



General Terms and Conditions of Purchase

These General Terms and Conditions constitute part of the agreement between FIRST RF Corporation (the “Buyer”) and the supplier shown on the face of this purchase order (the “Seller”).

1. **Acceptance of Purchase Order.** Any of the following shall constitute Seller’s unqualified acceptance of this purchase order (which shall be deemed to include plans, specifications, regulations and other documents to the extent that any of the same are attached to the purchase order or incorporated by reference therein) and these terms and conditions: (a) acknowledgment of or signature on this purchase order; (b) furnishing of any part of the materials or services hereby ordered; (c) acceptance of any payment for the materials or services; or (d) commencement of performance under this purchase order. Any terms or conditions proposed by Seller that are inconsistent with or in addition to the terms and conditions of purchase herein contained shall be void and of no effect unless specifically agreed to in writing by Buyer. No modification hereof or addition hereto shall be effective unless made in writing and signed by authorized representatives of Buyer and Seller. These terms and conditions, together with any such modifications, and together with the purchase order and any documents incorporated therein by reference, and any statement of work or other attachments and exhibits to the purchase order as are accepted in writing by Buyer (collectively, the “Purchase Order”), constitute the entire agreement between the parties and supersede any prior or contemporaneous written or oral agreements pertaining thereto.
2. **Price and Fees.** The total price of this Purchase Order shall be that shown on the face of this Purchase Order and shall include all taxes, fees, assembly, packaging, labeling, shipping, storage and setup charges and shall not be increased because of changes in Seller’s costs for materials, labor, taxes, freight, storage, overhead or profit.
3. **Invoicing and Payments.** Seller agrees to promptly render, after delivery of goods, correct and complete invoices to Buyer. Invoices must include the Purchase Order number and an itemization of all items in terms identical to those on the face of this Purchase Order showing quantities, type, and specifications of each item. Unless otherwise specified in this Purchase Order, payment terms shall be net thirty (30) days from the later to occur of (i) the date the product or service is accepted by Buyer, (ii) the date Buyer receives payment with respect to the product or service under the Prime Contract, as defined in the face of this Purchase Order, or (iii) the date Seller’s correct invoice is received. Payment will be in United States dollars. Buyer may offset against any amounts due under Seller’s invoices (a) any damages resulting from Seller’s default under or breach of this Purchase Order or any other contract with Buyer; (b) any amount owing from Seller to Buyer; or (c) any adjustment for shortage or rejection and any costs occasioned thereby.
4. **Shipping.** Seller shall be responsible for ensuring the proper packaging of materials hereunder for shipment. No extra charge will be allowed for packing, crating, freight, or other charges with respect to shipment unless so specified in this Purchase Order. Unless otherwise specified in this Purchase Order, the goods shall be sold F.O.B. Buyer’s delivery facility at the address set forth on the face of the Purchase Order. Seller agrees that any and all risk of loss shall remain with Seller until such time as Buyer receives and accepts the shipment of goods specified in this Purchase Order together with the required documents. Seller shall at all times comply with Buyer’s written shipping instructions. Seller must include the Purchase Order number(s) on all correspondence, shipping labels and shipping documents.
5. **Delivery.** Time is of the essence of this Purchase Order, and no acts of Buyer, including without limitation modifications of this Purchase Order or acceptance of late deliveries, shall constitute a waiver of this provision. Deliveries shall be made both in quantities and at times specified by Buyer and to locations specified by Buyer. Seller shall comply with the delivery schedule but shall not make material or production commitments in advance of such time as Seller reasonably believes necessary to meet the schedule without prior written approval by Buyer. Buyer reserves the right to refuse or return at Seller’s risk and expense shipments made in excess of Buyer’s orders or in advance of required schedules, or to defer payment on advance deliveries until after scheduled delivery dates. Buyer may change the date or destination of scheduled shipments or direct temporary suspension of scheduled shipment, none of which shall entitle Seller to a modification of the price for goods or services covered by the Purchase Order. Freight method shall be according to the PO. At the request of Buyer, schedule delays due to the Seller will be minimized by express shipment with the cost difference at the Seller’s expense.
6. **Notice of Delay.** Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Purchase Order, including all relevant information with respect thereto and a revised schedule. Neither receipt of such notice by Buyer nor the inclusion of this provision shall constitute a waiver of Buyer’s rights and remedies hereunder.
7. **Changes.**
 - a. Seller may not substitute any goods for those goods described in the Purchase Order without the written consent of Buyer.



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- b. Buyer, by written order, may suspend work or make changes from time to time in the services to be rendered or the goods to be supplied or the delivery date under this Purchase Order. If such suspension or changes cause an increase or decrease in the cost of performance of this Purchase Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted in writing within 15 days after Seller's receipt of notice of the change or suspension. Nothing contained herein shall excuse Seller from proceeding with this Purchase Order as changed pending resolution of any such adjustment.
 - c. Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's purchasing representative and which states it constitutes an amendment or change to this Purchase Order.
- 8. Inspection.**
- a. All goods and workmanship shall be subject to inspection and test at reasonable times and places by Buyer or Buyer's customer or both, before, during and after performance and delivery. If inspection and test are made on the premises of Seller or Seller's subcontractors, Seller shall furnish without additional charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duty. Neither Buyer's inspection or testing under this Section nor Buyer's failure to test or inspect shall relieve Seller of any responsibility to perform according to the terms of the Purchase Order, nor constitute a waiver of any defects or nonconformities.
 - b. All shipments and goods furnished under this Purchase Order will be subject to final inspection and acceptance by Buyer after receipt at destination, notwithstanding any payment or prior inspection. Buyer's acceptance or payment for non-conforming goods or services shall not relieve Seller of responsibility for latent defects or limit or impair (i) any warranty or right of indemnity granted by Seller under this Purchase Order or otherwise, or (ii) Buyer's right to assert any legal or equitable remedy.
 - c. Notwithstanding any prior acceptance, Buyer, at Buyer's option, may reject or require prompt correction of any goods or services that are defective or fail to meet the requirements of this Purchase Order. In addition to any rights that Buyer may have at law or in equity, Buyer, at Buyer's Option, may require Seller to repair, replace or reimburse the purchase price of rejected goods, or Buyer may accept any goods and upon discovery of nonconformance, may reject or keep and rework any such materials not conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging and/or reinspection by Buyer shall be at Seller's expense.
- 9. Intellectual Property.**
- a. Seller warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material and rights furnished or licensed hereunder which are not of Buyer's design, composition or manufacture shall be free and clear of infringement of any patent, copyright, trade mark, or other intellectual property or proprietary rights.
 - b. Seller shall indemnify, defend, and hold Buyer and its customers harmless from and against any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, demands, suits or actions alleging infringement of any United States or foreign patent, copyright, trademark, or other intellectual property or misappropriation of trade secrets arising out of the manufacture or delivery of supplies or performance of services under this Purchase Order or out of the use or disposal by, or for the account of, Buyer or Buyer's customers of such supplies or services. Without limiting the foregoing, if the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and its customers an adequate substitute acceptable to Buyer or the right to use and sell said item.
 - c. Any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of information supplied by Buyer shall be the sole property of Buyer, and Buyer shall have the full right to use such property without any claim by Seller and without any duty to account to Seller for such use. Without limiting the foregoing, the parties specifically agree that any original work of authorship created under this Purchase Order is a work made for hire for purposes of copyright ownership. Seller agrees to assign to Buyer any interest in such inventions and intellectual property and to execute any documents necessary to evidence such assignment or to perfect Buyer's title thereto. This Purchase Order 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 purchase order.



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- d. In addition to the Government's rights in data and inventions Seller agrees that Buyer in the performance of its Prime Contract obligation, shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Purchase Order. Seller certifies the originality of all deliverable items and states that no portion is protected by any copyright or similar right vested in any third party.
- 10. Protection of Information; Buyer's Property.**
- a. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction.
- b. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, tools, samples, equipment, software, materials and other items which are supplied or disclosed or paid for by Buyer shall be and remain the property of Buyer, and Buyer shall have the right to enter Seller's premises and remove any such property at any time without being liable for trespass for damages of any sort. Seller shall maintain such property and shall assume the risk of, and be responsible for, any loss, destruction of or damage to such property while in Seller's possession or control. Seller shall promptly return all such property to Buyer on request or upon completion of this Purchase Order, in a condition as good as when received except for normal wear and tear. Seller (i) shall maintain all such property as proprietary to Buyer, (ii) shall use such property only for purposes of providing goods or services to Buyer pursuant to this Purchase Order and for no other purpose, (iii) shall not disclose the same to any third party without Buyer's express written consent, and (iv) shall take all reasonable precautions to prevent the disclosure thereof to third parties.
- c. Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.
- 11. Release of Information.** Seller shall not publish, distribute, or use any information developed under or about the existence of the Purchase Order, or use the FIRST RF Corporation name, logo, trademark, or service mark for any purpose, including, without limitation, the purpose of advertising, making a news release, creating a business reference, creating website content or for products or service endorsement without prior written approval of Buyer.
- 12. Warranty and Indemnity.** Seller warrants that all goods delivered and services rendered in connection with this Purchase Order shall be free from defects in workmanship, design and materials; shall conform to the design, specifications, drawings, samples and other descriptions referred to in this Purchase Order; shall be in accordance with all the requirements of this Purchase Order; shall be free from all liens and encumbrances; and, to the extent that Seller knows or has reason to know of the purpose for which the supplies are intended, will be fit and sufficient for such purpose. Seller further warrants that goods and services rendered in connection with this Purchase Order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which would interfere in any manner with Buyer's property rights as provided under this Purchase Order. All warranties shall survive final acceptance and payment and shall run to Buyer and to Buyer's customers. Seller shall be liable for and shall indemnify, defend, and hold Buyer and its customers harmless from and against any loss, damage, or expense whatsoever (including all costs and expenses including attorneys' fees) that Buyer or its customers may suffer from breach of any of these warranties or from any other breach of Seller's obligations hereunder. Without limiting other remedies available by law, remedies for breach of warranty include replacement or reimbursement of the purchase price of nonconforming goods at Buyer's election.
- 13. Assignment.** Seller shall not assign any rights or obligations under this Purchase Order without Buyer's prior written consent. Any purported assignment by Seller without such consent shall be void. Seller shall not subcontract all or any part of this Purchase Order without Buyer's prior written consent; provided that the foregoing shall not apply to purchases of standard commercial articles or raw materials on which Seller will perform further work.
- 14. Termination for Convenience.** Without limiting any other rights Buyer may have to terminate this agreement for default of Seller or otherwise, Buyer shall have the rights set forth in FAR 52.249-2 as specified in the attachment to this Purchase Order entitled "Flowdown of FAR and DFARS Provisions."
- 15. Termination for Default of Seller.** Buyer may, by written notice to Seller, terminate this Purchase Order or work hereunder in whole or in part, at any time, for Seller's breach of any one or more of its terms. If Seller defaults hereunder, Buyer may exercise any or all rights accruing to it at law or in equity. Without limiting the foregoing, Buyer shall have the rights set



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forth in FAR 52.249-9 as specified in the attachment to this Purchase Order entitled "Flowdown of FAR and DFARS Provisions."

16. **Insurance.** Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Purchase Order. Seller shall also maintain such general liability, property damage, employer's liability, workers' compensation and motor vehicle liability insurance as are specified in this Purchase Order, or if none are specified, in such amounts as will protect Seller and its subcontractors and Buyer from said risks and from any claims under any applicable workers' compensation, occupational disease, occupational safety and health and related statutes, including without limitation the Occupational Safety and Health Act. Seller shall indemnify, defend, and hold Buyer harmless from and against all loss, damage, or expense whatsoever (including all costs and expenses including attorneys' fees) arising from or associated with (a) claims which may be asserted against property covered hereunder, including without limitation any liens or any claims arising under workers' compensation or occupational disease and safety laws and (b) claims for injury to persons or property arising out of or related to such property, unless the same are caused solely and directly by Buyer's negligence.
17. **Compliance with Law.** Seller shall comply with, and Seller warrants that the goods to be furnished and the services to be rendered under this Purchase Order shall be manufactured, sold, and used in compliance with, all applicable federal, state, and local laws, executive orders and regulations and applicable international prohibitions on child labor, including, without limitation, the Fair Labor Standards Act, OSHA, U.S. Department of Transportation and other regulations on hazardous materials, and the Anti-Kickback Act of 1986. For orders placed in support of and charged to a U.S. Government Prime Contract, Seller agrees that performance under this Purchase Order is subject to applicable regulations and directives of the U.S. Government, including but not limited to those identified in this Purchase Order. Seller shall be liable for and shall indemnify, defend, and hold Buyer and its customers harmless from and against any loss, damage, or expense whatsoever (including all costs and expenses including attorneys' fees) that Buyer or its customers may suffer from breach of the warranty and obligations in this Section.
18. **Order of Precedence.** The various documents constituting this Purchase Order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event of any inconsistency or conflict between or among the provisions of this Purchase Order, such inconsistency or conflict shall be resolved by the following descending order of preference: (a) provisions required by statute, regulation or Government contract; (b) typed purchase order form; (c) Statement of Work; (d) this Terms and Conditions document; (e) specifications; (f) drawings; and (g) samples. Buyer's specifications shall prevail over those of the United States Government, and both of the foregoing shall prevail over specifications of Seller. In cases of ambiguity in the specifications, drawings, or other requirements of this Purchase Order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final. All headings and captions are for convenience only and are of no meaning in the interpretation or effect of this Terms and Conditions document.
19. **Disputes.**
 - a. If Seller believes it has a "claim" (as defined in FAR 33.201) against the Government that arises under, or relates to, the Prime Contract and/or this Purchase Order and which, if it were Buyer's claim, could properly be submitted for a final decision of the Contracting Officer, Seller may submit such claim to Buyer, and Buyer agrees to forward such claim to the Contracting Officer on Seller's behalf for final decision, subject to the limitations and other conditions contained in this Purchase Order. Buyer shall in good faith consult with Seller concerning the forwarding of such claim to the Contracting Officer.
 - b. Any decision of the Contracting Officer under the Prime Contract that relates to this Purchase Order, whether or not it results from a claim submitted on Seller's behalf under paragraph (a) above, shall be final and binding upon Seller insofar as it relates to this Purchase Order; provided, however, that if it appears Seller is adversely affected by any such decision of the Contracting Officer, and if Buyer elects not to appeal such decision pursuant to the "Disputes" clause in the Prime Contract (FAR 52.233-1), Buyer shall promptly notify Seller. If Buyer thereafter receives, no less than twenty days before the expiration of the period of appeal under the "Disputes" clause of the Prime Contract, a written request by Seller to appeal such decision, and if Buyer has the right of such appeal under the Prime Contract, Buyer shall file an appeal from the decision on Seller's behalf, subject to the terms of paragraph (c) below. If Buyer appeals such decision, whether at its election or at Seller's request, any decision upon such appeal by the appropriate Board of Contract Appeals, the U.S. Court of Federal Claims, or any other board or agency having jurisdiction over the appeal shall be final and binding upon Seller insofar as it relates to this Purchase Order. If Seller timely requests Buyer to bring a further appeal to obtain judicial review of such decision by a court of competent jurisdiction, Buyer shall do so, subject to the terms of paragraph (c) below. If Buyer files such an appeal, a final judgment in any such appeal, if binding on Buyer under the Prime Contract, shall in turn be binding upon Seller insofar as it relates to this Purchase Order.

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- c. If Buyer is required to certify any Seller claim before forwarding it to the Contracting Officer as described in paragraph (a) above, or in connection with any appeal as described in paragraph (b) above, either under the “Disputes” clause of the Prime Contract or the Contract Disputes Act, 41 U.S.C. § 601 et seq. (the “Contract Disputes Act”), Buyer shall not forward such claim to the Contracting Officer, or proceed with such appeal, unless it is satisfied (1) that Seller’s claim is in good faith, and (2) that Buyer can certify such claim of Seller’s to the Contracting Officer to the extent and manner required by the Contract Disputes Act. Buyer’s position on whether or not it is “satisfied” shall be reasonable and shall not be used to deny arbitrarily certification. Seller agrees to provide Buyer with such information as Buyer may reasonably deem necessary to make this determination.
 - d. In any appeal brought by Buyer on behalf of Seller, or at Seller’s request, under paragraph (b) above, Seller shall bear all costs and expenses incurred by Buyer and Seller in prosecuting such appeal, including but not limited to any legal fees or costs incurred. In any appeal taken or brought by Buyer, whether at its election or at Seller’s request, Seller shall cooperate fully with Buyer in its prosecution thereof in every reasonable manner and Seller shall be afforded the opportunity to participate in the prosecution thereof to the extent Seller’s interest may be affected. To the extent requested by Buyer, Seller shall prosecute for Buyer any appeal taken or brought at Seller’s request and, in such event, Buyer shall assist Seller in every reasonable manner. Seller’s failure to comply with the provisions of this paragraph shall entitle Buyer to terminate such appeal.
 - e. Seller agrees that, with respect to any claim or dispute that arises under, or relates to, the Prime Contract and/or this Purchase Order which, if it were Buyer’s claim, could properly be submitted for a Contracting Officer’s Final Decision, its right of appeal is limited to the procedures set forth in this Section.
 - f. Any dispute, controversy, or claim arising under or relating to this Purchase Order either during or after the term thereof which is not settled by agreement of the parties or pursuant to paragraphs a. through e. above will be resolved at Buyer’s sole discretion either by submitting the claim to (i) the state or federal courts located in the State of Colorado, or (ii) binding arbitration, before a single arbitrator, in the State of Colorado, administered by the American Arbitration Association under its commercial arbitration rules, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If Buyer elects arbitration hereunder and Seller does not comply with a demand for arbitration within sixty (60) days after notice, then without limiting Buyer’s other remedies for such failure, Buyer reserves the right to abandon arbitration and pursue any available legal or equitable remedy. This Purchase Order will be governed by and construed and interpreted according to the laws of the State of Colorado, without regard to conflict of law principles.
 - g. Pending final resolution of any dispute or claim as discussed in paragraphs a. through f. above, the parties shall both proceed diligently with performance as required by this Purchase Order. Seller’s performance shall be in accordance with Buyer’s written instructions.
20. **Remedies; Non-Waiver.** The rights of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.
21. **Notice.** Any notice to be given to or by either party hereunder shall be in writing, signed by the party giving the same, and will be deemed properly given and received (i) on the next business day after deposit for overnight delivery by an overnight courier service, or (ii) three business days after mailing by registered or certified mail. All such notices will be furnished with delivery or postage charges prepaid to the address for the relevant party set forth in this Purchase Order. Either party may change its address for notices hereunder by notice to the other party. If no address for a party is specified herein, notice to such party hereunder may be delivered as provided above to the principal office or registered agent of such party.
22. **Survival.** Seller’s obligations which by their nature would continue beyond the expiration or earlier termination of this Purchase Order, including without limitation, its obligations regarding intellectual property, confidentiality, warranty, disputes, and indemnification, shall survive the expiration or earlier termination of this Purchase Order.
23. **Export Control.**
- a. Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. §§730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract



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to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

- b. Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations.
- c. Seller shall immediately notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- d. If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- e. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.