

## **SHIELD TECHNOLOGIES CORP - Purchase Order Terms and Conditions**

### **1.0. Definitions:**

- 1.1 Buyer: Shield Technologies Corporation shall be known as the Buyer.
- 1.2 Supplier: The entity providing the Goods or services being purchased through this Purchase Order shall be known as the Supplier.
- 1.3 Goods: Goods are tangible, as in these have a physical presence and they can be touched.
- 1.4 Services: Services refer to an act or deed, rather than property ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental Services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the Supplier covered under the Purchase Order or Contract.
- 1.5 Purchase Order: A purchase order (PO) is a document a buyer sends to a supplier requesting particular products or services.

### **2.0. Orders:** Purchase orders are not valid unless signed by the Buyer. Buyer will not recognize claims based on verbal orders.

**3.0. Acceptance-Agreement.** Supplier's commencement of work on the Goods subject to this purchase order or shipment of such Goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained herein. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this offer in Supplier's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price, or delivery schedule of the Goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Supplier without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms contained herein. Additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of the Supplier's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the Goods.

**4.0. Defense Priorities and Allocations System (DPAS).** If a DPAS rating is shown on the face or any line of this purchase order, then: This is a "DPAS Rated" order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulations (15 CFR 700 et seq). All DPAS Rated" orders must be accepted or rejected as follows:

- 4.1 "DO" rated POs must be accepted or rejected in writing (hardcopy), or electronica format, within 15 working days after order receipt.
- 4.2 "DX" rated POs must be accepted or rejected in writing (hardcopy), or electronica format, within 10 working days after order receipt.
- 4.3 Rejection of "DO" or "DX" orders must be in writing (hardcopy), or in electronic format, giving the specific reason for the rejection.
- 4.4 If, after acceptance of this order, Supplier subsequently finds that shipment or performance will be delayed, Supplier must notify the Buyer immediately in writing (hardcopy), or in electronic format, give reasons for the delay, and advise of a new shipment or performance date. If both DPAS rated and unrated PO quantities are reflected in this order you are only required to follow DPAS regulations as it pertains to the DPAS rated quantities.

**5.0 Government Contracting Flow Down Clauses (Applicable to Government orders including DO/DX rated orders.).** For Orders issued under contracts between Buyer and the U.S. Government Department of Defense or National Aeronautics and Space Administration, or subcontracts at any tier under such U.S. Government contracts, the terms and conditions of the versions of the "Flowdown of U.S. Government Contract Clauses Under U.S. Government Contracts" documents in effect on the date of the particular order shall apply. The full text of the FAR clauses may be accessed electronically at the following address: <https://www.acquisition.gov/far/index.html>. The full text of the DFARS may be accessed electronically at the following address: <https://www.acquisition.gov/dfars>.

<u>CLAUSE NUMBER</u>	<u>TITLE</u>
52.202-1	Definitions
52.203-13	Contractor Code of Business ethics and Conduct
52.204-10	Reporting Executive Compensation and First Tier Subcontract Awards
52.204-21	Basic Safeguarding of Covered Contractor Information Systems
52.204-27	Prohibition on a ByteDance Covered Application
52.212-8	Defense Priority and Allocation Requirements
52.212-13	Stop-Work Order
52.215-1	Examination of Records
52.215-24	Subcontractor Cost or Pricing Data
52.215-25	Subcontractor Cost or Pricing Data-Modifications
52.219-8	Utilization of Small Business Concerns
52.222-21	Prohibition of Segregated Facilities
52.222-26	Equal Opportunity
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of eh Vietnam Era, and Other eligible Veterans
52.222-36	Affirmative Action for Workers With Disabilities
52.222-37	Employment Reports on Veterans
52.222-40	Notification of Employee rights Under the National Labor Relations Act
52.222-50	Combating Trafficking in Persons
52.222-55	Establishing Minimum Wage for Contractors
52.223-3	Hazardous Material Identification and Material Safety Data
52.225-13	Restrictions on Certain Foreign Purchases
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
52.229-3	Federal, State and Local Taxes
52.244-6	Subcontracts for Commercial Items
52.233-1	Disputes
52.243-1	Changes-Fixed Price
52.246-23	Limitation of Liability
52.249-2	Termination for Convenience of the Government
52.249-8	Default (Fixed-Price Supply and Service)
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
252.204-7020	NIST SP 800-171 DoD Assessment Requirements
252.225-7002	Qualifying Country Sources as Subcontractors
252.225-7012	Preference for Certain Domestic Commodities

**6.0. FAR 52.246-2 Inspection of Supplies - Fixed-Price:** Supplier shall comply with FAR 52.246-2.

**7.0. Certificates of Conformance.** The Supplier shall provide to the Buyer a completed Certificate of Compliance certifying that all materials used in the fabrication of the Goods being purchased under this Purchase Order are in full compliance with the Berry Amendment as prescribed at Defense Federal Acquisition Regulation Defense Federal Acquisition Regulation (DFARS) 225.7002, "Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools" and implemented via DFARS clauses 252.225-7012, 252.225-7014, and 252.225-7015.

7.1. The Supplier understands and will comply with the DFARS supplemental regulations. Furthermore, the Supplier understands that in addition to the Buy America Act, the Berry Amendment applies to both end items AND components to assemble the end item, as well as any and all subcontracted components. These components (but not limited to) can include buttons, zippers, thread, clips, fasteners, and ties.

7.2. The Certificate of Compliance shall indicate the names and addresses of those suppliers from whom each cloth or textile component item will be obtained for use in the performance of any resultant contract. In addition, for each such cloth or textile component item, the offeror shall also identify the name of the item's manufacturer and the address of the manufacturing location. Failure to furnish this information with the offer may result in rejection of the Goods by the Buyer. The Certificate of Compliance shall indicate the names and addresses of the manufacturer(s) assembling the components and materials into the finished Goods. Failure to furnish this information with the offer may result in rejection of the Goods by the Buyer. Any change in the supplier(s) or manufacturer(s) listed, and in any resultant contract, is prohibited unless it is specifically approved in advance by the contracting officer.

**8.0. Shipment.** If delivery is not made by the date indicated in this Order, Buyer may, in addition to its other rights, cancel this Order, without any liability whatsoever. If in order to comply with Buyer's required delivery date it becomes necessary for Supplier to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting there from shall be paid for by Supplier unless the necessity for such rerouting or expedited handling has been caused by Buyer.

**9.0. Force Majeure.** Buyer may delay delivery or acceptance occasioned by causes beyond its control. Supplier shall hold such Goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Supplier's direct additional costs in holding the Goods or delaying performance of this agreement at Buyer's request. Causes beyond Buyer's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

**10.0. Drawings and Technical Data.** If required as part of its performance specifications hereunder, Supplier shall deliver to Buyer all printed materials relating to the Goods, such as catalogs, fabric layout drawings, wire-frame drawings, certified prints, parts lists, service and technical manuals, diagrams and the like on or before delivery of the Goods, and Buyer is permitted to withhold payment until such delivery is made. All printed materials supplied by or prepared at the request of Buyer or pursuant to this Order, shall at all times be and remain the property of Buyer and shall be delivered to Buyer on demand. All drawings, data, designs and other technical information (collectively, "Technical Information") (i.) if furnished by Buyer shall remain the property of Buyer and shall be held by Supplier in confidence: (ii.) if prepared by Supplier or incorporated into Technical Information supplied by Buyer or others, shall be a work made for hire, and Supplier agrees to secure for, and assign to, Buyer all ownership rights, including intellectual property rights, relating to such Technical Information.

10.1. All cut drawings specific to the Suppliers needs to operate its installed equipment used to fabricate Envelop® Covers shall remain property of the Supplier.

**11.0. Changes.** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made, and this agreement shall be modified in writing accordingly. Supplier agrees to accept any such changes subject to this paragraph.

**12.0. Price and Payment:** Supplier warrants that the prices for the articles sold to the Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Supplier reduces its price for such article during the term of this order, Supplier agrees to reduce the prices hereof correspondingly. The price stated in this Order includes all charges for packaging, boxing, crating, special handling, and freight, F.O.B. destination. No modification or adjustment of the stated price may be made without the signed written agreement of Buyer. If the price is not stated on this Order, the price shall be the lower of the later price last quoted or paid, or the prevailing market price.

**13.0. Setoff.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Supplier.

**14.0. Delivery and Risk of Loss:** Buyer's production schedules and warranties to its customer are dependent upon the agreement that deliveries of the Goods covered by this Order will occur on a required delivery date shown on the face hereof. Therefore, time is of the essence. Unless otherwise specified, Goods shall be delivered FOB destination designated by Shield Technologies Corporation. Supplier shall be responsible for all damages of any kind incurred or suffered by Buyer which were caused by delay of Supplier in making deliveries of conforming Goods. Supplier agrees to notify Buyer immediately if at any time it appears that Supplier may not meet the delivery schedule. Such notification shall include the reasons for the delay, actual or potential, the steps being taken to remedy the constraint and the schedule or a waiver of the delivery schedule in the Order. Any assistance furnished by Buyer to overcome delays shall not be regarded as waiving Buyer's remedies for default, including termination rights, if Supplier fails to meet the contractual schedule. Unauthorized advanced shipments and shipments other than for the quantity ordered are returnable at Supplier's expense. Identification of the Goods under Section 2-501 of the Uniform Commercial Code shall occur at the moment Supplier accepts this Order. Supplier shall not be excused from performing his obligation hereunder if the Goods identified are destroyed. Delivery shall not be deemed complete until the Goods have been actually received by Buyer at its facility. The risk of loss and damage in transit shall be upon Supplier and shall not pass to Buyer until received at Buyer's facility in a condition in accordance terms of this Order. The cost of all return shipments shall be borne by Supplier.

14.1. Buyer reserves the right to refuse C.O.D. shipments.

**15.0. Warranty.** Supplier expressly warrants that all Goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Supplier warrants that all such Goods or services will conform to any statements made on the containers or labels or advertisements for such Goods or services, and that any Goods will be adequately contained, packaged, marked, and labeled. Supplier warrants that all Goods or services furnished hereunder will be merchantable and will be safe and appropriate for the purpose for which Goods or services of that kind are normally used. If Supplier knows or has reason to know the particular purpose for which Buyer intends to use the Goods or services, Supplier warrants that such Goods or services will be fit for such particular purpose. Supplier warrants that Goods or services furnished will conform in all respects to samples.

Inspection, test, acceptance or use of the Goods or services furnished hereunder shall not affect the Supplier's obligation under this warranty, and such warranties shall survive inspection, test, acceptance, and use. Supplier's warranty shall run to Buyer, its successors, assigns and customers, and users of Goods sold by Buyer. Supplier agrees to replace or correct defects of any Goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defects in or replace nonconforming Goods or services promptly, Buyer, after reasonable notice to Supplier, may make such corrections or replace such Goods and services and charge Supplier for the cost incurred by Buyer in doing so.

**16.0. Indemnification.** Supplier shall defend, indemnify, and hold harmless Buyer against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the Goods or services purchased hereunder, or from any act or omission of Supplier, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Supplier.

**17.0. Inspection/Testing.** Payment for the Goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such Goods and to reject any or all of said Goods which are in Buyer's judgment defective or nonconforming. Goods rejected and Goods supplied in excess of quantities called for herein may be returned to Supplier at the Supplier's expense and, in addition to Buyer's other rights, Buyer may charge Supplier all expenses of unpacking, examining, repacking and reshipping such Goods. In the event the Goods must be installed, tested, or assembled prior to use, they shall not be deemed fully accepted until such installation, testing or assembly indicates the Goods are in accordance with the specifications of this Order and are operating properly. In the event Buyer receives Goods whose defects or nonconformities are not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Supplier from the obligation of testing, inspection, and quality control.

**18.0. Quality Systems:** The Supplier shall provide to the Buyer evidence that they have at a minimum a quality system that is acceptable to the Buyer. The minimum Quality System requirements for Suppliers is either SAE AS9003, or ISO 9001 tailored to the requirements of SAE AS9003. Such tailoring shall not affect the Supplier's ability, or responsibility to provide product that meets the Buyer's and applicable statutory and regulatory requirements. Suppliers may also choose to offer a quality management program meeting or exceeding the requirements of full ISO 9001. (Ex. ASQ/ANSI E4: ASME NQA-1, SAE 447 AS9100, ISO/TS 16949)

18.1 The Buyer reserves the right to verify the Supplier's quality system through either a verbal or written confirmation, or through a scheduled visit to the Supplier's facility by Buyer or Buyer's designee.

18.2 All Supplier's sub-contractors shall adhere to the same quality standards as the Supplier and may be verified through either a verbal confirmation or through a scheduled visit to the sub-contractor's facility by Buyer or Buyer's designee.

**19.0. Identification.** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting this Order shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this Order, indicating the content of such boxes or packages.

**20.0. Bailment.** Unless otherwise agreed to in a writing signed by Buyer, all property furnished to Supplier by Buyer shall remain the property of Buyer. Any tooling drawings and technical data furnished to Supplier or created as a result of this Order shall be the property of the Buyer. Supplier shall bear risk of all loss and damage thereto while such property is in Supplier's actual or constructive possession. Such property shall at all times be properly protected and maintained by Supplier, shall not be commingled with the property of Supplier or others, shall not be removed from Supplier's premises without prior written consent of Buyer, and shall upon request be immediately returned to Buyer. Further, such property shall be identified and marked by Supplier as Buyer's property and shall be used only as expressly authorized by Buyer. Such property shall be adequately insured by Supplier for any and all losses while in Supplier's possession and shall be returned to Buyer in the same condition as when received, reasonable wear and tear excepted.

**21.0. Waiver.** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

**22.0. Entire Agreement.** This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties.

**23.0. Bankruptcy.** In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against the Supplier, including any proceeding under the United States bankruptcy laws, or in the event of the appointment, with or without Supplier's consent, of a receiver of an assignee for the benefit of creditors, Buyer shall be entitled to cancel any unfulfilled part of this Order without any liability whatsoever.

**24.0. Taxes.** Unless otherwise indicated on the face of the Order, Buyer agrees to pay all State of Minnesota sales or use taxes. Supplier will not charge for federal excise taxes, and Purchase agrees to furnish Supplier, upon acceptance of Goods or materials supplied under this Order, with an exemption certificate.

**25.0. Antitrust Assignment Clause.** Supplier and Buyer acknowledge that overcharges by manufactures are in fact borne by the Buyer and not the Supplier. Supplier, therefore, agrees to assign to Buyer any and all claims which it may have for overcharges, as to Goods and materials purchased in connection with any contract between Buyer and Supplier, arising out of antitrust or similar actions, except as to overcharges which commence after the price is established under any contract between Buyer and Supplier and which are not passed on to the Buyer under an escalation clause.

**26.0. Equal Opportunity.** Supplier agrees to comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, color, national origin, sex, age or because of a physical or mental handicap, including Title VII of the Civil Rights Act of 1964 as amended, Executive Orders 10925, 11141 and 11246 as amended. Sections 402 and 503, the regulations at 41 C.F.R. Parts 60-1 through 60-60, 60-250 and 60-741, and ASPR 12-802 as modified by ASPR -12-803m which are part of hereof by reference.

**27.0. Compliance:** Supplier warrants that all Goods and services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations, including EEO and Affirmative Action, to which they are subject. Supplier shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are hereby incorporated by this reference, as applicable, including provisions of 38 U.S. Code 4212, Executive Orders 11246, 11375, 11758, 11701, 12086, 13201 (including 29 CFR Part 470), as amended, and any subsequent executive orders relating to equal opportunity for employment on government contracts.

**28.0. Termination for Convenience of Buyer.** Buyer reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Supplier shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Supplier shall be paid a reasonable termination charge, consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Supplier shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided.

**29.0. Termination for Cause.** Buyer may also terminate this order or any part hereof for cause in the event of any default by the Supplier or if the Supplier fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of Goods which are defective, or which do not conform to this order, and failure to provide Buyer, upon request, of reasonable assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause, Buyer shall not be liable to Supplier for any amount, and Supplier shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination.

**30.0. Proprietary Information - Confidentiality -Advertising.** Supplier shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person or use such information itself for any purpose other than performing this contract, unless Supplier obtains written permission from Buyer to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Supplier for Buyer in connection with this order. Supplier shall not advertise or publish the fact that Buyer has contracted to purchase Goods from Supplier, nor shall any information relating to the order be disclosed without Buyer's written permission. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Supplier to Buyer shall be deemed secret or confidential and Supplier shall have no rights against Buyer with respect thereto, except such rights as may exist under patent laws.

**31.0. Patents.** Supplier agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers, or other Suppliers for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of Goods, or services furnished hereunder, and Supplier further agrees to indemnify Buyer, its agents and customers against any and all expenses, losses, royalties, profits, and damages, including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Supplier.

**32.0. Insurance.** In the event that Supplier's objections hereunder require or contemplate performance of services by Supplier's employees, or persons under contract to Supplier, to be done on Buyer's property, or property of Buyer's customers, the Supplier agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Buyer. Supplier shall maintain all necessary insurance coverage's, including public liability and Workers' Compensation insurance. Supplier shall indemnify and save harmless and defend Buyer from any and all claims or liabilities arising out of the work covered by this paragraph.

**33.0 Prohibited Telecommunications Equipment & Services.** Supplier recognizes that the Buyer, and their respective Affiliates are subject to Section 889 of the National Defense Authorization Act for Fiscal Year 2019 ("Section 889"), which prohibits prime contractors to the U.S. government from using (regardless of end use) "covered telecommunications equipment or services", as such term is defined in Section 889 ("Prohibited Telecom").

33.1. Supplier represents that it shall not furnish to Buyer any Goods or Services that use or contain Prohibited Telecom.

33.2. Supplier commits to (i) have in place processes to determine whether it furnishes, or has furnished, to Buyer Goods, separately-identifiable items or components of Goods, or Services that use or contain Prohibited Telecom; (ii) notify Buyer, within 1 business day of Supplier's identification, of the use or existence of Prohibited Telecom in the Goods and/or Services it furnishes, or has furnished, to Buyer (a "Prohibited Telecom Use Notice"), which shall include the brand, model number, and item description of such Goods and/or Services; and (iii) within 10 business days of Supplier's submission of a Prohibited Telecom Use Notice, provide Buyer with such further available information as Buyer may request about such Supplier's use of Prohibited Telecom in the Goods and/or Services it furnishes, or has furnished, to Buyer, and the efforts Supplier has taken, and will take, to prevent the use of Prohibited Telecom in the Goods and/or Services it furnishes to Buyer.

33.3. Supplier shall require its subcontractors to satisfy the requirements of this Section

**34.0 Cyber Incident Safeguarding & Reporting:** To the extent the obligations of the parties hereunder require the handling or the access to information or a system owned, or operated by or for a Contractor where attributional/proprietary information and/or Client information resides in, transits through and/or is processed; the same will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (see <http://dx.doi.org/10.6028/NIST.SP.800-171>). Supplier will report Cyber Incidents to Serco within 48 hours of discovery. "Cyber incident" means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein. Such incidents include system compromise such as penetrations of networks and information systems and/or unauthorized data breaches. Supplier shall conduct a review for evidence of compromise of covered information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered supplier information system(s) that were part of the cyber incident, as well as other information systems on the Supplier's network(s), that may have been accessed as a result of the incident in order to identify compromised covered information, or that affect the Supplier's ability to provide support.

**35.0. NIST SP 800-171 DoD Assessment Requirements.** Supplier shall comply with DFARS clause 252.204-7020, paragraph (g.) quoted below:

*"(g) Subcontracts.*

*(1) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items (excluding COTS items).*

*(2) The Contractor shall not award a subcontract or other contractual instrument, that is subject to the implementation of NIST SP 800-171 security requirements, in accordance with DFARS clause 252.204-7012 of this contract, unless the subcontractor has completed, within the last 3 years, at least a Basic NIST SP 800-171 DoD Assessment, as described in*

*[https://www.acq.osd.mil/dpap/pdi/cyber/strategically\\_assessing\\_contractor\\_implementation\\_of\\_NIST\\_SP\\_800-171.html](https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html), for all covered contractor information systems relevant to its offer that are not part of an information technology service or system operated on behalf of the Government.*

*(3) If a subcontractor does not have summary level scores of a current NIST SP 800-171 DoD Assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) posted in SPRS, the subcontractor may conduct and submit a Basic Assessment, in accordance with the NIST SP 800-171 DoD Assessment Methodology, to [webpmsmh@navy.mil](mailto:webpmsmh@navy.mil) for posting to SPRS along with the information required by paragraph (d) of this clause."*

**36.0. Prohibition on a ByteDance Covered Application.** Supplier shall comply with FAR clause 52.204-27 as quoted below.

*52.204-27 Prohibition on a ByteDance Covered Application. Prohibition on a Bytedance Covered Application (JUN 2023)*

*(a) Definitions. As used in this clause—*

*Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.*

*Information technology, as defined in 40 U.S.C. 11101(6)—*

*(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency*

that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M–23–13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M–23–13.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

**37.0. Assignments and Subcontracting.** No part of this order may be assigned or subcontracted without prior written approval of Buyer.

**38.0. Limitation on Buyer's Liability-Statute of Limitations.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the Goods or services or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the Goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

**39.0. Termination.** In the event of a breach by Supplier of any of the provisions of this contract, Buyer reserves the right to cancel and terminate this contract, upon giving oral or written notice to the Supplier. Supplier shall be liable for damages suffered by Buyer resulting from Supplier’s breach of this contract.

**40.0. Severability.** If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this order and the remainder of the order shall not be affected.

**41.0. Governing Law.** The laws of the State of Minnesota shall govern this Order and the right and the obligations of the parties hereunder.