

# MIDCON CABLES TERMS AND CONDITIONS

The following terms and conditions are part of this Order and are binding on Seller.

## I. ACCEPTANCE AND MODIFICATION

This Purchase Order (this "Order") is the offer of Midcon Cables Co. ("Buyer") to Seller. Acceptance in any manner is expressly limited to its terms. Any additional or different terms of Seller are hereby objected to. When accepted, this Order together with any attachments incorporated herein, constitutes the final, complete and exclusive statement of the terms and conditions of the agreement between Buyer and Seller. This Order shall not be modified by or interpreted by reference to any course of dealing, usage of trade or course of performance. No modification of this Order shall be effective unless in writing signed by an authorized representative of Buyer's Materials Department Acceptance by Buyer of goods or services delivered under this Purchase Order shall not constitute acceptance of any of Seller's terms and conditions.

## 2. DELIVERY

Each container and accompanying packing list shall be marked with the purchase order number. Buyer will pay no charges for preparation, packaging, delivery or similar costs unless separately stated in this Order. All goods shall be suitably prepared for shipment and packed to (i) prevent damage or deterioration, (ii) secure lowest transportation and insurance rates, and (iii) comply with carrier requirements. Seller shall strictly adhere to the delivery and completion schedules specified in this Order. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, Seller shall immediately notify Buyer's Materials Department in writing of the probable length of and reasons for any anticipated delay, and shall continue to notify Buyer's Materials Department of any material change in the situation. In the event of such notification or an actual failure by Seller to comply with the delivery or completion schedules, Buyer may, in addition to all other remedies, require Seller, at Seller's expense, to ship goods via air freight or expedited routing to avoid or minimize delay. In the event of early delivery, Buyer may store goods at Seller's expense, and payment due dates (including discounts) will be computed from scheduled delivery dates. In the event goods are delivered in quantities that exceed the requirements of the Order, Buyer may, in addition to all other rights and remedies, return the excess to Seller at Seller's expense.

## 3. RISK OF LOSS

Notwithstanding any other term of the Order, the risk for any loss or damage to or destruction of goods described in this Order shall be borne by Seller at all times until the goods are received and accepted by Buyer. Title to the goods passes to Buyer upon final acceptance after inspection.

## 4. PAYMENT

Seller shall mail invoices in duplicate to Buyer's Accounting Department when goods are shipped. Payment due dates (including discounts) will be computed from the date goods are accepted by Buyer in complete accordance with the requirements of this Order. Buyer may equitably adjust Seller's invoice prices before payment due to failure of Seller to comply with the requirements of this Order, as provided for in Section 5 of this Order.

## 5. INSPECTION, ACCEPTANCE AND REJECTION

(a) All goods furnished under this Order will be subject to inspection, surveillance and test at all times and places, including the period and place of manufacture or performance, by Buyer (Midcon Cables Co. LLC, the end customer, including any regulatory agency), and also by the Government if this Order is a subcontract placed under a Government contract or subcontract Buyer's and the Government's inspectors shall have access to all areas on Seller's premises in which work on this order is being performed, and

seller shall furnish all data and information as may be reasonably required to perform their inspections. All goods to be delivered hereunder shall be subject to final inspection, test and acceptance by Buyer at destination, notwithstanding any payment or inspection at source.

(b) Any tender of goods or services which is nonconforming shall be deemed to impair substantially the value of this contract as a whole to Buyer. In the event of a nonconforming tender, Buyer shall have the right, without liability and in addition to all other rights and remedies, to do any or all of the following: (i) reject nonconforming goods and services and require correction or replacement of materials, workmanship or services, at Seller's expense; (ii) accept nonconforming goods and services at an equitable price reduction, provided that with respect to late delivery of goods, such price reduction shall equal 5% of Seller's invoice price for each week during which delivery is delayed, up to a maximum of 25% of Seller's invoice price; (iii) replace or correct nonconforming goods and services and charge to Seller the cost occasioned to Buyer thereby; (iv) recover by adjustment of Seller's invoice prices, offset or otherwise all expenses, costs, price reductions and damages paid, incurred or suffered by Buyer as a result of any and all such actions; (v) terminate this Order as provided in Section 13 hereof.

(c) Supplier must notify buyer of any non-conforming material and obtain buyer's approval prior to shipment of non-conforming product. The supplier does not have MRB authority and can not ship product that does not meet print, specification, or purchase order requirements without approval from the buyer.

## 6. WARRANTY

Seller warrants for a period of one year that all goods and services furnished hereunder will conform to the requirements of this Order and will be (i) free from defects in material or workmanship, (ii) free from defects in design (except to the extent furnished by Buyer), (iii) in conformity with applicable specifications, drawings, samples or other descriptions applicable thereto, and (vi) fit for their intended purposes. In addition to all other rights and remedies, Buyer may, at Seller's expense, return any goods and services failing to meet Seller's warranties hereunder for prompt correction, replacement or credit, as Buyer may direct. The warranty given under this Section 6 shall not be deemed to limit any additional warranties given to Buyer by Seller.

## 7. CHANGES

Buyer shall have the right, at any time, to make changes in quantities, drawings and specifications, delivery schedules, and methods of shipment and packaging. Seller shall promptly notify Buyer of any resulting increase or decrease in costs or required performance time, and an equitable adjustment in prices or other terms of the Order shall be made by mutual agreement of Buyer and Seller. Pending any such adjustment, Seller will diligently proceed with this Order as modified. No change shall be binding upon Buyer unless signed by an authorized representative of Buyer's Materials Department

## 8. TAXES

Federal, State or Local taxes of any nature which are billed to Buyer shall be stated separately in Seller's invoices. Any and all tax exemption certificates will be accepted by Seller.

## 9. PATENTS,

Seller warrants that all goods furnished under this Order (except goods produced or supplied by Seller that were based on designs submitted by Buyer) do not and will not infringe any patent, trademark, trade name, copyright or other similar right and agrees to defend, indemnify and hold Buyer harmless from all claims, actions, liabilities, damages, losses or expenses, including attorneys' fees, incurred by Buyer due to any alleged infringement of any such right

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## 10. PROPRIETARY INFORMATION AND MATERIALS; CONFIDENTIALITY

Buyer retains all rights in all patterns, tools, dies, equipment, drawings, specifications, designs, and any other information, materials or equipment furnished or paid for by Buyer in connection with this Order. Such property shall be used only in filling orders from Buyer and, together with all reproductions and products of such property, shall be subject to removal by or return to Buyer at any time without additional cost to Buyer, upon Buyer's demand. Seller assumes all liability for any loss or damage to such property, except for normal wear and tear. All information obtained by Seller from Buyer in connection with this Order is received in confidence, shall remain the property of Buyer, and shall be used and disclosed by Seller only to the extent necessary to perform this Order. Seller shall not, without Buyer's prior written consent, communicate to third parties that Seller has furnished or contacted to furnish to Buyer the goods covered by this Order.

## 11. STOP ORDERS

Buyer may at any time, by written stop order, require Seller to stop all or any part of the work required under this Order for a period of up to 90 days, and for any additional period to which both parties agree. Seller shall comply with the terms of any stop order promptly upon receipt and take all reasonable steps to minimize costs and charges allocable to work covered by the stop order during the stoppage period. Seller shall resume work whenever a stop order is canceled or expires. Seller shall report any cost increases or schedule delays resulting from any stop order within 30 days after the end of the stoppage period, and an equitable adjustment in price, schedule or other terms of this Order shall be made by mutual agreement of Buyer and Seller. No change shall be binding upon Buyer unless signed by an authorized representative of Buyer's Materials Department.

## 12. TERMINATION WITHOUT CAUSE

Buyer may terminate, for its convenience and without cause, this Order or any part at any time by written notice to Seller. Upon such termination, settlement shall be made in accordance with the principles contained in Federal Acquisition Regulation (FAR) 52.249, as in effect on the date of this Order, provided that Seller shall submit to Buyer any claim made under such regulation for equitable adjustment or termination within 45 days after the effective date of termination, or such claim shall be waived.

## 13. TERMINATION WITH CAUSE

Buyer may, at its option, terminate all or any part of this Order if (i) Seller fails to deliver the goods or perform the services required by this Order within the time specified herein, or any extension thereof granted by Buyer in writing, or (ii) Seller fails to perform any other provision of this Order in accordance with its terms, and in either such circumstance does not cure such failure within 10 days after receipt of written notice from Buyer. Payment for completed goods delivered to and accepted by Buyer shall be at the price stated in this Order.

## 14. TIME

Time shall be of the essence hereunder.

## 15. GOVERNMENT CONTRACTING

Seller agrees to comply with all applicable Federal, State, and Local laws, executive orders, rules and regulations regarding the goods or services to be furnished under this Order and to indemnify and hold Buyer harmless against all loss and liability resulting or arising from any failure to comply. The supplier also agrees to flow down all Government requirements to any sub-tier suppliers to ensure that all requirements are met. Without limiting the foregoing, unless the goods or services furnished under this Order are not acquired by or provided to the **Federal Government**, the following Federal Acquisition Regulations (FAR) procurement clauses and Defense

Supplement (DFAR) clauses, as amended as of the date of this Order, shall apply, except for all references to a 'Dispute' clause, and shall prevail insofar as they are inconsistent with any provision set forth in this Order, FAR clauses 52.203-6, Restrictions on Subcontractor Sales to the Government; 52.203-7, Anti-Kickback Procedures; 52.210-5, New Material; 52.212-8, Defense Priority and Allocation Requirements; 52.215-22, Price Reduction for Defective Cost or Pricing Data; 52.215-26, Integrity of Unit Prices; 52.215-27, Termination of Defined Benefit Pension Plans; 52.222-1, Notice to the Government of Labor Disputes; 52.222-4, Contract Work Hours and Safety Standards Act - Overtime Compensation; 52.222-41, Service Contract Act of 1965, as Amended; 52.223-3, Hazardous Material identification and Material Safety Data; 52.225-3, Buy American Act - Supplies; 52.225-11, Restrictions on Certain Foreign Purchases; 52.227-3, Patent Indemnity; 52.227-11, Patent Rights - Retention by the Contractor (Short Form); 52.227-12, Patent Rights - Retention by the Contractor (Long Form); 52.227-13, Patent Rights - Acquisition by the Government; 52.227-14, Rights in Data - General; 52.227-19, Commercial Computer Software - Restricted Rights; 52.245-17, Special Tooling; 52.245-18, Special Test Equipment 52.247-63, Preference for U.S. Flag Air Carriers; 52.249-2, Termination for Convenience of the Government (Fixed-Price) (time periods are changed to 45 days); and 52.249-8 Default; IF TINS ORDER IS FOR \$2,500 OR MORE, ALSO FAR clause 52.222-36, Affirmative Action for Handicapped Workers; IF THIS ORDER IS FOR \$10,001.3 OR MORE, ALSO FAR clauses 52.215-1, Examination of Records by Comptroller General; 52.215-2, Audit Negotiation; 52.222-20, Walsh-Healey Public Contracts Act; 52.222-26, Equal Opportunity; 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans; 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of The Vietnam Era; and 52.225-10, Duty-Free Entry; IF THIS ORDER IS FOR \$25,000 OR MORE, ALSO FAR. clauses 52.223-5, Certification Regarding a Drug-Free Workplace; 52.227-1, Authorization and Consent; 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement 52.246-23, Limitation of Liability; and 52.246-25, Limitation of Liability - Services; IF THIS ORDER IS FOR \$100,000 OR MORE, ALSO FAR clauses 52.203-12, Limitation on Payments to Influence Certain Federal Transactions; 52.215-24, Subcontractor Cost or Pricing Data; 52.215-25, Subcontractor Cost or Pricing Data - Modification; 52.223-1, Clean Air and Water Certification; 52.223-2, Clean Air and Water, IF THIS ORDER IS CLASSIFIED, ALSO FAR clauses 52.204-2, Security Requirements; and 52.227-10, Filing of Patent Applications - Classified Subject Matter, AND IF THIS ORDER IS PLACED UNDER A DEPARTMENT OF DEFENSE CONTRACT, ALSO DFAR clauses 252.203-7001, Special Prohibition on Employment; 52.225-7009, Duty-free entry - Qualifying country and products and supplies; 252.225-7010, Duty-free entry - Additional provisions; 252.225-7014, Preference for domestic specialty metal - Alternate 1 (plus deviation); 252.227-7013, Rights in technical data and computer software; and 252.227-7037, Validation of restrictive markings on technical data. Where necessary to give FAR and DFAR clauses proper application, 'Contractor' means Seller, 'contract' or 'schedule' means this Order, and 'Government' or 'Contracting Officer' means Buyer. Additional clauses, when necessary, will be specified on the face of this Order or added as an amendment, FAR and DFAR are published in Chapters 1 and 2, Title 48, Code of Federal Regulations. For copies of FAR and AFAR, write Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20025.

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## 16. OVERTIME

Seller may not perform overtime work in connection with this Order without Buyer's prior written approval. Absent such approval, Buyer will not recognize premium compensation payments for any purpose.

## 17. WAIVER

Buyer's failure to insist upon performance of any provision of this Order, or to exercise any right or privilege granted to Buyer hereunder, shall not constitute a waiver of such provision or privilege and both shall remain in effect.

## 18. ASSIGNMENT AND SUBCONTRACTS

Seller shall not in any manner delegate or subcontract all or substantially all of its duty of performance, or assign all or substantially all of its rights or obligations, under this Order without the prior written consent of Buyer, provided that Seller may assign its rights to monies due and to become due under this Order to a single assignee if such assignee agrees in writing to the following conditions:

- (a) Buyer may amend, settle all claims arising from, and exercise all of its rights under this Order without notice to or consent of Seller's assignee; and
- (b) Seller's assignee shall have no right of assignment; If Seller notifies Buyer of any such assignment, all invoices of Seller shall refer to the assignment

## 19. VALIDITY

The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of any other term or condition.

## 20. COMPLIANCE WITH LAWS

Seller warrants that all goods furnished under this Order were produced in compliance with the Federal Fair Labor Standards Act and that the goods or the sale thereof by Buyer do not and will not violate any Federal, State, or Local statute, ordinance, rule or regulation; and Seller agrees to defend, indemnify and hold harmless Buyer from all claims, actions, liabilities, damages, losses or expense incurred by Buyer due to any alleged violations thereof, or arising from any act or omission of Seller or Seller's servants, agents or subcontractors, in performing this Order.

## 21. PROCESS CHANGES

The supplier must notify the buy of any changes to the manufacturing process that affect fit, form, or function of the product that is built to the buyers prints and specifications. A First Article will be required per AS 9102 Aerospace Standard requirements. Catalog items and off the shelf items do not require a First Article per this clause.

## 22. QUALITY TERMS AND CONDITIONS

### MILITARY/GOVERNMENT CONTRACTS

#### (a) QUALITY SYSTEM

(i) **Control of Quality (MIL-I-4520S):** The Supplier provides, documents, and maintains a system that complies with the specification MIL-I-45208, Inspection System Requirements. Compliance with the provisions of this specification in no way relieves the supplier of the responsibility to furnish acceptable supplies or services. The supplier must ensure that subtier suppliers conform to

company requirements.

### INSPECTION REQUIREMENTS

(i) **Certificate of Compliance** - Each shipment must be accompanied by one legible and signed copy of a *Certificate of Compliance* (C of C). The supplier's material, processes, and finished parts were controlled and tested in accordance with the applicable specifications. Specified test records are on file subject to examination upon request. The C of C or packing slip must include part number (s) and the purchase order number.

(ii) **Identification of Shelf Life Material** - Supplier must identify each item, package, or container of shelf life material with its cure or manufacture date, expiration date, and any special storage and handling conditions in addition to the standard identification requirements. The supplier must certify that at a minimum two thirds of the usable shelf life is available.

(iii) **Chemical and Physical Test Reports** - Supplier certifies that all Chemical and Physical tests, required per the applicable specification/drawings, have been performed and test reports are on file and available upon request from the buyer and/or government representative.

(iv) **Preservation, Packing, and Packaging** - The supplier will ensure that all items are adequately preserved, packed, and packaged to prevent damage and/or contamination.

(v) **Corrective Action** - Supplier shall formally reply within 30 days with written corrective action for material that does not meet specification or is not fit for intended use.

### COMMERCIAL CONTRACTS

(i) **Supplier & inspection System** - The supplier maintains an inspection system that ensures that all items furnished have been inspected or tested (prior to shipment) for conformity to company drawing, specification, and procurement documents. The supplier must ensure that his or her subtier suppliers conform to company requirements.

(ii) **Preservation, Packing, and Packaging** - The supplier will ensure that all items are adequately preserved, packed, and packaged to prevent damage and/or contamination.