



HARRIS RF COMMUNICATIONS DIVISION FIRM-FIXED-PRICE (FFP) DOMESTIC COMMERCIAL SALES TERMS AND CONDITIONS OF SALE

1. Definitions: As used in these Terms and Conditions, the following terms shall have the following meanings: (a) "Supplies" or "Equipment" shall mean Seller's products or services; (b) The term this "Subcontract," this "Contract" or this "Purchase Order" or this "Agreement" are interchangeable and wherever appearing herein, shall be deemed to mean the contractual instrument, which shall be binding between Purchaser and Seller.

2. Price: Prices quoted to Purchaser are FFP. Seller reserves the right to change prices or terms after the validity expiration date of the quote or proposal.

3. Terms of Payment: Subject to credit approval and acceptance of Purchase Order by Seller, the Purchaser shall pay the Seller, upon the submission by Seller of proper invoices or vouchers, the prices stipulated in this Contract for supplies or services delivered and accepted. Partial shipments and early deliveries are acceptable and will result in partial invoices. Payments received by Seller beyond thirty (30) days from date of submission of the invoice shall be subject to the assessment of interest at the rate of 1.5% per month.

4. Taxes and Duties: All prices are exclusive of federal, state, and local excise, sales and use and similar taxes arising from or assessed in connection with the Purchase Order. Should Purchaser be exempt from paying certain taxes described above then Purchaser shall be responsible for providing Seller with a properly executed tax exemption certificate acceptable to the interested taxing authorities prior to shipment of supplies or services contemplated under the Purchase Order.

5. Delivery: FOB Origin, Harris Corporation, RF Communications Division (RFCD) Rochester, New York, USA. Risk of loss and damage shall transfer to Purchaser at shipping point upon transfer to a common carrier.

6. Force Majeure: Seller shall be excused from performance and not be liable for delay in performance or non-performance attributable in whole or in part to any cause beyond its reasonable control and without its fault or negligence, including but not limited to: actions or inactions of government, whether in its sovereign or contractual capacity; judicial action; war, civil disturbance, terrorism, insurrection, sabotage, or act of public enemy; labor difficulty or dispute; fire, flood, storm or other act of God; transportation difficulties; by Purchaser's fault or negligence; failure or delay in delivery by Seller's suppliers or subcontractors; strike; shortage of energy, materials or labor sufficient to fill its order (in which case Seller may apply or prorate shipments of its products to or among its customers as in its judgment is reasonable in the circumstances), or inability to obtain export licenses or other event or circumstance beyond the control of Seller.

7. Title and Remedies: Title shall pass to Purchaser upon acceptance. If Purchaser defaults in paying or performing any of its obligations hereunder or Purchaser's financial stability changes, Seller may treat all amounts owing hereunder to be immediately due and payable, may deduct same from any other sums due or to become due to Purchaser, may withhold any shipments due Purchaser, may require advance payments, or seek other remedies as allowed by law.

8. Factory Inspection and Acceptance: Materials or equipment supplied by this Contract shall be new, unused and in conformity with the agreed upon specifications. Acceptance shall be deemed to occur upon satisfactory conclusion of standard factory acceptance tests at Seller's factory and upon transfer to a common carrier.

9. Changes: Purchaser may, during the progress of the work, request Seller to perform changes within the scope of work. In no event will changes be undertaken by Seller, nor additional compensation be paid by Purchaser, unless and until agreement is reached on the technical and/or commercial impacts of said changes and the Contract is modified in writing accordingly. No alteration, modification, release or waiver, of the Purchase Order or any of the Terms and Conditions herein shall be effective unless agreed to in writing and executed by both parties. Such changes in Purchase Order shall be promptly modified by the Purchaser within thirty (30) days following agreement on such change.

10. U.S. Export License and Transfer Approvals: It is expressly understood and agreed that this Agreement, and all obligations arising hereunder, are subject to US export control laws and regulation. Furthermore, to the extent any technical data is exchanged between the parties, the receiving party represents and warrants that no technical data furnished to it by the disclosing party shall be disclosed to any foreign nation, firm, or country, including foreign nationals employed by or associated with the receiving party, nor shall any technical data be exported from the United States without first complying with all requirements of the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR), including the requirement for obtaining any export license if applicable. The receiving party shall first obtain the written consent of the disclosing party prior to submitting any request for authority to export any such technical data. The receiving party shall indemnify and hold the disclosing party harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the receiving party to comply with this clause or the ITAR and EAR.

11. Information Exchange: Information provided or exchanged between the parties shall remain the property of the disclosing party. Each party shall comply with the terms of any non-disclosure agreement executed between the parties.

12. Public Release Information: No public release of information, news release, announcement, advertisement, denial or confirmation of the Purchase Order or the subject matter hereof or thereof by Purchaser shall be made without the prior written approval of the Seller.

13. Limitation of Liability: PURCHASER IS EXPRESSLY NOTIFIED THAT UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF BENEFICIAL USE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY TO ANY CLAIM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR BREACH OF WARRANTY). IN NO EVENT WILL SELLER'S LIABILITY TO PURCHASER OR ANY PARTY CLAIMING THROUGH PURCHASER, EXCEED THE ACTUAL SALES PRICE PAID BY PURCHASER FOR ANY SUPPLIES PROVIDED.

14. Warranty: The Seller's standard limited warranty is extended to the original Purchaser or the U. S. Government, in the case of a prime subcontract, and applies to all Harris Corporation, RF Communications Division equipment purchased and employed for the service normally intended, except those products specifically excluded.

If Seller's equipment fails in normal use because of a defect in workmanship or materials within twelve (12) months from the date of shipment, Seller will repair or replace (at Seller's option) the equipment or part with new, reconditioned, or remanufactured equipment or parts without charge to Purchaser, at Seller's Authorized Repair Center or factory.

Other manufacturer's equipment, if any, including electron tubes shall carry only such manufacturer's standard warranty

The Purchaser must notify Seller promptly of a defect within twelve (12) months from date of shipment. Providing Seller concurs that the failure is a valid warranty claim, and is unable to correct the problem without having the equipment shipped to Seller, then:

- Purchasers with equipment purchased for use outside the United States will be supplied with information for the return of the defective equipment or part to Seller's factory in Rochester, NY, U.S.A., for repair or replacement. Purchaser must prepay all transportation, insurance, duty and customs charges. Seller will pay for return to Purchaser of the repaired/replaced equipment or part, C.I.F. destination; Purchaser must pay any duty, taxes or customs charges.

- Purchasers with equipment purchased for use in the United States must obtain a Return Authorization Number, properly pack, insure, prepay the shipping charges and ship the defective equipment or part to Seller's factory or to the Authorized Warranty Repair Center indicated by Seller.

Harris Corporation Telephone: (585) 244-5830
RF Communications Division Fax: 585-242-4755
Product Service <http://www.harris.com>
1680 University Avenue
Rochester, NY 14610, U.S.A.

Seller will repair or replace the defective equipment or part and pay for its return to Purchaser, provided the repair or replacement is due to a cause covered by this warranty.

Seller shall not be responsible for:

- Defects or failures caused by Purchaser or user abuse or misuse.
- Defects or failures caused by unauthorized attempts to repair or alter the equipment in any way.
- Consequential damages incurred by a Purchaser or user from any cause whatsoever, including, but not limited to transportation, non-Seller repair or service costs, downtime costs, costs for substituting equipment or loss of anticipated profits or revenue.
- The performance of the equipment when used in combination with equipment not purchased from Seller.
- SELLER MAKES NO WARRANTY OF OPERATIONAL EFFICIENCY OR COMMUNICATIONS RANGE WHICH EXTENDS BEYOND THE DESCRIPTION OF THE EQUIPMENT ON THE FACE OF THE PURCHASE ORDER.

- Seller assumes no responsibility for design characteristics of special equipment manufactured to specifications supplied by or on behalf of Purchaser

Service Warranty - Any repair service performed by Seller under this limited warranty is warranted to be free from defects in material or workmanship for sixty (60) days from date of repair. All terms and exclusions of this limited warranty apply to the service warranty.

Purchaser's who purchased equipment for use in the United States must obtain a Return Authorization Number before shipping the defective equipment to Seller. Failure to obtain a Return Authorization Number before shipment may result in a delay in the repair/replacement and return of Purchaser's equipment.

THIS IS SELLER'S SOLE AND EXCLUSIVE WARRANTY FOR DEFECTIVE OR NON-CONFORMING SUPPLIES, AND IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT TITLE), EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT, OR ANY WARRANTY ARISING OUT OF COURSE OF DEALING, OR CUSTOM OR USAGE OF TRADE. THE ABOVE LIMITED WARRANTY CONSTITUTES SELLER'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING SUPPLIES.

15. Disputes: The parties agree that the exclusive venue for any action related to the dispute or interpretation of the terms herein or this contractual instrument shall be in the courts with appropriate jurisdiction located in the State of New York, and each party irrevocably submits to the jurisdiction of each such court in any such action and waives any objection it may now or hereafter have to venue or personal jurisdiction in each such court. The prevailing party in any action related to the dispute or aforementioned interpretation shall be entitled to recover its reasonable attorneys fees incurred in pursuing the action, including those fees incurred throughout all bankruptcy and appellate proceedings.

THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY LAW, TO WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ANY ACTION RELATING TO ANY DISPUTE OR INTERPRETATION OF THIS AGREEMENT. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE ITS TERMS.



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16. Patent, Copyright, and Trademark Indemnity: Purchaser agrees to notify Seller promptly in writing of any notice, suit or other action against Seller based upon a claim that the supplies delivered by Seller under this Purchase Order, infringe a U.S. patent, copyright, or trade secret of a third party. Seller will defend at its expense any such action, except as excluded below, and shall have full control of such defense, including all appeals and negotiations, and will pay all settlement costs or damages awarded against Purchaser, but Seller shall not be liable to Purchaser for any indirect, consequential or incidental damages, including but not limited to, loss of profits.

In the event of such notice, suit or action, Seller may at its option and at its expense procure for Purchaser the right to continue using the equipment or modify the equipment to render such non-infringing, or accept return of the equipment and replace such with substantially equivalent non-infringing equipment, or accept return of the equipment and refund or credit to Purchaser the amount of the original purchase price, less a reasonable charge for depreciation and damage.

The preceding agreements by Seller in this section shall not apply (1) to any equipment or portion thereof manufactured to specifications furnished by or on behalf of Purchaser; (2) to any infringement arising out of the use of the equipment in combination with other equipment not furnished by Seller; (3) to use in a manner not normally intended; (4) to any patent, copyright, or trade secret in which Purchaser, or subsidiary or affiliate thereof, has a direct or indirect interest; (5) if Purchaser did not provide Seller with prompt notice, authority, information and assistance necessary to defend the action; (6) if any supply to be furnished under this Purchase Order is to be delivered to the United States Government, unless Purchaser's contract with the Government for the product obligates Purchaser to provide indemnification to the Government for intellectual property rights infringement, but in that event, only to the same extent as Purchaser's obligation. The foregoing states the entire liability of Seller for patent, copyright, trademark and trade secret infringements by the equipment delivered by Seller under this Purchase Order.

17. Termination for Default:

(a)(1) The Purchaser may, subject to paragraphs (b) and (c) of this clause, by written notice of default to the Seller, terminate this Purchase Order in whole or in part if the Seller fails to --

- (i) Deliver the supplies or to perform the services within the time specified in this Purchase Order or any extension;
- (ii) Make progress, so as to endanger performance of this Purchase Order (but see subparagraph (a)(2) of this clause); or
- (iii) Perform any of the other provisions of this Purchase Order (but see subparagraph (a)(2) of this clause).

(2) The Purchaser's right to terminate this Purchase Order under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Seller does not cure such failure within 10 days (or more if authorized in writing by the Purchaser) after receipt of the notice from the Purchaser specifying the failure.

(b) Except for defaults of Seller's subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform the Purchase Order arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(c) If the failure to perform is caused by the default of the Seller's subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.

(d) If this Purchase Order is terminated for default, the Purchaser may require the Seller to transfer title and deliver to the Purchaser, as directed, any

- (1) completed supplies, and
- (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this Purchase Order.

Upon direction of the Purchaser, the Seller shall also protect and preserve property in its possession in which the Purchaser has an interest.

(e) The Purchaser shall pay Purchase Order price for completed supplies delivered and accepted. The Seller and Purchaser shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause.

(f) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

(g) The rights and remedies of the Purchaser in this clause are in addition to any other rights and remedies provided by law or under this Purchase Order.

18. Termination by Seller: Seller may terminate this Purchase Order if Purchaser defaults in a material respect in the payment of money to Seller under this Purchase Order and fails to cure such default within thirty (30) days after receiving written notice of its decision immediately to terminate this Purchase Order. If Seller terminates this Purchase Order based on Purchaser's breach then the Seller shall be entitled to damages, including lost profits the Seller would have realized, had the Seller been permitted to perform in accordance with the Purchase Order.

19. Assignment: Neither party shall assign the Purchase Order to any other party without the prior written consent of the other party. Any attempted or purported assignment of the Purchase Order without the other parties' prior written consent shall be null and void and not binding.

20. Orders Issued Under Government Prime or Subcontracts: Nothing in Harris Standard Terms and Conditions shall be construed to authorize the waiver of any provision of law as prescribed in FAR Part 12, or terms as set forth in FAR 52.244-6, Subcontracts for Commercial Items, if applicable.

21. Survivability: The following provisions shall survive the completion or termination of this Purchase Order: U.S. Export License and Transfer Approvals (10), Information Exchange (11), Public Release Information (12), and Limitation of Liability (13).

22. Restocking: Restocking standard equipment may be accepted with specific written approval of Seller. Special products shall be subject to all expenditures made and committed for this order with a reasonable allowance for prorated expenses and profit. All authorized returns will be subject to a restocking charge of 20%.

23. Waiver: Any waiver by either party of a breach or default shall not constitute a general waiver of any other breach or default otherwise occurring.

24. Enforceability: The parties agree that if any portion of this Purchase Order shall become illegal and/or unenforceable, the remaining portion shall continue to be binding and enforceable provided that the validity of the remaining portion would not defeat the overall business intent of the parties or give one party any substantial financial benefit to the detriment of the other party.