

Argon ST, Inc.

TERMS AND CONDITIONS FOR FIXED PRICE PURCHASE ORDERS ISSUED UNDER US GOVERNMENT PRIME CONTRACTS

- 1. ACCEPTANCE** -The Order (which term shall be deemed to include plans, specifications, and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the Goods and Services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this Order: (a) acknowledgment of this Order; (b) furnishing of any part of the Goods or Services under this Order; (c) acceptance of any payment for the Goods or Services or (d) commencement of performance under this Order. Any additional or different terms proposed by the Seller are objected to and are hereby rejected unless the same shall be accepted in writing by the Buyer. Failure of any party to enforce its rights under this purchase order shall not constitute a waiver of such rights or of any other rights under this Order or otherwise. SELLER IS HEREBY URGED TO ONLY ACCEPT THIS ORDER AFTER READING IT IN FULL AND AGREEING TO ITS TERMS. IF SELLER DOES NOT AGREE TO ANY OF THE TERMS CONTAINED HEREIN, SELLER SHOULD DECLINE THE ORDER AND PROVIDE SUGGESTED REVISIONS TO BUYER. FAILURE OF SELLER TO SO OBJECT SHALL BE CONCLUSIVE OF SELLER'S ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS HEREIN. No amendments or variations to the Terms and Conditions of this Order shall be valid unless agreed to in writing by the parties, such agreement being evidenced on an official Purchase Order.
- 2. DEFINITIONS.** As used herein, the following terms shall have the meanings set forth below: "Order" shall mean an Argon ST, Inc. (hereafter "Argon" or "Buyer") purchase order under which Goods are to be supplied and/or Services performed. The "Seller" shall mean the person, firm or company to whom the Order is issued. The "Goods" shall mean all of the parts, goods, and articles, whether raw material or finished products, covered by the Order. "Services" shall mean all work and/or services to be performed by the Seller pursuant to the Order. "Buyer's Procurement Representative" means the person authorized by Buyer's procurement organization to administer and/or execute an Order and to authorize changes thereto. Buyer may not enforce against Seller any affirmation, promise, or warranty concerning the Goods or Services covered by the Order unless contained herein. The Order shall not be varied, supplemented, qualified, or interpreted by any prior course of dealing between the parties or by any usage of trade.
- 3. CHANGES** - (a) The Buyer's Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make unilateral changes within the general scope of this Order in any one or more of the following: (i) technical requirements and descriptions, statement of work, drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery, (iv) adjustment in quantities, (v) delivery schedule, (vi) amount of Buyer-furnished property, (vii) description of services to be performed, (viii) place of performance, (ix) terms and conditions of this Order required to meet Buyer's obligations under Government prime contracts or subcontracts; and (iv) time of performance (e.g., hours of the day, days of the week). Seller shall comply immediately with such direction. (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Order, Buyer and Seller shall negotiate an equitable adjustment in the Order price and/or delivery schedule, and modify this Order accordingly. Changes to the delivery schedule will be subject to a price adjustment only. (c) Seller must assert its right to an equitable adjustment under this clause within fifteen (15) days from the date of receipt of the written change order from Buyer. If the Seller's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, Buyer shall have the right to prescribe the manner of disposition of the property. (d) If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. (e) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Order. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Order as changed.
- 4. ORDER DIRECTION** - a) Only the Buyer's Procurement Representative has authority to make changes to this Order. All amendments must be identified as such in writing and, except for changes authorized herein to be made by Buyer on a unilateral basis, executed by both parties hereto. (b) Buyer engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the goods or services contemplated hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for equitable adjustment. (c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be in writing and sent to the Buyer Procurement Representative.
- 5. PRICES.** Unless specifically otherwise stated in this Order, all prices shall be firm fixed price and not subject to any form of surcharge or variation. Except as may be otherwise stated on the face of this Order, the prices stated herein shall include, to the extent allocable hereto, all federal, state, and local taxes applicable to the Goods or Services furnished by the Seller. No extra charges of any kind shall apply to this Order, including without limitation (1) charges for boxing or cartage, and (2) any permits, fees, or licenses required for the proper execution and completion of the work, unless otherwise specifically authorized by Buyer in writing.
- 6. TOOLS, MATERIALS, AND INFORMATION.** Unless otherwise provided herein, all items, including but not limited to products, software, tools, materials, data, drawings, schematics or other technical information developed or created by Seller in the performance of this Order (hereinafter in this clause referred to as "Developed Material") shall be identified by Seller as the proprietary property of Buyer and Seller shall (a) retain no rights therein and (b) hereby waives all rights therein. Buyer may provide to Seller property owned by either Buyer or its customer (hereinafter in this clause referred to as "Furnished Property"). Developed Material and Furnished Property shall be used only for the performance of this Order and title to Developed Material and Furnished Property shall remain in Buyer or its customer, as applicable. Seller shall clearly mark (if not so marked) all Developed Material and Furnished Property to show its ownership. Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Developed Material and Furnished Property in accordance with good commercial practices. On completion of the Order or its earlier termination any Developed Material and Furnished Property still in Seller's possession must

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be held in safe custody and maintained in good condition until such time as disposal instructions are received from the Buyer.

- 7. PREVIOUSLY-DEVELOPED SOFTWARE.** The Seller warrants that, if previously-developed software is to be supplied hereunder, Seller has provided Buyer with any condition of use or license terms relating to such software prior to the date of this Order. In the event that such conditions or license terms have not been provided, the Seller agrees to waive their application and the Seller fully indemnifies the Buyer against all losses, claims, liabilities, damages, cost and expenses arising from the Buyer's use or sale of the software. The Seller warrants that the Seller is the owner of the copyright and other intellectual property in such software to be supplied or has a valid license from the owner of the copyright or intellectual property to sell or sub-license the software to the Buyer.
- 8. QUALITY CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods and Services purchased under this Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods or Services delivered to Buyer during the period of any such violation or deviation. Quality Assurance Provisions (QAPS) are fundamental requirements of the Buyer's acceptance of Seller's goods and services when specified on the face sheet of this Order.
- 9. PROGRESS REPORT.** The Seller may be required to submit a progress report outlining progress towards completion of the Order. The contents and frequency of said progress report shall be as specified on the face of this Order or as otherwise subsequently agreed upon between the Buyer and the Seller.
- 10. DELIVERY.** Any time or period for delivery or completion by the Seller shall be of the essence. Without limitation, the Buyer shall be entitled to cancel this Order and/or claim reimbursement for all losses, costs, and expenses suffered in the event (a) the Seller fails to deliver the Goods or provide Services in accordance with the terms of the Order or (b) the Seller fails to make progress with the Order so as to jeopardize the timely fulfillment of the Order. The Seller shall notify the Buyer in writing without delay of any changes in circumstances which may delay delivery and/or performance.
- 11. TRANSPORTATION.** Except as otherwise provided on the face of this Order, transportation charges on Goods sold F.O.B shipping point must be *prepaid* and invoiced to Buyer. No insurance or premium transportation costs will be charged to Buyer unless authorized by Buyer in writing. Risk of loss from any casualty to Goods ordered hereunder, regardless of cause, shall be Seller's responsibility until Goods have been delivered in compliance with the terms of transportation agreed upon herein. If Seller does not comply with Buyer's delivery schedule, Buyer may, in addition to any other rights which Buyer may have under this Order, require expedited delivery. Premium charges resulting from expedited transportation must be fully prepaid and absorbed by Seller. Orders should be shipped via the best way possible to comply with the delivery schedule.
- 12. INSPECTION.** Buyer and its customer may inspect all goods at reasonable times and places, including, when practicable, during manufacture and before shipment. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work. No such inspection shall relieve Seller of its obligations to furnish and warrant all goods in accordance with the requirements of this Order. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. Seller shall maintain an inspection system acceptable to Buyer for the goods purchased under this Order. If Buyer performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.
- 13. ACCEPTANCE AND REJECTION.**
 - a. Buyer's final inspection and acceptance shall be at destination. Within thirty (30) days of arrival for acceptance, Buyer shall accept the Goods or give Seller notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Order or impair any rights or remedies of Buyer.
 - b. If Seller delivers non-conforming Goods, Buyer may at its option and at Seller's expense (i) return the Goods for a complete credit or refund; (ii) require Seller to promptly correct or replace the Goods; (iii) correct the Goods; or (iv) obtain replacement Goods from another source.
 - c. Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's Procurement Representative may reasonably direct.
 - d. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Order or otherwise.
- 14. WARRANTY.** The Seller warrants that all Goods furnished under this Order shall conform to all specifications and requirements of this Order and shall be free from defects in materials and workmanship. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects. This warranty shall survive inspection, test and acceptance of, and payment for, the Goods. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance and extend for a period of one (1) year. Buyer may, at its option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective or non-conforming Goods. Return to Seller of defective or non-conforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this clause and the "Inspection" clause of this Order in the same manner and to the same extent as Goods originally delivered under this Order, but only as to the

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corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller did not breach this warranty, the parties shall equitably adjust the Order price

15. INVOICE AND PACKING. Seller shall include an itemized packing list bearing the Buyer Purchase Order number, Buyer Purchase Order Line Number, Seller part number, description of the items shipped, and any other information called for in the Order. A copy of the packing list shall be placed in the shipping package. Invoices shall be submitted to the address shown on the face of the Order to the attention of the Accounts Payable Department. The invoice must contain the same Purchase Order number, Purchase Order Line Number, description of Goods/Services, quantity, and price as the Purchase Order. Any Seller invoice discount period or net payment period shall begin when both the invoice and the Goods/Services (conforming to technical requirements) have been received and the Goods have been accepted and the Services have been performed.

16. PAYMENT. Payment terms are net, forty five (45) days, after the date of the Seller's invoice. Buyer shall have the right to recoup or offset, as the case may be, against payments due or at issue under this Order or any other order or Order between the parties.

17. CANCELLATION FOR DEFAULT.

a) Buyer may, by written notice to Seller, cancel all or part of this Order if (i) Seller fails to deliver the goods within the time specified by this Order or any written extension; (ii) Seller fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Buyer specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

b) Seller shall continue work not canceled. If Buyer cancels all or part of this Order, Seller shall be liable for Buyer's excess procurement costs.

c) Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Order rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Order. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.

d) Buyer shall pay the Order price for Goods accepted. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" clause of this Order, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Order any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.

e) Upon the occurrence and during the continuation of a default, Buyer may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Order. If after termination for default under this Order, it is determined that Seller was not in default, such termination shall be deemed a termination for convenience.

18. TERMINATION FOR CONVENIENCE.

a) Buyer reserves the right to terminate this Order, or any part hereof, for its convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all subcontractors and suppliers to stop work. Subject to the terms of this Order, Seller shall paid a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate to the satisfaction of Buyer have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Seller's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

b) In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Order price for the work terminated.

c) Seller shall continue all work for all work not terminated.

d) If the terminated Order is solely for Services, Buyer shall be liable only for payment of Services performed before the effective date of termination.

19. WAIVER. Failure of either party to enforce its rights under this Order shall not constitute a waiver of such rights or any other rights. No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation is supported by consideration and is in writing signed by both parties.

20. NON-ASSIGNMENT. Neither this Order nor any expressed interest in this order may be assigned, in whole or in part, by Seller without the prior written consent of the Buyer. Notwithstanding the above, Seller may assign any monies due or to become due to him hereunder, provide that such assignment shall not be binding upon Buyer until receipt of a copy of the assignment is acknowledged and approved by the Buyer. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

21. NON-DISCLOSURE. The Seller shall not disclose any interest of any kind arising as a result of the Order by way of advertisement, publicity or purpose of trade without the prior written consent of the Buyer. Technical information, drawings, design and other data supplied by the Buyer are confidential and shall not without consent of the Buyer be disclosed to any third party and shall be used solely for the purpose of the Order. Where drawings or other data are issued, the Seller shall exercise proper custody of such in accordance with Buyer's instruction.

22. STOP WORK

a) Seller shall stop work for up to ninety (100) days in accordance with any written notice received from Buyer, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the work during the period of work stoppage.

(b) Within such period, Buyer shall either terminate in accordance with the provisions of this Order or continue the work by written

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notice to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the work stoppage, if applicable, provided that the claim for equitable adjustment is made within twenty (20) days after date of notice to continue.

23. DISPUTES. Any dispute arising under this Order that is not settled by arrangement between the parties may be settled by appropriate legal proceedings. Pending any appeal, decision, or judgment in such proceedings or the settlement of any disputes arising from this Order, Seller shall proceed diligently with the performance of this Order in accordance with the instructions of the Buyer.

24. INFRINGEMENT INDEMNIFICATION. The Seller shall indemnify the Buyer in respect of any claim of infringement of intellectual property rights by the use or sale of any Goods or Services supplied under the Order and against all losses, expenses, costs and damages for which the Buyer may become liable or may incur in connection with any such claim. Where development forms part of the Order the ownership of any intellectual property rights including but not limited to patents, registered designs, unregistered design rights and copyright arising from such development shall be transferred to the Buyer and the Seller shall assist in any measures necessary to make such transfer effective as any such right arises.

25. RESPONSIBILITY FOR CLAIMS/INDEMNITY. Seller shall, at its own expense, defend, indemnify and hold harmless Buyer from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of Seller, its subcontractors, agents, or employees in the performance of this Order. If Seller fails to defend, hold harmless, and indemnify Buyer as provided in this clause, then Seller shall pay for any damages, attorney's fees, and any other fees, costs, and expenses that may be incurred by Buyer in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.

26. CONTROLLING LAW. The validity, construction, scope and performance of this Order shall be enforced and interpreted under the laws of the State of Delaware, without regard to its conflicts of laws provisions, and the parties consent to jurisdiction and venue in the state and federal courts located in the federal Eastern District of Virginia. The parties agree to irrevocably waive their right to a jury trial in the event of any legal proceedings related to this Agreement.

27. NOTICES. Except for acceptance hereof, any notices required to be given hereunder shall be given in writing at the address of each party herein set forth or at such other address as either party may substitute by notice to the other.

28. EQUAL EMPLOYMENT COMPLIANCE. The Seller represents to the best of its knowledge and belief, that no written notice such as a show cause letter, a letter indicating probable cause, or any other formal written notifications citing specific deficiencies has been received by the Seller from any Federal Government agency or representative thereof, that the Seller or any of its divisions or affiliates or known lower tier suppliers is in violation of any of the provisions of Executive Order No. 11246, September 24, 1965, and any Executive order amending or superseding this order or rules or regulations of the Secretary of Labor (41 CFR 60) and specifically as to not having an acceptable Affirmative Action Program or being in

noncompliance with any aspect of the Equal Opportunity Program. It is agreed that Seller shall promptly notify Buyer of any changes to status or circumstances and hold harmless Buyer from loss, cost, damage, or liability, including any fines, penalties, attorney's fees, any other costs arising out of or resulting from any failure to so comply.

29. COPYRIGHT. The Seller shall grant the Buyer copyright privilege of all documentation and manuals to be furnished under this Order for continuous long-term training and documentation purposes across all Buyer programs and internally.

30. FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Order. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Order.

B. GOVERNMENT SUBCONTRACT

(a) This Order is entered into by the parties in support of a U.S. Government contract.

(b) As used in the FAR clauses referenced below and otherwise in this Order:

1. "Contracting Officer" shall mean the U.S. Government Contracting Officer for Buyer's government prime contract under which this Order is entered.

2. "Contractor" and "Offeror" means the Seller, as defined in these terms and conditions.

3. "Prime Contract" means the contract between Buyer and the U.S. Government or between Buyer and its higher-tier contractor who has a contract with the U.S. Government.

4. "Subcontract" means any contract placed by the Seller or lower-tier subcontractors under this Order.

C. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION INCORPORATED BY REFERENCE

1. The following FAR clauses apply to this Contract:

(a) FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

(b) FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(c) FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

(d) FAR 52.222-35 Equal Opportunity for Veterans (SEP 2010)

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(e) FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009)

(f) FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

(g) FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2009)

(h) FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)

2. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$10,000:

(a) FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(b) FAR 52.222-40 NOTIFICATION OF EMPLOYEES RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

3. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$100,000:

(a) FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

(b) FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

4. The following FAR clauses apply to this Order if the value of this Order equals or exceeds \$5,000,000:

(a) FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)
(Applicable if the period of performance is more than 120 days)