



12303 FUQUA, HOUSTON, TX 77034

FAX (281) 619-0158 • (281) 619-0144

Terms and Conditions for Purchase Orders - Rev -

(1) DEFINITIONS (AS USED HEREIN)

(a) The term "Order" shall mean the purchase order, Letter of Authorization or contract and revisions thereto, incorporating by reference these conditions and instructions and all applicable data incorporated by reference thereto.

(b) The term "Contract Products" shall mean the goods, technical data, drawings, services, or other items constituting the subject matter of this Order which are to be furnished by the Seller.

(c) The term "Buyer" shall mean USM, Inc. and its duly authorized representative(s). The Buyer stated on the accompanying Purchase Order is the only authorized representative for this Order.

(d) The term "Seller" shall mean the person, firm, or corporation from whom the Contract Products described in this Order are to be furnished.

(e) Prices appearing herein shall include all packaging, crating, and federal, state and local taxes, if applicable, duties, tariffs and similar fees imposed by any government, and are firm for the delivery period shown.

(2) ACCEPTANCE

This Order is the Buyer's offer and shall become a contract only when accepted, either by the Seller's signed acknowledgement of this Order, by the Seller's commencement of performance, by shipment of any of the Contract Products, or by the Seller's dispatch of the Seller's sales acknowledgement, provided that such sales acknowledgement agrees with this Order with respect to description of Contract Products, quantity, price, and delivery schedule. By acceptance using any of these methods, the Seller agrees to all of the terms and conditions set forth herein. The Buyer hereby objects to any different or additional terms in the Seller's acceptance. The terms and conditions contained in this Order shall be flowed down to all sub tier, suppliers, subcontractors and material by the Seller, at all times when entering into purchase orders and/or subcontracts for the purpose of satisfying the requirements of this Order. This Order is not an expression of acceptance or confirmation except to the extent expressly stated herein. To the extent that is so stated, any acceptance contained in this Order is conditional on the Seller's assent to the additional and different terms included herein. The terms set forth herein constitute the entire agreement of the parties and supersede all previous verbal or written representations, offers, or agreements. No modifications of the requirements of this Order shall be binding unless authorized by the Buyer in writing.

(3) DELIVERY

The Buyer's production schedules are based upon the agreement that the Contract Products will be delivered to the Buyer by the date specified on the face of this Order. Time is, therefore, of the essence of this Order.

If the Seller is delayed in meeting the delivery schedule for any reason whatsoever, he/she shall promptly notify the Buyer in writing of the delay, its anticipated duration, its causes, and the Seller's proposed remedy. If the Seller's deliveries fail to meet the delivery schedule, the Buyer reserves the right to terminate the Order in whole or in part, acquire the Contract Products elsewhere, and to charge the Seller for any additional costs thereof. Such rights shall be in addition to any other remedies provided by law.

(4) QUANTITY

Shipments must equal exact amounts ordered unless otherwise agreed upon in writing by the Buyer. Invoices shall be honored and paid for only those quantities indicated on the Order or otherwise authorized in writing by the Buyer. Excess quantities shall be held by the Buyer at the Seller's risk, for a period of thirty (30) days. Arrangements for return, including handling and shipping costs, must be effected during the thirty- day period, at the Seller's expense. Subsequent to the thirty-day period, all excess Contract Products shall be returned to the Seller at the Seller's expense.

(5) PACKING AND SHIPPING

Unless otherwise specified, all Contract Products are to be packed in accordance with good commercial practice.

Unless otherwise specified, all Contract Products shall be forwarded and classified in accordance with good commercial practice in order to obtain the most economical transportation rate. Any extra transportation costs or other losses accruing from deviations from the Buyer's routing instructions will be charged to the Seller's account.

A complete packing list shall be enclosed with all shipments including but not limited to, the Order number, the Order item number, description of the Contract Products, sizes, and quantity. Bills of Lading shall include the number of pieces and weight of the shipment.

The Seller shall mark containers or packages with necessary lifting, loading, and shipping information, as applicable, including the Buyer's Order number, date of shipment, and the names and addresses of consignee and consignee.

(6) INSPECTION, ACCEPTANCE AND DEFAULT

(a) The Seller shall perform all examinations, inspections, and tests, or assume responsibility for others so to do, necessary to insure that the Contract Products furnished are in complete conformity with all requirements of this Order.

(b) The Seller shall permit Buyer, including Buyer's customer when accompanied by Buyer, to have access to all facilities utilized by Seller to perform the requirements of this Order, for verification of Contract Products. Seller shall make this provision a flow down to its suppliers. If inspection and/or test is made on the premises of the Seller or its supplier, the Seller shall furnish without additional charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to unduly delay the work. Final inspections shall be on the Buyer's premises unless the Buyer directs otherwise in writing.

(c) In case any of the Contract Products are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Order, the Buyer shall have the right to reject the same or require that such Contract Products be corrected or replaced promptly. Nonconforming Contract Products shall be identified by the Seller and removed from normal production flow until correction or replacement is complete. Deviations from Seller's quality control documents must be approved in writing by the Buyer. The Seller's Material Review Board (MRB) authorities are specifically withheld. Contract Products rejected as not conforming to this Order shall be returned at the Seller's expense including packaging, transportation and handling costs. If the buyer so rejects the Contract Products or if the Seller, when requested by the Buyer, fails to proceed promptly with the replacement or correction thereof, the Buyer either may terminate this order for default



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or may replace or correct such Contract Products and in either event may charge the Seller the cost or damages occasioned the Buyer. Acceptance of the Contract Products by the Buyer shall not relieve the Seller of its liability for Contract Products that do not conform to the requirements of this Order, including the delivery schedule. The Seller's liability shall include any reduction in value of nonconforming Contract Products and any other incidental or such consequential damages which the Buyer may suffer on account of failure to conform with the requirements of this Order. If the Buyer elects to accept such nonconforming Contract Products, the parties will negotiate in good faith for a downward equitable adjustment and payment will be withheld during the pendency of such negotiations.

(d) The Seller shall maintain an Inspection system in accordance with sound business practice and as otherwise specified in this Order.

(e) The methods of inspecting and testing for purposes of the Buyer's acceptance of the Contract Products shall be determined in the Buyer's sole discretion and shall include statistical sampling methods. Acceptance of any Contract Products shall not waive, modify, limit, or constitute compliance with any of the warranty obligations imposed herein on the Seller.

(f) The Buyer shall have the right to reject all or any part of any lot (or installment) whenever any Contract Product within the lot (or installment) fails acceptance testing, or at the Buyer's election, the Buyer may subject each Contract Product of the lot (or installment) to acceptance testing in order to determine which units are acceptable and which are not, in which event the Buyer shall have the right to charge and deduct from the price otherwise due the Seller all of the Buyer's direct costs associated with handling and testing the units to the extent those costs exceed the testing costs originally contemplated by the Buyer, together with a reasonable allowance for overhead. Regardless of whether the Buyer elects to reject all or any part of a lot (or installment) whenever any Contract Product within such lot (or installment) fails acceptance testing, and regardless of whether the Seller offers to cure any nonconformity, the Buyer shall have the right to cancel the remainder of this Order for default whenever any Contract Product fails acceptance

(g) The seller shall insure that all work in conjunction with this order is performed by individuals with the applicable knowledge and experience to produce the products for the buyer specified in the provided drawings or other documentation. If requested, the Seller shall provide certifications, resume information or other documentation as proof that the contracted work was performed by qualified individuals.

(7) INVOICES/PAYMENTS

The Seller shall forward to the Buyer, the invoice, receipt document, or Bill of Lading signed by the carrier, evidencing the fact that the shipment has been made.

The Seller's right to payment is contingent upon the Buyer's approval and acceptance of the Contract Products, but payment of the stipulated price is not evidence of the Buyer's final acceptance. The cash discount period to the Buyer, if any, will date from the later of (a) the receipt of the invoice (not from the date of the invoice), (b) the actual date of acceptance of the Contract Products, or, (c) the delivery date specified in this Order. If no discount is offered, payment of invoices will be made within thirty (30) days after the latter of the above.

Invoices which do not agree with the quantity, prices or other terms of this Order will be returned to the Seller for corrections. The payment schedule shall commence upon receipt of the corrected invoice by the Buyer.

If Technical Data/Software or any part thereof as required by this Order

is not delivered within the time specified or is deficient upon delivery, the Buyer may, until such data is accepted, withhold payment to the Seller of twenty percent (20%) of the total Order price. Payments shall not be withheld nor any other action taken pursuant to this clause when the Seller's failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the Seller.

(8) WARRANTY

The Seller warrants all Contract Products to be free from defect of materials, design, and to conform strictly to the specifications, drawings, or samples specified or furnished; to be new and of the most suitable grade of their respective kinds; to be suitable for the purpose identified in the Order; and to meet all of the performance requirements of the Order. Such warranties shall be in addition to all express warranties. All warranties shall survive any inspection, design approval, delivery, acceptance or payment by the Buyer or the Buyer's Materials Review Board (MRB). The Seller's MRB authorities are withheld. All warranties shall run to the Buyer, its successors, assigns, customers, and the users of the Contract Products. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive. The Seller agrees to replace or to correct promptly without expense to the Buyer, including transportation and handling costs, any Contract Products not conforming to the foregoing requirements when notified by the Buyer during a period of twelve (12) months after final acceptance.

(9) CHANGES

The Buyer may, at any time, by written notice or Change Order, without notice to any sureties or assignees, make changes to this Order and the Seller shall proceed immediately with the Order as changed. The Seller shall notify the Buyer within fifteen (15) calendar days of any increase or decrease in cost caused by such changes and an equitable adjustment in prices or other terms shall be agreed upon in a written revision to this Order.

(10) CONTROL OF DRAWING CHANGES

The Seller's inspection system shall provide for procedures which will assure that the latest applicable drawings, specifications, and instructions required by the Order, as well as authorized changes thereto, are used for fabrication, inspection, and testing.

(11) DISPUTES

Except as otherwise provided in this Order or any supplement hereto, any dispute concerning a question of fact between the Buyer and the Seller arising under this Order which is not disposed of by agreement shall be subject to whatever remedies shall be available to either of them at law or in equity. Pending a final agreement concerning any dispute hereunder, or in the event the Buyer and the Seller fail to reach an agreement, pending a final decision by a Court of competent jurisdiction, the Seller shall proceed diligently with the performance of the Order and in accordance with the Buyer's direction.

(12) INDEMNITY

The Seller shall indemnify and hold harmless the Buyer, its directors, officers, employees, agent and invitees, from and against all liability, demands, claims, losses, costs, damages and expenses, including but not limited to attorney's fees based upon, connected with or arising out of the performance of the Order by or for the seller.

(13) PATENTS, TRADEMARK AND COPYRIGHT INDEMNITY



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Seller shall indemnify and hold harmless Buyer from any and all damages, costs, including legal fees, losses, and liabilities resulting from a suit, claim or proceeding of alleged infringement of any intellectual Property rights by reason of the sale or use of any item sold to Buyer hereunder, and from reasonable expenses incurred by Buyer in defense of such suit, claim or proceeding if Seller does not undertake the defense thereof; provided, that Seller is notified of any such suit and, except for suits against the U. S. Government, Buyer offers Seller full and exclusive control of the defense of such suit, claim or proceeding when products of Seller only are involved therein or the right to participate in the defense of such suit, claim, or proceeding when products other than those of Seller are also involved therein; except that this indemnity shall not extend to infringement resulting solely from Seller's compliance with Buyer's specific designs. In the event of an injunction or restraining order, the Seller shall, at its own expense, either procure for Buyer the right to continue to sell and use the item, or replace or modify the item so that it becomes non-infringing. Seller shall also indemnify Buyer's customers and agents for such infringement if and to the extent that Buyer has agreed to indemnify them, but to no greater extent than Seller has indemnified Buyer herein and under the same conditions as set forth herein

(14) ASSIGNMENT AND SET-OFF

The Seller shall not delegate any duties or assign any rights under this Order without the Buyer's prior written consent. All claims for monies due or to become due from the Buyer shall be subject to deduction by the Buyer, for any set-off or counterclaim arising out of this or any other of the Buyer's Orders with the Seller whether such set-off or counterclaim arose before or after any such claim or assignment by the Seller.

(15) SUPPLEMENTARY INFORMATION

Any specifications, drawings, instructions, engineering notices or technical data referred to in this Order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions on any matter arising from this Order, the Seller shall request from the Buyer a decision, instruction, or interpretation of such matters.

(16) GOVERNING LAW

This Order shall be construed and interpreted in accordance with the laws of the State of Texas and of the United States of America. The venue shall be the Texas Court System, in Harris County, Texas.

If this Purchase Order is issued under a Government prime contract, the governing law is the federal common law of contracts as interpreted by the Armed Service Board of Contract Appeals and the United States Court of Federal Claims. For all matters not covered by the federal common law, the laws of the State of Texas shall apply. At the Buyer's sole discretion, venue shall be the Federal Court System, in Houston, Texas.

(17) DATA AND PROPERTY RIGHTS

The Buyer shall at all times have title to all data furnished by the Buyer to the Seller and intended for use in connection with this Order. The Seller agrees that all such data is considered to be company proprietary by the Buyer. The Seller shall use such data only in connection with this Order and shall not disclose such data to any person, firm, or corporation, other than the Buyer's or the Seller's employees, subcontractors, or Government inspectors as may be necessary to complete this Order. The Seller shall upon the Buyer's request or upon completion of this Order, whichever occurs first, promptly return all drawing and specifications to the Buyer.

All property, including materials, tools, designs, and patterns furnished or

specifically paid for by the Buyer shall be owned by the Buyer, shall be subject to removal at any time without additional costs upon demand by the Buyer, shall be used only in filling orders from the Buyer, shall be kept separate from other property on the Seller's premises and shall be clearly identified as the property of the Buyer.

The Seller assumes all liability for loss or damage, with the exception of normal wear and tear; and the Buyer reserves the right to replace, or to require that the Seller replace, all lost or damaged property with property of like kind and quality, at the Seller's expense. If this order arises out of a Government contract to the Buyer, the Seller hereby conveys the Buyer all rights to technical data and computer software and data bases, including rights under the U.S. Copyright laws, to permit the Buyer to fulfill its obligations under its Government contract.

(18) BUYER FURNISHED ITEMS

If, in the performance of this Order, the Buyer furnishes the Seller with components or other items to be incorporated by the Seller in the Contract Products to be delivered to the Buyer, the Buyer does not waive its right to require the level of quality specified for the Contract Products to be delivered by the Seller. The Seller agrees to replace any components or other items furnished by the Buyer that are damaged by the Seller or the Seller's agents, or to reimburse the Buyer or the same.

(19) SPECIAL TOOLING

If the Buyer's Order includes special tooling, payment of the Seller's invoices for said special tooling are contingent upon acceptance by the Buyer's Receiving Inspection of the first piece produced by the special tooling.

(20) INDEPENDENT CONTRACTOR

It is hereby mutually understood and agreed by the Seller and the Buyer that the Seller is an independent contractor during the performance of the work specified in this Order.

(21) RELEASE OF INFORMATION

The Seller shall not advertise or make any public announcements, news releases or other forms of releases of information to the public concerning this Order without prior written approval from the Buyer.

(22) WAIVER

The failure of the Buyer to enforce at any time any of the provisions of this Order or to exercise any option herein provided, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this agreement or any part thereof, or the rights of the Buyer thereafter to enforce each and every such provision. The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

(23) TERMINATION

By written notice, Buyer may terminate this order or any part hereof, for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause all of its suppliers and subcontractors to cease work. Subject to the terms of this Order, Seller shall be paid a portion of the Order price reflecting the actual costs incurred for the work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate to the



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satisfaction of Buyer using its standard record keeping system, that have resulted from the termination. Seller shall submit its claim no later than ninety (90) days after receipt of the termination notice. Seller shall make reasonably available to Buyer or Buyer's representative, any directly related books, records and papers supporting its claim. Upon Buyer's payment to Seller in accordance with this paragraph, title to all Contract Products, materials, work-in-progress, special tooling, finished products, and anything acquired for this Order, and any plans, drawings, specifications, information, and other things that would have been required to be delivered to Buyer shall vest in Buyer.

By written notice, Buyer may terminate this order in whole or in part: (i) if Seller fails or refuses to perform in accordance with any of the requirements of this Order or to make progress so as to endanger performance hereunder, (ii) if Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller (whether voluntary or involuntary) under any federal or state law, or under any agreement, instrument, security interest, or similar arrangement, relating to bankruptcy, arrangement among debtor and creditors, reorganization, receivership or assignment for the benefit of creditors, or (iii) if Seller fails to provide Buyer, upon request or notification to show cause, with adequate assurances of future performance within the time period requested by Buyer. Any such termination will be without liability to Buyer except for completed items delivered and accepted by Buyer, payment for which can be set off against damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work completed as of the termination and Seller shall be credited with the reasonable value thereof not to exceed Seller's actual costs or the Order price, whichever is less. Seller will be liable for damages caused by or resulting from its default including but not limited to excess costs of re-procurement. If, after a termination pursuant to clause (i) or (iii) of this subparagraph, it is determined that Seller was not in Default or that adequate assurances had been provided, the termination shall be deemed a termination for convenience in accordance with the first paragraph of this clause. Buyer or its designee shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records and papers relating thereto. Termination of the order pursuant to this subparagraph shall be without prejudice to any other rights and remedies of Buyer under statute or common law.

(24) ORDER OF PRECEDENCE

Except as provided otherwise in a written document executed by Buyer and Seller, in the event of any conflict among the provisions of this Order, the following order of precedence shall apply in interpreting this Order:

- A. The text of the Order
- B. Any Special or Supplemental Terms and Conditions incorporated by reference in the Order
- C. These Terms and Conditions
- D. Other Order Document