



**MANAGEMENT SERVICES GROUP, INC., DBA GLOBAL TECHNICAL SYSTEMS (GTS) TERMS AND CONDITIONS**

**ARTICLE I. ENTIRE AGREEMENT & ACCEPTANCE**

Acceptance of this Purchase Order ("PO")/ ("Order") by Seller may be made by signing the acknowledgment copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto. This PO and all documents incorporated herein by reference, shall constitute the entire agreement between the parties hereto and supersede all prior agreements relating to the subject matter hereof.

**ARTICLE II. CHANGES/MODIFICATION OF TERMS**

GTS may, at any time, by written order: make changes to procured services and/or materials, including shipping/packing instructions; increase/decrease quantities ordered; change drawings, designs or specifications, change place of inspection, delivery, or acceptance, or any other changes noted in writing. If any change causes a variation in the cost of performance or the time required for performance, Seller may resubmit a quote for such change, and an equitable adjustment may be made to the PO, in writing. Information, advice, approvals or instructions given by GTS's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect GTS's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by GTS's Purchasing Representative, and which states it constitutes an amendment or change to this PO. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such request for adjustment.

**ARTICLE III. TERMINATION**

**TERMINATION FOR CONVENIENCE.** Buyer may terminate this PO, in whole or in part, at any time for any reason whatsoever by giving not less than seven (7) days written notice to the Seller. If this PO is so terminated, Buyer shall pay Seller only for that portion of the product(s) received and accepted by GTS, and services actually performed and for documented expenses incurred by Seller and authorized by Buyer prior to the date of termination. Under no circumstance shall Buyer be liable for any other damages whatsoever, including loss of anticipated profit on account of such termination. Notwithstanding any partial termination of services, Seller shall continue to perform and complete any remaining services required.

In the event of strike, slow down, "sick-out", or work stoppage for any reason Buyer shall have the right to immediately terminate this PO by written notice to Seller. No further action is required of Buyer.

**TERMINATION FOR DEFAULT.**

- (a) Buyer may, by written notice of default to Seller, terminate the whole or any part of this Order in any one of the following circumstances:
  - (i) Seller fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
  - (ii) Seller fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, and in either of the circumstances specified in this subpart (a)(ii) does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure;
  - (iii) Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due; or
  - (iv) Seller fails to provide Buyer, in writing, within a reasonable time after demand by Buyer, adequate assurances of performance by Seller.
- (b) If this Order is so terminated, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those terminated. Seller, subject to the exceptions set forth below, shall be liable to Buyer for any excess costs of such similar supplies or services.
- (c) Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination, such complete or partially completed articles, property, materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order and Buyer will pay Seller the contract price for completed articles delivered to and accepted by Buyer and the fair value of the other property of Seller so requested and delivered.
- (d) Seller shall continue performance of this Order to the extent not terminated. Buyer shall have no obligations to Seller in respect to the terminated part of this Order except as herein provided. Buyer's rights as set forth herein shall be in addition to any other rights in case of Seller's default.
- (e) Seller shall not be liable for damages resulting from default due to causes beyond Seller's control and without Seller's fault or negligence, provided, however, that if Seller's default is caused by the default of a subcontractor or supplier at any tier, such default must arise out of causes beyond the control of both Seller and subcontractor or supplier, and without the fault or negligence of either of them and, provided further, the supplies or services to be furnished by the subcontractor or supplier were not obtainable from other sources.

**ARTICLE IV. DISPUTES & APPLICABLE LAW**

This order shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict or choice of law provisions. Buyer and Seller agree to first enter into negotiations to resolve any controversy, claim or dispute arising under or relating to this order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Buyer and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the City of Virginia Beach, Commonwealth of Virginia. The arbitrator(s) shall be bound to follow the provision of this order in resolving the dispute, and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and an award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction., rules and regulations issued there under.

**ARTICLE V. COMPLIANCE WITH LAWS**

Seller hereby warrants and certifies to comply with all applicable federal, state and local laws, rules & regulations and orders in effect on the date of this PO, including but not limited to: FLSA, OSHA, DOT, EAR, ITAR, Foreign Corrupt Practices Act ("FCPA"), Walsh-Healy Public Contracts Act; Service Contract Act (SCA) Certification (the Seller certifies that it is familiar with and if applicable will comply with the requirements of the SCA of 1965). The seller further agrees to indemnify and hold GTS harmless from and against all claims, losses, demands, liabilities, obligations, costs, expenses, including reasonable attorneys' fees or rights of action that arise out of, results from, or are caused by Seller's noncompliance with the SCA. Seller warrants it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of said Act.

**ARTICLE VI. ASSIGNMENT**

This PO shall not be transferred or assigned by either party without the prior written consent of the other. Seller shall not assign the PO, or any rights, interest, or payments, or the performance of its duties under this PO without the prior written consent of GTS. Any attempt or assignment/subcontracting by Seller without GTS consent shall be void.

**ARTICLE VII. ORDER OF PRECEDENCE**

In the event of any inconsistency between or among the provisions of this PO, conflict shall be resolved by the following descending order of precedence: 1. Order-specific provisions which are typed or hand-written, and initialed on the PO as additional items to the pre-printed terms; 2. Documents incorporated by reference; 3. these general terms and conditions; 4. Statement of Work; and any other documents or specifications. In the event of conflicts, Seller must, before proceeding, consult GTS, whose written interpretation will be final. If a Government contract number appears on the Purchase Order, the Government Prime Contract and the terms and conditions there are to take precedence.



**ARTICLE VIII. RESPONSIBILITIES OF SELLER (INSURANCE/TAXES/LICENSES)**

Seller shall be responsible for the actions and failure to act of all parties retained by, through or under Seller in connection with performance of this PO. Seller shall also maintain, and cause its Sellers to maintain adequate insurance such as general liability, property damage, employer's liability, worker's compensation, errors & omissions, motor vehicle liability. The price of this PO includes, and Seller is liable for all taxes, impositions, charges, permits, fees, and licenses in connection with the performance of this PO. Seller shall provide GTS with certificates evidencing required insurance upon GTS's request. To the extent that Seller is providing products under this PO, Seller agrees to purchase and maintain, at its own expense, the following insurance coverages with minimum limits as stated:

- (a) Commercial General Liability in an amount no less than \$1 Million per each occurrence and \$2 Million in the aggregate covering bodily injury, broad form property damage, personal injury, products and completed operations, contractual liability, and independent contractors' liability. Buyer, its officers and employees shall be included as Additional Insured's and a waiver of subrogation shall be obtained from the carrier in favor of Buyer;
- (b) Products Liability in an amount no less than \$1 Million per occurrence covering bodily injuries or property damage arising out of defective products or work completed. To the extent that coverage for Seller's products are not excluded in (a), this requirement does not apply;
- (c) All-Risk Property Insurance in an amount adequate to replace property of Buyer and/or Buyer's customer, including supplies covered by this Order, which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.

**ARTICLE IX. INVOICES**

An itemized invoice shall be submitted to the address shown on the face of this PO to the attention: A/P Dept. It is preferred that invoices shall be submitted electronically to [Accounts.Payable@gts.us.com](mailto:Accounts.Payable@gts.us.com). The invoice must include the PO Number, line item number, description of the supplies/services quantity, unit prices & total price. Payment of invoices may be delayed pending correction of any errors or omissions. Before payment, Buyer may make any adjustments to Seller's invoices to accommodate shortages, late delivery, rejections, or other failure to comply with the requirement of this Order. Cash discounts will be taken from the date of final acceptance of delivered items, or the date of acceptable invoice, whichever is later. Payment shall not constitute final acceptance. Buyer may offset against any payment hereunder any amount owed to Buyer by Seller. Invoices must be submitted within 60 days of the delivery of supplies/services. Any invoices submitted beyond the allotted time frame will be subject to rejection.

**ARTICLE X. PAYMENT TERMS**

Unless otherwise stated on this PO, terms of payment are net 45 days from the latter of the delivery of acceptable supplies/services or receipt of valid invoice.

**ARTICLE XI. WARRANTY OF SUPPLIES/SERVICES/INSPECTION**

Seller warrants that all supplies/services furnished under this PO shall conform to the GTS's drawings, specifications, or other description and will be of good material and workmanship and free of defects. All material & workmanship shall be subject to inspection and test at all reasonable times & places by GTS or GTS's customer, before, during or after performance and delivery. GTS may reject or keep and rework, or may require Seller to repair, replace or reimburse the purchase price of rejected material upon discovery of nonconformance. Cost of repair, rework, replacement, inspection, transportation, repackaging, and re-inspection shall be at Seller's expense. GTS's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the PO.

**ARTICLE XII. PACKAGING & PACKING**

Seller shall be responsible for properly packing and packaging the supplies in suitable containers for protection during shipment in accordance with transportation regulations and good commercial practice. No additional charge will be allowed for packing & packaging unless agreed to in writing. Seller shall label each package with the PO number. Seller shall prepare itemized packing list bearing the PO number, description of items, part number and quantity shipped for each package. If applicable, Certificate of Conformance and/or Certificate of Analysis shall be provided. One copy of the packing list shall be placed in the shipping container, one copy shall accompany the invoice. Unless otherwise provided, the FOB point shall be the delivery destination indicated in this PO and the title to the supplies and risk of loss or damage shall pass to GTS upon GTS's acceptance of the supplies regardless of where GTS takes physical possession. Buyer shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.

**ARTICLE XIII. TRANSPORTATION AND DELIVERY**

Unless otherwise provided, transportation charges shall be prepaid and separately identified on the invoice. No insurance or premium transportation costs will be allowed unless authorized by GTS. Unless otherwise provided in this PO, risk of loss, regardless of cause, is Seller's responsibility until the supplies/services/data are delivered. If seller is delinquent in delivery, GTS may require shipment by the fastest means available, any premium fees will be Seller's responsibility. Time is of the essence in this Order. The date specified for delivery or performance is the required delivery date at Buyer's plant or other specified location, unless otherwise specifically noted herein. Buyer reserves the right to refuse any goods or services and to cancel all or any part hereof if Seller fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller's deliveries will not meet agreed schedules, Buyer may require Seller to ship via a more rapid route or carrier, in order to expedite such delivery and any difference in cost caused by such change shall be paid by Seller. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding delivery to any carrier, or until orders for services have been performed, received and accepted. Whenever the Seller has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer. If applicable, unless otherwise stated, Seller will be deemed as the Exporter/Importer of Record and is responsible for providing all required documentation/licenses.

**ARTICLE XIV. INSPECTION AND AUDIT**

Seller shall keep and maintain books and records of all time spent and cost incurred in connection with the Purchase Order issued hereunder for five (5) years after payment of the final invoice for the Purchase Order. GTS shall have the right to inspect and audit such books and records during the performance of the goods and/ or services called for and for a period five (5) years after payment for the Purchase Order. If no Government Prime or Subcontract Number appears in the Purchase Order, the Seller's books and records pertaining to the work under the Purchase Order shall at all reasonable times be subject to inspection and audit by GTS. If a Government Prime or Subcontract Number appears on the Purchase Order, the Seller's books and records pertaining to the work performed under the Purchase Order shall, at all reasonable times, also be subject to inspection and audit by the Federal Government. Seller agrees that either the Comptroller General of the United States, a similar State Official, GTS, or any of their duly authorized representatives shall, until the expiration of the audit period referenced, have access to and the right to examine any directly pertinent books, papers and records of the Seller, involving transactions related to the Purchase Order.

**ARTICLE XV. ACQUISITION OF RIGHTS AND CONFIDENTIALITY**

Buyer's property, such as drawings, specifications, data and the like furnished to Seller for performance of the work shall remain the property of Buyer, shall be considered private and confidential GTS information, and shall not be given to others not having a need-to-know or used by Seller for its own purposes. Seller shall not be obligated under the provisions of this paragraph with respect to technical information that is documented in the public domain prior to GTS's disclosure of such information to Seller, or subsequently becomes a part of the public domain through no fault of Seller.

Any designs, drawings, dies, molds, tooling, technical data/information, manuals, materials, equipment, etc., that Seller makes or buys from others for producing the supplies/services and charged to Buyer's account, shall be marked as belonging to GTS, shall be used exclusively to perform the work requirements of this PO. Upon order completion, all GTS furnished property shall be returned to GTS in the same condition as received, except to the extent that the property has been incorporated into supplies delivered or consumed in the performance of work.

Seller agrees to assign to GTS, without additional compensation, the entire right, title and interest in or to any discoveries, inventions, whether or not patentable, know-how, trade secrets, technical data, computer software or copyrightable works, hereafter referred to as 'intellectual property', which is first conceived, developed or generated, individual or jointly, by or on behalf of Seller in the performance pursuant to the Purchase Order issued hereunder. Seller will report to GTS any such items of intellectual property promptly after such items are conceived, developed or generated.

Upon GTS's request, the Seller will execute, or cause to be executed and deliver to GTS all papers and documents and will perform all other acts required to transfer to GTS all rights to each such item of intellectual property and to enable GTS, at its expense, to file and obtain appropriate protection, under the laws of the United States of America and any foreign countries. Unless otherwise agreed to in writing, GTS shall acquire the unlimited rights to use all background data and/or computer software furnished to it by Seller in the performance of these services pursuant to any Purchase Order (s) issued hereunder.



**ARTICLE XVI. FEDERAL ACQUISITION REGULATIONS (FAR) and/or DFAR**

If a Government Contract Number appears on any Purchase Order issued by GTS, the applicable clauses of such contract will supersede any clauses set forth by either GTS and/or Seller. These following will be made a part of these terms and conditions. CONF101 (FAR Supplement) and CONF102 (DFAR Supplement) In compliance of such FAR/ DFAR clauses, Seller will provide any certifications that may be required, prior to the award of any order. In the event that Seller circumstances change during the period of performance of this Purchase Order, Seller is to provide GTS with written notification of such changes.

**ARTICLE XVII. RELATIONSHIP OF PARTIES**

Seller is performing this agreement only as an independent contractor. Nothing set forth in this Agreement shall be construed to create a relationship of principal and agent between Seller and Buyer. Seller acknowledges that this is an arms-length transaction and that no conflict of interest exist that would impede or appear to impede the performance of this procurement. Seller further acknowledges that it shall not act or attempt to act or represent itself, directly or indirectly, or by implication as an agent or its affiliates or in any manner assume or create or attempt to assume or create an obligation on behalf or, or in the name of GTS. Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the supplies or services hereunder, of disclose any of the details connected with this PO to any third party, except as may be required to perform this PO.

**ARTICLE XVIII. INDEMNIFICATION**

Seller shall indemnify, defend and hold GTS and GTS's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) intentional misconduct, negligence, or fraud, (ii) breach of any representation, warranty or covenant made herein, or (iii) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party.

Buyer shall promptly notify Seller of any claim against Buyer that is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent Buyer in, or to take charge of, any litigation in connection therewith.

**ARTICLE XIX. INFRINGEMENT INDEMNITIES**

Seller shall indemnify, defend and hold Buyer and Buyer's customers (hereinafter collectively referred to as "Buyer") harmless from and against any claim, suit or proceeding ("claim") brought against Buyer asserting that the goods or services, or any part thereof, furnished under this Order, or Buyer's use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Buyer in connection with such claim including reasonable attorneys' fees. In the event such goods or services or use thereof are enjoined in whole or in part, Seller shall at its expense and option undertake one of the following: (i) obtain for Buyer the right to continue the use of such goods or services; (ii) in a manner acceptable to Buyer, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such goods or services plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.

**ARTICLE XX. ENTIRE AGREEMENT**

This Order, including all documents incorporated herein by reference, shall constitute the entire agreement and understanding between the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreement or understanding of any kind, whether written or oral, relating to the subject matter hereof.

**ARTICLE XXI. DEFINITIONS/CLAUSES**

If CONF101 and CONF102 are applicable, the clauses therein, unless the context of the clause requires otherwise, the term "Contractor" shall mean the "Seller", the term "Contract" shall mean the Order (or Purchase Order "PO"), and the terms "Government", "Contracting Officer" and equivalent phrases shall mean GTS and GTS's Contractual Representative respectively. It is intended that these clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to GTS, to insure Seller's obligations to GTS and to the United States Government, and to enable GTS to meet its obligations under its Prime Contract and the Order. If this is an order for commercial items, then any clause below not applicable is self-deleting. The definition of a commercial item is within FAR 2.101 and can be found at [www.acquisition.gov](http://www.acquisition.gov).

*Include CONF101 (FAR SUPPLEMENT) and CONF102 (DFAR SUPPLEMENT), when applicable.*