



Revised April 2004

STANDARD PURCHASE ORDER TERMS AND CONDITIONS
for
US GOVERNMENT PROGRAMS

1. **DEFINITIONS:** The following definitions shall apply unless otherwise specifically stated.
 - Buyer means EFW Inc.
 - Contracting Officer means the US Government official authorized to issue contracts
 - Seller means the legal entity to whom the Purchase Order is issued.
 - PO means this Purchase Order or Subcontract
 - Government means the Government of the United States of America and those authorized or delegated responsibility to act on its behalf except where specifically stated to be the Government of any other country.
 - Prime Contract means the Government funded contract under which this PO is issued.

2. **PACKING AND SHIPMENT:** Unless otherwise specified, the PO price includes all charges for boxing, crating, drayage or storage, dunnage and bundling. All items shall be packaged and packed in accordance with common carrier requirements to (a) insure safe arrival at their destination (b) provide ESD protection where required and (c) secure the lowest transportation cost. Items shall be described on bills of lading which must be annotated to show that the shipments are released at the maximum value which applies to the lowest transportation rate or rating provided in applicable tariffs and classifications. Buyer's PO and item numbers, and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists in duplicate must accompany items. Bills of lading or shipping receipts shall be sent to Buyer's Traffic Department on the date items are shipped. Buyer's count or weight shall be final and conclusive on shipments without packing lists. Items must be routed in accordance with Buyer's orders.

3. **DELIVERY:** (a) Delivery shall be made in strict accordance with the delivery schedule of this PO. If Seller fails to meet such schedule and Buyer elects to call for expedited shipments, Seller shall pay any additional costs associated with such shipments. Buyer reserves the right, without loss of discount privileges to pay invoices covering items shipped in advance of the schedule on the normal maturity after the date specified for delivery. If Seller encounters or anticipates difficulty in meeting the delivery schedule Seller shall immediately notify Buyer in writing, giving pertinent details; provided, however, that such data shall be informational only and shall not be construed as a waiver by Buyer of any delivery schedule or date or of any rights or remedies provided at law, or in equity, or under this PO.
(b) Items fabricated or services performed in excess of or in advance of Buyer's release are at Seller's risk. Items shall not be supplied in excess of the quantities specified herein.

4. **PRICES:** Unless otherwise specified, prices are FOB destination. Seller warrants that prices charged for the items are not higher than those charged to any other customer, including the Government, for items of like grade and quality in similar or lesser quantities.

5. **PAYMENT:** (a) To Seller - Seller shall be paid upon submission of properly prepared invoices in accordance with Buyer's invoicing instructions for items delivered to and accepted by Buyer. All checks will be issued in the Seller's name and mailed to the address specified in the Seller's block on the PO unless proper authority for deviation is supplied to Buyer's Procurement Department. Delays in receiving invoice, errors or omissions on invoice, or lack of supporting documentation required by this PO will be cause for withholding payment without losing discount privilege. Discount periods shall commence ten (10) days after the latest of schedule delivery, actual delivery, or receipt of invoice. No charges will be honored unless specified on the face of this PO. Invoices must be accompanied by

transportation receipt, if transportation is payable as a separate item. Invoices, only one of which shall be identified as "Original", shall be mailed in triplicate immediately after each shipment to:

EFW INC.
4700 Marine Creek Parkway
Fort Worth, Texas 76179
Attn.: Accounts Payable

(b) To Buyer - Any amounts charged to Seller here under or required to be paid by Seller here under shall be, at Buyer's election, either deducted from amounts specified on invoices rendered by Seller to Buyer, or submitted to Seller for payment. Any and all invoices rendered to Seller by Buyer shall be paid by Seller within 15 calendar days of the mailing date thereof in accordance with instructions submitted to Seller by Buyer as set forth in or accompanying such invoices.

6. **WARRANTY:** (a) Seller warrants for a period of one year from date of delivery under this PO that all items shall be free from defects in material and workmanship and shall conform to applicable specifications, drawings and all other requirements of this PO. If Seller is responsible for design of the items, Seller warrants for such period that all items delivered under this PO shall be free from defect in design, and if Seller is responsible for designing the items to meet specified performance requirements of Buyer, Seller warrants for such period that all such items shall be fit and sufficient for the purposes intended by Buyer. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty. Seller's warranties, together with its service guarantees, if any, shall run to Buyer and its customers.

(b) Seller's liability for breach of any warranty herein above set forth shall be limited to the repair or replacement, at Buyer's election, of all defective or non-conforming supplies, and the payment of all packing and transportation costs attributable to the repair or replacement of defective or non-conforming items.

(c) If the items delivered under this PO will be incorporated in an end item to be delivered to Buyer's customer, Seller's obligation under this clause shall be extended to one year after delivery of such end item to the customer.

(d) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided at law, or in equity, or under this PO.

7. **COMPLIANCE WITH LAWS AND REGULATIONS:** Seller warrants that in the performance of this PO, Seller shall comply with all applicable statutes, rules, regulations and orders of the Government, and of any State or political subdivision thereof, and agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this warranty.

8. **WORK ON BUYER'S PREMISES:** In the event that Seller, Seller's employees, agents, representatives, or subcontractors enter into Buyer's premises for any reason in connection with this PO, Seller and such other parties shall observe all military security requirements and all plant safety, plant protection and traffic regulations. Seller shall defend, indemnify and hold Buyer harmless from all claims, actions, demands, losses and causes of action arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from the acts or omissions of Seller, Seller's employees, agents, representatives, or subcontractors of Seller save and except damage caused by the negligence of Buyer. Seller and any subcontractor used by Seller in connection with this PO shall carry Workmen's Compensation and Employees' Liability Insurance to cover Seller's and subcontractor's legal liability on account of accidents to their employees. Seller and any subcontractor used by Seller in connection with this PO shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance to cover the legal liability of Seller and the subcontractor on account of accidents arising out of the operations of Seller or the subcontractor and resulting in bodily injury, including death, being sustained by any person or persons, or any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller's and its subcontractors' insurers showing such coverage in effect and agreeing to give Buyer ten (10) days prior written notice of cancellation of such coverage.

9. **RIGHTS AND RESERVATIONS:** (a) The information contained in reports, drawings, documents or other records (hereinafter referred to as "Buyer Information") which are furnished to Seller by Buyer relative to this PO, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for the completion of this PO, in which event the subcontractor shall have the same obligation of nondisclosure. Such Buyer Information shall not be used or reproduced for any purpose whatsoever except in the performance of work under this PO. Upon completion, termination or cancellation of this PO, Seller shall, if requested by Buyer, return all Buyer Information to Buyer thirty (30) days after the effective date of such completion, termination or cancellation. Any such Buyer Information retained by Seller shall remain subject to the foregoing restrictions on use, reproduction and disclosure.

(b) Upon termination, either for cause or convenience, completion, or cancellation of this PO, Buyer may use on a non-exclusive basis, all information related to this PO whether created by Buyer or Seller without further compensation to Seller.

10. **PUBLIC RELEASES:** Except as required by law or regulation, Seller shall not, without prior written consent of Buyer, in any manner advertise, publish or publicly announce that Seller has supplied or contracted to supply to Buyer the items or services to be delivered under this PO., These restrictions, however, do not apply to communication with the Government.

11. **PATENTS, COPYRIGHTS, MASK WORKS AND TRADE SECRETS:** Seller agrees to defend, indemnify and hold harmless Buyer, its customers and agents against any liability, including, without limitation, costs, expenses and attorney's fees, for or by reason of any actual or alleged infringement of any patent, copyright, mask work or trade secret arising out of the manufacture, use, sale, delivery or disposal of goods furnished under this PO and not attributable to Seller's compliance with Buyer's detail design and stated requirement for specific structure. Buyer shall notify Seller, as soon as practicable, of any claim of infringement resulting therefrom received by Buyer. In the event of any such claim against Buyer, Seller shall furnish to Buyer, when so notified by Buyer, all evidence and information in possession of Seller pertaining to such claim. Seller shall report to Buyer promptly and in reasonable written detail, each notice or claim of patent, copyright, mask work or trade secret infringement relating to the performance of this PO of which Seller has knowledge. The indemnity and hold harmless provisions of this clause shall not be applicable to actual or alleged patent infringements if a prime contract number appears on the face page of this PO.

12. **PATENTS AND DATA:** The clauses related to Patents and Data in, FAR, and DFARS, which are incorporated in the prime contract under which this PO is issued are hereby incorporated herein by reference and Seller is cognizant of such provisions and agrees to comply with such provisions as "Contractor". Notwithstanding the foregoing, if this PO is not for experimental, development or research work, the "Patent Rights-Retention by Contractor" clauses do not apply to Seller. Unless otherwise specified in this PO, all technical data and/or computer software and computer software documentation which are required to be furnished by Seller under this PO shall be furnished with "Unlimited Rights".

13. **WAIVER:** No waiver by Buyer of any breach of this PO or the granting of an extension for performance here under shall be deemed to be a waiver of any other or subsequent breach.

14. **ASSIGNMENT AND SUBCONTRACTING:** Seller shall not assign this PO or any portion hereof, nor shall Seller subcontract for completed or substantially completed goods or services purchased here under without the prior express written consent of Buyer. Seller shall to the maximum practical extent, select subcontractors (including suppliers) on a competitive basis.

15. **NOTICES:** All notices required or permitted to be given here under shall be deemed to be properly given if delivered in writing personally or sent by United States certified or registered mail addressed to Seller or Buyer, as the case may be, to the addresses set forth on the face of this PO, with postage thereon fully prepaid. The effective time of notice shall be at the time of mailing.

16. **DISPUTES:** Except as otherwise provided in this PO, the parties shall have the right to appeal any dispute arising under or related to this PO which is not disposed of by agreement. The supplier's right to appeal to the Buyer's customer is specifically excluded. Any right or remedy which the parties may have at law or in equity may be pursued

to the Federal Courts of the Northern District Texas, exclusively, to whose jurisdiction the parties hereby consent. Pending resolution of any dispute, Seller shall proceed with the performance of work, including delivery of items and services in accordance with Buyer's direction. Upon resolution of the dispute, this PO shall be equitably adjusted, if necessary to reflect the resolution.

17. **GOVERNING LAW:** This PO shall be construed, interpreted and applied in accordance with the laws of Texas, excluding its choice of law rules.

18. **PO SEVERABILITY - INVALID PROVISIONS:** If any of the provisions of this PO shall contravene or be invalid under the laws of the United States or of any country in which the work is being performed, such contravention or invalidity shall not invalidate the whole PO, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly. In such event, Buyer and Seller shall endeavor to agree on a mutually acceptable alternative provision.

19. **CONTRACTUAL COMMITMENTS:** The parties agree that there shall be no adjustment in the price, time for performance or any other provision of this PO unless an authorized representative of Buyer's Procurement Department shall have issued a written order directing a change hereto.

20. **TECHNICAL SURVEILLANCE:** Buyer and authorized representatives of Buyer's customers shall have direct access to all areas of Seller's and Seller's subcontractor's plants where work under this PO is being performed to review progress and witness testing of the items to be delivered under this PO. Seller shall include this clause in all of Seller's subcontracts under this PO.

21. **ADJUSTMENT OR TERMINATION FOR ILLEGAL OR IMPROPER ACTIVITY:** Seller agrees to pay Buyer the amount Buyer's price or fee is reduced by the Government pursuant to FAR clause 52.203-10 entitled "Price or Fee Adjustment for Illegal or Improper Activity" to the extent such reduction results from Seller's violation of the Office of Federal Procurement Policy Act (the "Act"), as amended, (41U.S.C.423), as implemented in the FAR. In the event that Buyer's contract is terminated for default as a result of Seller's violation of the Act, Buyer shall have the right to terminate this PO for default.

22. **PCBs:** Seller warrants that items delivered under or attendant to this purchase order do not contain polychlorinated biphenyl (PCBs) and agrees to indemnify buyer against any lost cost, damage or liability, including removal cost, by reason of Seller's violation of this warranty

23. **COMPLIANCE WITH REGULATIONS:** The following Federal Acquisition Regulation (FAR) and DOD FAR Supplement (DFARS) clauses are incorporated herein by reference subject to the modifications/ applications indicated and the following definitions: "Contract" means EFW PO; "Contractor" means Seller; "Subcontractor" means Seller's subcontractors, "Government and "Contracting Officer" mean Buyer except for specific clauses where it is obvious that the words Government and Contracting Officer refer to the prime contract or Contractor or government or Contracting Officer. The listed clauses which are not applicable due to monetary threshold, place, performance, type of effort or contract shall be self deleting. The dates of the FAR/DFARS clauses incorporated herein by reference are the same as the dates of the corresponding clauses in the prime contract. Where the line item relates to a single Prime Contract, that contract number will be identified on the face of the purchase order line item. For commercial items as defined in FAR clause 52.202-1, all of the below referenced clauses are self-deleting except 52.222-26, 52.222-35 and 52.222-36.

24. **Notice of Non-Conformance for Delivered Material:** Seller shall notify the Buyer in writing upon discovery of any non conformance of previously Delivered Product or of any non-conformance of the process used in the manufacturing of the Delivered Product.

25. **Approval to Ship Non-Conforming Material:** Buyer expects the Seller to delivery materials that fully conform to this Purchase Order. Seller is strictly prohibited from Delivering Non-Conforming Material without the prior written authority from the Buyer. Buyer reserves the right to reject any such request to delivery non-conforming materials at Buyer's sole discretion and to demand delivery of fully conforming materials.

FAR CLAUSES	TITLE
52-203-3	Gratuities
52.203-5	Covenant Against Contingent Fees.
52.203-6	Restrictions on Subcontractor Sales to the Government. If this PO exceeds \$100,000.
52.203-7	Anti-Kickback Procedures Applicable if this PO exceeds \$100,000. Disregard the modifications/applications set forth in Paragraph 23 above in respect of this clause except that in Paragraphs c(1), c(2), c(3) and c(5) "Contractor" means Seller.
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity.
52.203-12	Limitation on Payments to Influence Certain Federal Transactions - if this PO exceeds \$100,000. In Paragraph b(1) agency means EFW and Federal Contract means EFW PO.
52-204-2	Security Requirements - If access to classified material is required.
52.211-5	Material Requirements - Government means government with respect to property
52.211-7	Alternatives to Government Unique Standards
52.211-15	Defense Priority and Allocation Requirements.
52.214-26	Audit and Records, Sealed Bidding
52.214-27	Price Reductions for Defective Cost or Pricing Data-Modifications-Sealed Bidding
52.214-28	Subcontractors Cost or Pricing Data - Modifications - Sealed Biding Where Modification exceeds \$550,000 and the acquisition is not exempt
52.215-1	Instructions to Offerors - Competitive Acquisition
52.215-2	Audit and Records - Negotiation.
52.215-10	Price Reduction for Defective Cost or Pricing Data. Where cost or pricing data is required If Buyer is subject to any liability or expense, including government withhold of payments as the result of Seller's or it's lower-tier subcontractors' submission and certification of alleged or actual defective cost or pricing data as set forth in this clause and in FAR 52.215-11: or their furnishing as prospective subcontractors of alleged or actual defective cost or pricing data, which data was certified or required to be certified by Buyer to be accurate, complete and current as of the date of final price agreement given on Buyer's Certificate of Current Cost or Pricing Data, and which data Seller was given timely notice by Buyer to furnish and/or update prior to such date of Buyer's final price agreement; or their furnishing of data of any description that is allegedly or actually inaccurate as set forth in this clause and in FAR 52.215-11, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any damage or expense resulting from such action.
52.215-11	Price Reduction for Defective Cost or Pricing Data - Modification. See 52.215-22 above.
52.215-12	Subcontractor Cost or Pricing Data if PO is over \$550,000 and the acquisition is not exempt.
52.215-13	Subcontractor Cost or Pricing Data - Modifications. If over \$550,000 and the acquisition is not exempt.
52.215-14	Integrity of Unit Prices.
52.215-15	Pension Adjustments and Asset Reversions.
52.215-18	Reversion or Adjustment of plans for post-retirement Benefits other than Pensions (PRB).
52.215-19	Notification of ownership changes.
52.219-8	Utilization of Small Concerns.
52.219-9	Small Business Subcontracting Plan. If this PO exceeds \$500,000 unless Seller is a Small Business. "Contracting Officer" means ACO in the second paragraph (g).
52.222-1	Notice to the Government of Labor Disputes
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation. If this PO is in excess of \$100,000, add the following: "(f) Buyer shall have the right at its election either to withhold or to recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause."
52.222-20	Walsh Healy Public Contracts Act - if this PO exceeds \$10,000.
52.222-21	Prohibition of segregated facilities.
52.222-26	Equal Opportunity - if this PO exceeds \$10,000.

52.222-35	Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam era, and other eligible Veterans - (if this PO exceeds \$10,000).
52.222-36	Affirmative Action for Workers with Disabilities – (if this PO exceeds \$10,000).
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, and other eligible Veterans – (if this PO is for \$25,000 or more).
52.223-3	Hazardous Material Identification and Material Safety Data
52.223-6	Drug Free Work Place.
52.223-14	Toxic Chemical Release Reporting
52.225-8	Duty-Free Entry.
52.225-11	Buy American Act – Construction materials under trade agreements.
52.225-14	Inconsistency Between English Version and Translation of Contract.
52.227-1	Authorization and Consent.
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
52.227-3	Patent Indemnity
52.227.9	Refund of Royalties
52.227-11	Patent Rights -- Retention by the Contractor (Short Form)
52.227-12	Patent Rights -- Retention by the Contractor (Long Form)
52.227-13	Patent Rights --Acquisition by the Government
52.227-14	Rights in Data-General
52.228-3	Workers Compensation Insurance (Defense Base Act)
52.228-5	Insurance - Work on a Government Installation .
52.229-3	Federal, State and Local Taxes.
52.229.4	Federal, State and Local Taxes (State and Local adjustment).
52.229-6	Taxes - Foreign Fixed Price Contracts.
52.229-8	Taxes Foreign Cost Reimbursement Contracts
52.232-16	Progress Payments.
52-233-3	Protest After Award
52-242-13	Bankruptcy
52.242-15	Stop Work Order.
52.243-1	Changes - Fixed Price
52.243-3	Changes. Cost Reimbursement changes – Time and Materials or Labor Hours.
52.243-4	Changes.
52.244-6	Subcontracts for Commercial Items.
52.245-2	Government Property (Fixed-Price Contracts).
52.245-5	Government Property (Cost Reimbursement, Time and Material, or Labor Hour Contracts).
52.245-17	Special Tooling "Government" means Buyer except in the terms Government furnished property", "Government property" and "Government owned property"; where government means government
52.245-18	Special Test Equipment. "Government" means Buyer except in the terms "Government furnished property", "Government property" and "Government-owned property" where government means government
52.246-2	Inspection of Supplies - "Government" means Buyer except that in the fourth sentence of Paragraph (b), and the first time it appears in Paragraph (k) it means Government or Buyer. The provisions in the clause for access, rights to inspect, safety protection and relief from liability apply equally to Buyer and the Government.
52.246-3	Inspection of Supplies-Cost Reimbursement. “Government means buyer except in paragraph (c) and (d) where government means Buyer and the government and in paragraph (k) where government means the US. government.
52.246-16	Responsibility for Supplies
52.247-63	Preference for US Flag Air Carriers.
52.247-64	Preference for Privately Owned US Flag Commercial Vessels - if this PO is in excess of \$25,000.
52.248-1	Value Engineering - "Contracting Officer" means Contracting Officer in sentence 3 of Paragraph (j), “Government" means Government and Buyer in Paragraph (m).

52.249-2	Termination for Convenience (Fixed Price)- "Government" and "Contracting Officer" mean government and Buyer in Paragraph (m). In Paragraph (c) the term "120 days" is changed to "90 days". The term "1 year" in Paragraph (e) is changed to "6 months".
52.249-6	Termination (Cost Reimbursement) - applicable to Cost Reimbursement contracts only.
52.249-8	Default (Fixed price supply and service).

DFAR CLAUSES TITLE

252.203-7001	Special Prohibition on Employment if this PO exceeds \$100,000.
252.204-7000	Disclosure of Information
252.209-7000	Acquisition from Defense Contractors Subject to On-Site Inspection under the Intermediate-Range Nuclear Forces (INF) Treaty - if this PO is in excess of \$100,000.
252.211-7000	Acquisition Streamlining - if this PO is in excess of \$1,000,000..
252.219-7003	Small, Small Disadvantaged & Women Owned Small Business Subcontracting Plan (Supplement). This clause supplements FAR Clause 52.219-9 above if applicable.
252.222-7000	
252.223-7006	Prohibition on storage and disposal of toxic and hazardous materials.
252.225-7001	Buy American Act and Balance of Payments Program.
252.225-7002	Qualifying Country Sources as Subcontractors
252.225-7012	Preference for Certain Domestic Commodities.
252.225-7013	Duty Free Entry.
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools – (if this PO is for \$100,000 or more).
252.225-7016	Restriction on Acquisition of Ball and Roller Bearings.
252.225-7028	Exclusionary Policies and Practices of Foreign Governments.
252.225-7032	Waiver of United Kingdom Levies.
252.225-7037	Duty Free Entry – Eligible End Products.
252.227-7013	Rights in Technical Data - Non-commercial items.
252.227-7014	Rights in Non-commercial Computer Software and Non-commercial Computer Software Documentation .
252.227-7015	Technical Data - Commercial items.
252.227-7016	Rights in bidder proposal information.
252.227-7018	Rights in noncommercial technical data and computer software –Small Business Innovation Research (SBIR) Program.
252.227-7019	Validation of Asserted Restrictions-Computer Software. “contracting Officer means Buyer or Contracting Officer
252.227-7030	Rights in Technical Data - Withholding of Payment
252.227-7032	Rights in Technical Data and Computer Software (Foreign).
252.227-7034	Patents-Subcontracts.
252.227-7037	Validation of Restrictive Markings on Technical Data. “Contracting Officer means Buyer or Contracting Officer
252.231-7000	Supplemental Cost Principles.
252-235-7003	Frequency authorization.
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services at (Location to be identified)
252.242-7005	Cost/Schedule Status Report (Mar1998).
252.243-7001	Pricing of Contract Modifications.
252.246-7001	Warranty of Data (with its Alternate II)
252.247-7023	Transportation of Supplies by Sea - if this PO exceeds \$100,000. "Contracting Officer" means Buyer. In paragraph (d), delete the phrase ", within 30 days... Washington DC 20590," and replace with the phrase "furnish with each invoice submitted for payment".
252.249-7002	Notification of Anticipated Contract Termination and Reduction. Applies to first tiers over \$500,000 and subcontracts thereunder at \$100,000 or more

