, terminate any and all Orders with such Seller as upon a default, in addition to any rights or remedies provided by law.

#### 13. INDEMNITY TO BUYER:

Seller shall indemnify, hold harmless, and defend at its own expense Buyer, its customers, employees, agents, contractors, insurers, and subcontractors from and against all suits, claims, demands, and actions of every type and character by any party (including third parties) without regard to the cause thereof for any bodily injury, death, or property damage arising out of or resulting in any way from any conditions or defect in the goods, or by the transportation thereof to Buyer, or from performance of services purchased under any Order, excepting only injury, death, or property damages resulting solely from Buyer's negligence and without negligence or fault on the part of the Seller or any other party whomsoever.

#### 14. INSURANCE:

If Seller is to perform any work on Buyer's premises, Seller agrees upon acceptance of the applicable Order to maintain such insurance as Buyer may require to adequately protect Seller and Buyer from claims for personal injury and property damage arising directly or indirectly from operations under such Order. Seller agrees, upon Buyer's request, to furnish certificates of such insurance to Buyer before performance is commenced.

#### 15. INTELLECTUAL PROPERTY; NONINFRINGEMENT:

(a) Seller acknowledges and agrees that all specifications, drawings, diagrams, schematics, sketches, models, samples, designs, technical information, or data, written, oral, or otherwise, furnished by Buyer or on Buyer's behalf are and shall remain Buyer's sole and exclusive property, and shall be returned promptly to Buyer or Buyer's designee (together with all copies) upon the earlier of Buyer's request or the termination or completion of the applicable Order. Seller acknowledges and agrees that all such intellectual and industrial property, shall be treated as confidential, and shall not be used or disclosed by Seller except as required in the course of performing such Order or other Orders for Buyer. Unless Buyer has otherwise agreed in writing, information and material furnished or disclosed by Seller shall not be considered to be confidential or proprietary, and shall be acquired by Buyer free of restrictions of any kind.

(b) Seller represents and warrants that the products delivered under any Order do not infringe any United States or foreign patent, trademark, trade secrets, or copyright, or any proprietary, intellectual property, industrial property, contract, or other right held by any third party.

#### 16. APPLICABLE LAWS:

Seller warrants and agrees that it has complied with and will comply with all applicable federal, state, and local laws, codes, and regulations, including without limitation, the Fair Labor Standards Act of 1938, as amended.

#### 17. GOVERNING LAW:

Seller and Buyer agree that these Standard Terms and Conditions shall be carried out and interpreted according to the laws of the State of Florida.

#### 18. LABELING LAWS:

Seller shall label containers of all goods that are known to constitute a health, poison, fire, or explosion hazard in accordance with the labeling laws of the state to which such goods are shipped. In the

absence of any such law, Seller shall label such containers in accordance with the Warning Labels, Manual L-1, published by the Manufacturing Chemists Association, Washington, D.C.

#### 19. PACKAGING AND TRANSPORTATION; RISK OF LOSS:

(a) All packing and packaging shall be in accordance with specific instructions from Buyer on the face of any Order or in separate notification. In the absence of specific instructions, all packing and packaging shall comply with good commercial practice, applicable carrier's tariffs, and all applicable state, federal, and local law, and shall consist of suitable containers for optimum protection of the goods and for in-plant handling and storage.

(b) Transportation shall be in accordance with the Delivery Terms specified on the Purchase Order. The instructions will be F.O.B. Destination, Freight Prepaid, or F.O.B. Origin Freight Collect. Buyer shall not be liable for insurance or premium transportation charges unless Buyer consents to such charges in writing. All Items must be packaged in accordance with the instructions specified by Buyer and shipped by route and carrier designated by Buyer.

(c) The number of the Order must be shown on all packing slips and invoices, and, except in the case of ingredients, on all packages, crates, or other containers, together with the destination party and address specified by Buyer.

(d) If invoices are subject to discount for prepayment, Seller shall state such terms clearly on such invoices. Buyer's opportunity for prepayment shall not be prejudiced by delays beyond Buyer's control.

(e) Delivery shall not be deemed complete until the goods have actually been received and accepted by Buyer, or by the person to whom the goods were delivered, and the risk of loss on the goods shall be borne by Seller until such delivery and acceptance. Seller shall also bear the risk of loss on the goods rejected by Buyer from the time of shipment thereof to Seller until the redelivery thereof to Buyer.

#### 20. PASSAGE OF TITLE:

Title to all items sold to Buyer under any Order and all services performed by or on behalf of Seller for Buyer under such Order shall pass to the Buyer upon delivery of same by Seller to Buyer F.O.B. Buyer's plant if Seller arranges the freight carrier or upon delivery to the freight carrier if Buyer arranges freight.

#### 21. PATENTS; ROYALTIES AND ENCUMBRANCES:

All products supplied must be free from claims of others with respect to royalties, patent rights, and mechanics' liens or other encumbrances or charges. Seller agrees to indemnify and hold harmless the Buyer and Buyer's customers against all claims, demands, costs, and actions for actual or alleged infringements of patent rights in the use, sale, or resale of said products.

#### 22. PAYMENT:

Invoices will normally be paid according to terms set forth on the face of the applicable Order, or if no such terms are stated, then within sixty (60) days from the date of the invoice. Payment shall not be construed to limit Buyer's right of inspection, acceptance, set-off, or any other right.

#### 23. PRICE:

(a) Prices shall be firm and not subject to adjustment or variation unless specifically approved in writing by the Buyer.

Seller warrants that the prices set forth on the face of any Order are as low as any net prices now given by Seller to any other customer for goods or services of like grade and quality in like quantities, and Seller agrees that if at any time during the pendency of any Order lower net prices are quoted under similar conditions, said lower net prices shall be from that time substituted for the prices therein. Seller agrees that any price reductions made in the goods or services covered by any Order subsequent to its acceptance but prior to payment thereof will be applicable to such Order.

#### 24. BUYER-FURNISHED PROPERTY:

All tools or other materials furnished by Buyer for use in the performance of any particular Order shall

remain the property of the Buyer, shall be used by the Seller in the performance of the Order only, in accordance with the requirements of the Order relating to such use, and shall be returned to the Buyer when requested upon completion or termination of the applicable Order to the extent not previously delivered to the Buyer. Seller agrees to exercise reasonable care in the safeguarding and preservation of all Buyer-furnished property and assumes all responsibility for loss, damage, or destruction while such property is within Buyer's possession or control.

25. SETOFFS:

Seller agrees that Buyer shall have the right to set off against any amounts that may become payable by Buyer to Seller under any Order or otherwise any amounts that Seller may owe to Buyer, whether arising under such Order or otherwise.

26. SPECIFICATIONS:

Products shall be manufactured in accordance with Buyer specifications. No changes in specifications shall take place unless mutually acceptable and agreed to in writing.

27. INDEPENDENT CONTRACTOR:

Seller shall be an independent contractor in the performance of work pursuant to any Order, and shall not be considered or permitted to be an agent, servant, joint venturer, or partner of Buyer.

28. NO SUBSTITUTIONS:

Seller must deliver the products specified in Buyer's Order, without deviation. Seller is prohibited from providing any substitutions without express written authority from Buyer.

29. TAXES AND OTHER ASSESSMENTS:

Seller agrees to assume exclusive liability under all laws that impose taxes or other assessments on the manufacture or sale of the goods to be furnished under any Order or any component part thereof, or on any process or labor involved therein, or on any services to be rendered by Seller, and to pay any and all such taxes except those Buyer specifically agrees or is by law required to pay. Any taxes to be paid by Buyer shall be separately stated on the invoice. Prices shall not include any taxes for which Seller can obtain, or Buyer can furnish, exemption.

30. TERMINATION:

(a) For Convenience:

(i) Buyer may terminate any Order for its convenience, in whole or in part, at any time with a five (5) business days written notice to Seller. Upon receipt of such termination, Seller shall promptly comply with the directions contained in such notice and shall, as required:

(A) take action necessary to terminate the work as provided in the notice, minimizing costs and liabilities for terminated work,

(B) protect, preserve, and deliver in accordance with Buyer's instructions any property related to the Order in Seller's possession, and

(C) continue the performance of any part of the work not terminated by Buyer.

(ii) On termination for Buyer's convenience, if Seller at the time of termination, has in stock or on firm order completed or uncompleted items or raw, semi-processed or completed materials for use in fulfilling an Order:

(A) for completed items or materials, Buyer shall either require delivery of all or part of the completed goods and make payment at the order price, or (without taking delivery) pay Seller the difference, if any, between the order price and the market price if lower) at the time of termination

(B) For uncompleted items or raw or semi-processed materials, Buyer shall either require Seller to deliver all or part of such goods at the portion of the order price representing the stage of completion, or (without taking delivery) pay Seller for such goods that are properly allocable to such Order a portion of the order price representing the stage of completion, reduced by the higher of the market or scrap value of the goods at that stage of completion.

(C) For goods that Seller has on firm order, Buyer may, at its option, either take an assignment of Seller's right under the order or pay the cost, if any, of setting or discharging Seller's obligation under the Order.

(iii) the provisions of this subsection (a) shall be the sole remedy available to Seller in the event of a termination by Buyer under this subsection (a).

(b) For default by Seller.

(i) Buyer may also, by written notice to Seller, terminate the whole or any part of any Order:

(A) if Seller fails to deliver items and material or perform the services required on schedule, or

(B) if, at any time, reasonable grounds for insecurity arise as to Seller's expected performance (including timely performance) within ten (10) days after Buyer's written demand for adequate assurance.

(ii) Buyer may also terminate if Seller becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

(iii) If Buyer terminates all or part of any Order under this subsection (b), Buyer may procure, upon terms and in a manner it deems appropriate, goods and services similar to those terminated, in which event, Seller shall be liable for additional costs, if any, for the purchase of such similar goods and services to cover such default. In addition, at its election, Buyer may require Seller to deliver any completed or uncompleted goods related to such Order by agreeing to pay Seller as specified in paragraphs (a) (ii) (A) through (C) above.

### 31. WAIVER:

Buyer shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of the rights or remedies under any Order, and no waiver whatever shall be valid as against Buyer unless in writing, signed by an authorized representative of Buyer, and then only to the extent set forth therein. Buyer's waiver of any right or remedy under the terms of an Order on any one occasion shall not be construed as a waiver of any right or remedy that Buyer would otherwise have on a future occasion.

### 32. WARRANTY:

Seller represents and warrants that the goods described in any Order are fit for the use intended, are merchantable, and are free from all defects in design, workmanship, and material, and are in strict accordance with any plans, specifications or samples whether provided by Buyer or Seller. Seller agrees to repair or replace, at Buyer's option and at Seller's sole cost, any goods or workmanship found to be defective or at Buyer's option, to reimburse Buyer for cost of remedying such defects or noncompliance. All costs and damages in connection with defective or non-complying goods shipped or delivered by Seller or relating to the return thereof shall be borne by Seller. Seller's agreement to replace defective goods shall be cumulative of other remedies available to Buyer, including compensation to Buyer or Buyer's customers for all damages resulting from the defective goods.

As used in these Standard Terms and Conditions, Buyer's customers shall include its direct and indirect customers such as direct sale end-users, higher tier subcontractors, prime contractors and the ultimate user under relevant prime contracts. Any inspection, test, acceptance, or use of the goods furnished under an Order shall not diminish Seller's warranty obligations.

### 33. AUTHENTICITY AND TRACEABILITY

Seller certifies to Buyer that all material furnished under this purchase order is genuine, new, and unused. Seller certifies that all material is traceable to the point of manufacture and that complete material pedigree is known and can be furnished to Buyer upon request.

Seller will have a documented procedure that defines the method for controlling records that are created by and /or retained by the Seller.

Seller represents and warrants that only new and authentic materials (including embedded software and firmware are used in Items required to be delivered to Buyer and that the Items delivered contains no Counterfeit Parts. No material, part, or component other than a new and authentic part is to be used unless approved in advance in writing to Buyer. Seller shall only purchase authentic parts/components directly from the OEM, OCM, or authorized dealers/resellers. Purchase of parts/components from Non-Franchise Sources is not authorized unless first approved in writing by Buyer.

If it is determined that counterfeit parts or suspect counterfeit parts were delivered to Buyer by Seller, the suspect counterfeit parts will not be returned to the supplier. Seller shall promptly reimburse Buyer for the full Cost of the suspect counterfeit parts and Seller assumes responsibility and liability for all cost associated with the delivery of suspect counterfeit parts, including but not limited to, costs for identification Testing, and any corrective action required to remove and replace the suspect counterfeit parts.

If the procurement of materials under this Order is pursuant to, or in support of, a contract, subcontract, or task order for delivery of Items to the Government, the making of a materially false, fictitious, or fraudulent Statement, representation or claim or the falsification or concealment of a material fact in connection with this Order may be punishable, as a Federal felony.