

ThinKom Solutions, Inc.

PURCHASING TERMS AND CONDITIONS

Rev. A (01/06)

1. **GENERAL/ACCEPTANCE** – This proposed contract is Buyer’s offer to purchase the goods and services (Goods) described in this offer. Acceptance is strictly limited to the terms and conditions in this offer, unless specifically agreed to in writing by Buyer’s Authorized Procurement Representative. Buyer objects to and is not bound by, any terms and condition that differ or adds to this offer. Seller’s commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written. Unless otherwise stated in Buyer’s specifications, the latest revision of applicable standards, specifications, or similar documents as of the date of this order shall apply.
2. **ASSIGNMENT AND SUBCONTRACTING** – Seller shall not assign any of its rights or interest, subcontract all or substantially all of its performance, or delegate any of its duties or obligations under this contract without prior written consent of Buyer. No assignment, delegation or subcontracting by Seller, with or without Buyer’s consent, shall relieve Seller of any of its obligations under this contract or prejudice any of Buyer’s rights against Seller whether arising before or after the date of any assignment.
3. **GOVERNMENT CLAUSES (FAR/DFAR)** – Government clauses applicable to this contract are incorporated herein either by attachment to this document or by some other means of reference.
4. **CHOICE OF LAW** – Irrespective of the place of performance, this contract will be construed and interpreted according to the laws of the State of California, excluding the conflict of laws provisions. The provisions of the United Nations Convention on Contracts for the International Sales of Goods shall not apply to this contract.
5. **COMPLIANCE WITH LAWS AND REGULATIONS:**
 - (a) Seller shall comply with any applicable laws, Executive Orders, or regulations (including export administration regulations).
 - (b) Seller agrees to indemnify Buyer against any loss, cost, liability, or damage by reason of Seller’s violation of any applicable law, Executive order or regulation.
6. **FORCE MAJEURE** – Neither party shall be responsible for its failure to perform due to causes beyond its control such as acts of God, fire, war, riots, freight embargoes, or acts of civil or military authorities. If services or materials are to be delayed by such causes, Seller shall immediately notify Buyer in writing and Buyer may either elect to extend the period of performance of the contract, or terminate the contract in whole or in part per article 7 herein, “Termination for convenience”.
7. **TERMINATION FOR CONVENIENCE** – Buyer may:
 - a. Terminate this contract, or any part thereof, at any time for its sole convenience by giving written notice of termination to Seller. Upon Seller’s receipt of such notice, Seller shall immediately stop all work previously authorized and give prompt written notice to, and cause all of its suppliers or subcontractors to cease all related work.
 - b. Buyer shall be responsible for payment of authorized Goods/services already provided by Seller but not invoiced or materials that have been purchased but not yet delivered and work in process. Upon payment of Seller’s claims, Buyer shall be entitled to all work and materials paid for.
 - c. Before assuming any payment obligation under this section, Buyer may inspect Seller’s work in process and audit all relevant documents relating to direct material and direct labor prior to paying Seller’s invoice.
8. **TERMINATION FOR DEFAULT** – Buyer may (a) by written notice to Seller, cancel all or part of this contract if (i) Seller fails to deliver the Goods or services within the time specified by this contract or any written extension; (ii) Seller fails to perform any provision of this contract or fails to make progress, so as to endanger performance of under this contract, and, in either of these two circumstances, does not cure the failure within ten (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 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 cancelled. If Buyer cancels all or part of this contract, Seller shall be liable for Buyer’s re-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, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, “Manufacturing Materials”) that Seller specifically produced or acquired for the for the cancelled portion of this contract. 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 price specified on the purchase for the Goods accepted. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be shall be at a price determined in accordance with the “Termination for Convenience” article of this contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this contract 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) If, after cancellation, it is determined that Seller were not in default, the rights and remedies of the parties shall be as if the contract had been terminated according to the “Termination for Convenience” article of this contract.
9. **Publicity** – Without Buyer’s prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this contract for the Goods or program to which it pertains. Seller shall be liable to Buyer for any breach of such obligation by any of its subcontractors. If disclosure of this contract or any of the terms hereof is required by applicable law, rule, or regulation, or is compelled by a court or government agency, authority or body: (i) Parties shall use all legitimate and legal means available to minimize the disclosure of the content of the contract to third parties, including without limitation seeking a confidential treatment request or protective order; (ii) the disclosing party shall inform the other party at least ten (10) days in advance of the disclosure; and (iii) the disclosing party shall give the other party a reasonable amount of time to review and comment upon the disclosure, and any request

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for confidential treatment or a protective order pertaining thereto, prior to making such disclosure. The parties may disclose the contents of this contract in confidence to their respective attorneys, accountants, bankers, and financing sources as necessary. The obligations stated in this section shall survive the expiration or termination of this contract.

10. **CONFIDENTIALITY** – During The course of this contract, either party may have or may be provided access to the other party's confidential information and materials. Additionally, Seller may be engaged to develop new information and materials for Buyer during performance under this contract, which information will become, upon creation, Buyer's confidential and/or proprietary information unless otherwise agreed in writing. Information and materials to be provided shall be marked in a manner reasonably intended to make the recipient aware, or the recipient is sent written notice within forty eight (48) hours of disclosure, that the information or materials are "Confidential" and/or "proprietary". Each party agrees to maintain such information in accordance with the terms of this contract, and the applicable separate nondisclosure agreement between Buyer and Seller. At a minimum each party agrees to maintain such information in confidence and limit disclosure on a need to know basis, to take all reasonable precautions to prevent unauthorized disclosure, and to treat such information as it treats its own information of similar nature, until the information becomes rightfully available to the public through no fault of either party to this contract. Seller's employees who need to have access to Buyer's facilities may be required to sign a separate nondisclosure agreement prior to being granted access to confidential and/or proprietary information.

11. **PATENT, TRADEMARK AND COPYRIGHT**

INDEMNITY. Seller shall indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorney's fees and/or costs), liabilities, damages, costs, and attorney's fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of such claim, suit or action, and Seller will, at its own expense, fully defend such claim, suit or action on behalf of Buyer and its customer. Seller will have no obligation under this article with regards to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not have been avoided in complying with such Specification(s) or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller.

12. **SCHEDULE:** (a) Seller shall strictly adhere to shipment or delivery schedules specified in this contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via

air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" article of this contract. Any added premium transportation costs are to be borne by Seller.

(b) Buyer at its sole discretion may, accept portion(s) of completed Goods. Payment for such Goods shall be made in accordance with the provisions of article 7 herein "Termination for Convenience".

13. **INSPECTION.**

(a) At no additional cost to Buyer, Goods shall be subject to inspection, surveillance and test at reasonable times and places, including Seller's subcontractors' locations. Buyer shall perform inspections, surveillance and tests so as not to unduly delay the work.

(b) Seller shall maintain an inspection system acceptable to Buyer for the Goods purchased under this contract.

© If Buyer performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.

14. **ACCEPTANCE AND REJECTION.**

(a) 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 nonperformance shall relieve Seller of any obligations under this contract or impair any rights or remedies of Buyer.

(b) If Seller delivers nonconforming Goods, Buyer may at its option and at Seller's expense (i) return the Goods for credit or refund; (ii) require Seller to promptly correct or replace the Goods; or (iii) obtain replacement Goods from another source.

© 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 delivery shall be completed within the original delivery schedule or such later time as Buyer may reasonably direct.

(d) All costs and expenses and loss of value incurred as a result of or in connection with nonperformance 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 contract or otherwise.

15. **WARRANTY** - Seller warrants that all Goods furnished under this contract shall conform to all specifications and requirements of this contract and shall be free from all defects in material and workmanship. To the extent Goods are not manufactured pursuant to detailed design 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 successor, assigns and customers. Such warranty shall begin after Buyer's final acceptance. 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

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Goods shall be at Sellers, expense. Goods required to be corrected or replaced shall be subject to this article and the "inspection" article of this contract in the same manner and to the same extent as Goods originally delivered under this contract but only as to the corrected or replaced part or parts thereof. Even if 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 determine that Seller did not breach the warranty, the parties shall equitably adjust the contract price.

16. **RECORDS AND AUDIT.** Seller shall retain all records and documents pertaining to the Goods for a period not less than three (3) years after final payment. Such records and documents shall date back to the time of issuance of this contract and shall include without limitation, price proposal and/or list, catalogues, invoices and inventory records for purposes of verification of prices or rates charged by Seller for Goods procured by Buyer. Buyer shall have the right to examine, reproduce and audit all such records related to pricing and performance to evaluate the accuracy, completeness and accuracy of cost and pricing data submitted with Seller's Bid or offer to sell; and related to "changes," "Termination for Convenience" or "Termination for Default" articles of this contract.
17. **BUYER'S PROPERTY.** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this contract without Buyer's prior written consent. Seller shall notify Buyer if Buyer's property is lost, damaged, or destroyed. As directed by Buyer, upon completion, termination or cancellation of this contract, Seller shall deliver such property, to the extent to the extent not incorporated in delivered Goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.
18. **CHANGES:** (a) Buyer may, without notice to sureties and in writing, direct changes within the general scope of this contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property, and, if this contract includes services, (vi) description of services to be performed, (vii) time of performance (e.g. hour of the day, days of the week); (viii) place of performance, and (ix) terms and conditions of this contract required to meet Buyer's obligations under Government prime contracts or

subcontracts. Seller shall comply immediately with such direction.

- (b) If such change increases or decreases the cost or time required to perform this contract, Buyer and Seller shall negotiate an equitable in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer within 25 days and deliver a fully supported proposal to Buyer within 60 days after Seller's receipt such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller performing in accordance with Buyer's direction.
19. **DISPUTES** - Any dispute that arises under or is related to this contract that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this contract according to Buyer's instructions so long as Buyer continues to pay amounts not in disputes.
20. **LIENS** - Seller warrants that it has title to the Goods to be delivered under this contract and shall deliver same free of all liens, claims and encumbrances.
21. **PROPERTY RIGHTS** - (a) Seller agrees to make prompt and complete disclosure to Buyer of all inventions and disclosures made or received as a result of work performed under this contract. Seller agrees to keep necessary records supporting such inventions and discoveries and will furnish to Buyer upon request all such records.
(b) Any invention, discovery, proprietary information, software, system, data, or report resulting from the work performed under this contract shall be the sole property of Buyer. All patents, copyrights, trade secrets, trademarks or other intellectual property resulting from work under this contract shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of Seller and without any duty to account to Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this contract, and to provide reasonable support for Buyer's prosecution of such patent application. The parties agree that any original work of authorship created under this contract is a work made for hire for purposes of copyright ownership. To whatever extent Seller has any interest in any original work of authorship created under this contract, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative work.
(c) This contract does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, copyright, or other intellectual property right held by Buyer, unless specifically set forth in the body of the contract.
22. **SUBSTITUTION** - Seller shall not substitute material or accessories without written consent of Buyer.

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23. **TAXES** – Unless this contract specifies otherwise, the price of this contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Price shall not include any taxes for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
24. **INVOICES & PAYMENT** – Unless otherwise authorized by Buyer, Seller shall issue a separate original invoice for each delivery that shall include Buyer's contract number and line item number. Seller shall forward its invoices to the address specified elsewhere in this contract. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered.
25. **ACCESS TO PLANTS AND PROPERTIES** – Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises by Buyer or Buyer's customer.
26. **INSURANCE** – (a) Seller shall maintain, at its sole cost and expense, Commercial General Liability and Automobile Liability Insurance with limits not less than \$1,000,000 per occurrence and including liability for bodily injury or property damage and Buyer to be named as additional insured. (b) Seller shall maintain statutory Worker's Compensation coverage, including a Broad Form All States Endorsement in the amount required by law, and Employers' liability insurance in the amount of \$1,000,000 per occurrence. Such insurance shall include an insurer's subrogation in favor of Buyer. (c) If Seller is providing professional service to Buyer, Seller shall maintain Professional Liability insurance (including errors and omissions) with liability limits not less than \$1,000,000. Seller shall provide Buyer with properly executed certificate of insurance, as appropriate and prior to the commencement of this contract and shall notify Buyer, no less than thirty (30) days in advance, of any reduction or cancellation of the coverage.
27. **RIGHTS & REMEDIES** – Any failure, delays or forebearances of either party in insisting upon or enforcing any provisions of this contract, or in exercising any rights or remedies under this contract, shall not be construed as a waiver or relinquishment of any such provisions, rights and remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this contract, the rights and remedies set herein are cumulative and in addition to any other rights or remedies that the party may have at law or equity. If any provision of this contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
28. **INDEPENDENT CONTRACTOR** – In providing Goods and Services under this contract, Seller is an independent contractor. In no event shall Seller or its agent, representative or employees be deemed to be agents, representative or employees of Buyer. As an independent contractor, Seller will be solely determining the means and methods for provision of Goods and/or performing the required services under this contract.
29. **ORDER OF PRECEDENCE** – (a) In the event of any inconsistency or conflict between or among the provisions of contract, such inconsistencies or conflicts shall be resolved by the following descending order of preference: (i) Typed provisions set forth in the contract; (ii) the provisions of any attachment, exhibit or addendum included with this contract; (iii) standard terms and conditions referenced herein with this contract; and (iv) specification or drawing(s) attached hereto or incorporated by reference within this contract. Buyer's specifications shall prevail over specifications of Seller. (b) In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples whether or not approved by Buyer, and samples over designated type, part number, or catalog descriptions. In case of ambiguity in the specifications, drawings or other requirements of this contract, Seller must, before proceeding, consult Buyer for mutual resolution.
30. **PACKING AND SHIPPING**
- a. Seller shall pack the Goods to prevent damage and deterioration. Seller shall comply with carrier tariffs. Unless this contract specifies otherwise, the price includes shipping charges for Goods Sold FOB destination. Seller shall make no declaration concerning the value of the Goods shipped except on the Goods where the tariff rating is dependent upon released or declared value. In such event Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packing.
- b. Unless this contract specifies, Seller will ship the Goods in accordance with the following instructions:
- (i) Shipment by Seller or its subcontractors must include packing sheets containing Buyer's contract number, line item number, description and quantity of goods shipped, part number or size, if applicable, and appropriate evidence of inspection.
- (ii) Seller shall not insure any FOB origin shipment unless authorized by Buyer.
- (iii) Seller shall label each shipping container with the contract number and the number that each container represents of the total number being shipped (e.g. box 1 of 2, box 2 of 2).
- (iv) Buyer shall select the carrier and mode of transportation for all shipments where freight costs will be charged to the Buyer.