

**ATTACHMENT I - TELEDYNE BROWN  
ENGINEERING, INC.  
TERMS AND CONDITIONS - COMMERCIAL  
PROCUREMENTS  
NOVEMBER 2007**

**GENERAL**

Acknowledgment, shipment, or performance of any part of this purchase order will constitute acceptance by Seller of all terms and conditions hereof, including all documents incorporated herein by reference without reservation, and shall constitute the entire agreement between the parties and supersedes all prior agreements relating to the subject matter hereof. Buyer hereby specifically objects to any additional or different terms or conditions set forth in any communication from Seller.

Buyer liability to Seller is limited to and shall not exceed for any reason the value of the Purchase Order. Releases against Blanket Purchase Orders represent the aggregate of goods or services and/or dollar amount authorized for delivery to date. Buyer liability regarding Blanket Purchase Orders shall not exceed either of (1) total cumulative quantity of the goods identified on Buyer's order releases or (2) the total Purchase Order value. Deliveries by Seller that exceed either (1) or (2) above shall be at Seller's risk and Buyer is not obligated to accept such deliveries. Freight and insurance costs associated with the return of such deliveries shall be the Seller's responsibility.

**SECTION 1. CHANGES AND TERMINATION**

Buyer may by written change order make any changes in this purchase order, including additions of or deletions from the quantities ordered or in the designs, specifications, or delivery schedules. If any change affects the amount due or the time of performance hereunder, Seller shall notify Buyer within 5 days and not proceed with the work until Buyer confirms in writing that the change should be implemented. Seller shall then submit a proposal within 20 days detailing the impact of the change. Upon negotiation, Buyer shall then make an equitable adjustment in the purchase price or delivery schedule. Any exchange of information or advice between the parties shall not authorize Seller to change the goods or services purchased hereunder or the provisions of this purchase order unless incorporated as a written change order in accordance with this section.

Buyer may at any time by a written change order, terminate this purchase order for convenience as to all or any portion of the goods then not shipped or services not performed, subject to an equitable adjustment between the parties as to any work or materials then in progress, provided that such adjustment shall not include any cost with respect to any goods which are Seller's standard stock.

Buyer may, by written notice of default to the Seller, terminate this order in whole or in part if the Seller fails to: a) deliver the supplies or to perform the services within the time specified in this order or any extension; b) make progress so as to endanger performance of this order (unless

a force majeure condition exists as specified in Section 8); or c) perform any of the other provisions of this order. Buyer's right to terminate for default may be exercised if the Seller does not cure such failure within ten (10) days after receipt of the notice from the Buyer specifying the failure. If the Buyer terminates this order for default in whole or in part, Buyer may acquire, under the terms and in the manner the Buyer considers appropriate, supplies or services similar to those terminated, and the Seller shall be liable for any excess costs for those supplies or services. However, the Seller shall continue the work not terminated. If this order is terminated for default, the Buyer may require the Seller to transfer title and deliver to the Buyer 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 contract. Upon direction of the Buyer, the Seller shall also protect and preserve property in its possession in which the Buyer has an interest. The Buyer shall pay contract price for completed supplies delivered and accepted. The Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. The Buyer may withhold from these amounts any sum the Buyer determines to be necessary to protect the Buyer against loss because of outstanding liens or claims of former lien holders. If, after termination for default, 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 Buyer. The rights and remedies of the Buyer in this clause are in addition to any other rights and remedies provided by law or under this order.

**SECTION 2. INSPECTION AND ACCEPTANCE**

Buyer shall have the right to inspect and test the goods or services purchased hereunder at any time prior to shipment at Seller's plant or its subcontractor's plant. Acceptance of goods or services is subject to final inspection by Buyer to be made within a reasonable time after arrival at the specified destination. The making or failure to make any inspection of, or payment for, or acceptance of the goods or services shall in no way impair Buyer's right to reject or revoke its acceptance of nonconforming goods or services or avail itself of any other remedies to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its suitability, or the ease of its discovery.

**SECTION 3. WARRANTY**

Seller represents and warrants that the goods and services furnished hereunder shall be merchantable and fit for the particular purpose intended and shall be of the kind and quality described herein, in strict accordance with the specifications, and free of defects in design, workmanship and materials. If within one year from the date of placing

the goods or the product of the services provided hereunder into commercial operation, the goods or product of such services is or becomes defective though such discovery may be after said one year period, Seller shall correct such nonconformity or defect at its sole expense. The corrective work shall be performed diligently and in the most expeditious manner consistent with Buyer's needs and in a manner concurred in by Buyer. Seller warrants any adjustment, repair, or replacement to the same extent the original goods or services are warranted for a period of one year after such corrective work.

#### **SECTION 4. SUBCONTRACTS AND ASSIGNMENT**

Seller shall not subcontract with any other party without Buyer's prior written authorization for the whole or any major component of any item or service ordered hereunder, and Seller shall require a like agreement from its subcontractors. Any assignment of this purchase order or of any rights hereunder by operation of law or otherwise, without the prior written consent of Buyer shall be void.

#### **SECTION 5. JURISDICTION AND WAIVERS**

The rights and obligations of the parties hereto shall be governed by the law of the State of Alabama. No provisions hereof may be waived or modified, and no counteroffer hereto shall be deemed accepted, unless made in writing and signed by a duly authorized representative of Buyer. A waiver of one or more defaults hereunder or failure to insist on strict performance of any terms or condition hereof shall not be a waiver of any other or subsequent defaults or performance.

#### **SECTION 6. REPRODUCTION RIGHTS**

Buyer does not grant the Seller any rights to use designs, drawings, or other information belonging to or supplied by Buyer in the manufacture or design of articles or materials for anyone other than Buyer provided, however, nothing herein contained shall be construed to prevent the Seller from making direct sales to the Government where the Government has acquired the Right of Reproduction of such articles.

#### **SECTION 7. INFRINGEMENT**

Seller shall at its own expense, hold harmless and defend Buyer against any claim, suit, or proceeding brought against Buyer which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished hereunder constitute an infringement of any patent, copyright, or trademark. Seller shall pay all damages, costs, and expenses arising from such claims. In case the goods or services furnished hereunder, or any part thereof, are held to constitute infringement and the use of said goods or services or part is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using said goods or services or replace the same with non-infringing goods or services. This paragraph shall not apply to any goods or services or part thereof manufactured or furnished to Buyer's design.

#### **SECTION 8. FORCE MAJEURE**

Time is the essence of this purchase order. Neither

party shall be liable for delays due to causes not reasonably foreseeable which are beyond reasonable control, such as act of God, acts of civil or military authorities, fires, strikes, floods, epidemics, war, or riots. In the event of any such delay caused by such event of force majeure, the date of performance shall be extended for a period of time equal to the time actually lost by reason of such delay, without cost to either party. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof.

#### **SECTION 9. INSURANCE AND LIABILITY**

Seller shall, and shall require its subcontractors to, keep all materials, tools, and equipment in which Buyer has any interest insured against risk of loss or damage for their value at Seller's own expense during such time as they remain in Seller's possession.

Seller shall also provide and maintain insurance in the following amounts:

- Workmen's compensation insurance (statutory limits)
- Automobile, general liability, & product liability - \$1M combined single limit

When Seller's employees, agents, or contractors are on Buyer's premises for any reason, the presence of Seller shall be as an independent contractor, and Seller shall indemnify and hold harmless Buyer against all loss, damage, or expense by reason of injury to person or damage to property (including employees and property of Buyer) arising out of the use of or activities on any of said premises. Seller shall provide a certificate of insurance evidencing the above coverages, naming Buyer as an additional insured for claims caused by Seller's actions or inaction while on Buyer's property.

#### **SECTION 10. CONFLICTS**

To the extent of conflicts, if any, among the provisions hereof or any attachments hereto, such conflicting provisions shall prevail in the following order of precedence:

- (1) Typed provisions on the face of the purchase order
- (2) Purchase order attachments
- (3) Printed terms and conditions
- (4) Specifications.

#### **SECTION 11. COMPLIANCE WITH LAW**

Seller shall observe at all times all Federal, State, County, and Municipal laws or ordinances which in any manner affect the work herein specified, including those laws pertaining to recovery and recycling of parts in data processing equipment. This purchase order incorporates, by reference, all applicable clauses relating to employment of the handicapped, employment of veterans, or utilization of minority contractors which are required under governmental laws, orders, or regulations to be included in any such order according to applicable conditions thereof. Seller shall also require all of its agents, subcontractors, and employees to observe and comply with said laws and ordinances and shall indemnify and hold Buyer harmless for all claims, damages,

and expenses arising from or based on the violation of any such law or ordinance by Seller or its subcontractors, agents, or employees.

Seller hereby warrants that all goods and services provided hereunder shall conform with the Occupational Safety and Health Act (OSHA). In the event that such goods or services do not conform with OSHA, and Buyer is penalized for such nonconformance, Seller agrees to indemnify the Buyer for all penalties, costs, and expenses, including interest levied against Buyer.

#### **SECTION 12. TITLE AND RISK OF LOSS**

Title and risk of loss to goods shall pass to Buyer upon receipt at Buyer's designated destination.

#### **SECTION 13. EXPEDITING**

The goods and services shall be subject to expediting by Buyer or its representatives. Buyer's personnel shall be allowed reasonable access to Seller's plants for the purpose of expediting and/or inspection.

#### **SECTION 14. GOODS ORIGINATING OUTSIDE OF THE UNITED STATES**

For deliveries originating outside the United States, Seller hereby warrants that the Harmonized Tariff Code used on the shipping documentation is accurate, and hereby indemnifies Buyer from all penalties imposed by the U.S. Government as a result of Seller's use of an incorrect Harmonized Tariff Code. Seller further warrants that it has complied with the export laws of the country of origin and hereby indemnifies Buyer from any penalties which may be imposed from failing to so comply.

#### **SECTION 15. CONDITIONS APPLICABLE TO ORDERS FOR GOODS DESTINED FOR USE BY THE UNITED STATES GOVERNMENT**

Where the face of this Purchase Order bears a Government contract number, the following clauses shall supplement the foregoing and to the extent of any inconsistency with the foregoing, be controlling.

1. Procurement of "Commercial Items" in support of Government contract.

a. Definition – A commercial item is customarily used for nongovernmental purposes that is made available to the general public.

b. Applicable FAR Clauses

- (1) 52.219-8, Utilization of Small Business Concerns, if further subcontracting opportunities are possible
- (2) 52.222-26 Equal Opportunity (Executive Order 11246)
- (3) 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S. Code 4212(a))
- (4) 52.222-36 Affirmative Action for Workers with Disabilities (29 U.S. Code 793)
- (5) 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees

- (6) 52.222-41 Service Contract Act of 1965 as Amended, if the services being procured are subject to the Act
- (7) 52.222-50 Combating Trafficking in Persons
- (8) 52.247-64, Preference for Privately Owned U.S. Flag Commercial Vessels

#### 2. Department of Defense Orders

For orders issued under Department of Defense contracts, the Seller shall comply with DFARS 252.225-7014, Preference for Domestic Specialty Metals.

3. Where necessary to make the clauses above consistent with this Purchase Order, the words "Government," "contracting officer," and similar words as used therein shall mean Buyer, and the word "contractor" shall mean Seller.

#### **SECTION 16. "EQUAL OPPORTUNITY"**

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to: employment; demotion; transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency of the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor, as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interest of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### **SECTION 17. GOVERNMENT INSPECTION**

If this procurement document bears a government contract number, the government has the right to perform government quality assurance at the Supplier's plant as may be necessary to determine conformance with the requirements specified for all services and/or supplies ordered herein. In addition, there may be further government inspection rights provided by FAR citations (i.e., 52.246-2 through -9) or by Buyer's Quality Terms, Attachment II, Form 5124 (i.e., terms 1 through 6).

#### **SECTION 18. GOVERNMENT-OWNED FACILITIES**

If Government-owned facilities are to be used by Seller to perform work prescribed herein, two prices are to be submitted; one based on rent-free use and one based on rental payments (applicable to request for quote only).

#### **SECTION 19. ANTIKICKBACK**

TBE prohibits the payment of any money, fee commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract. All suspected violations of this section must be reported immediately to the Teledyne Brown Engineering Ethics Officer.

#### **SECTION 20. WORK PERFORMED IN BUYER FACILITIES**

Work performed under this purchase order in Buyer facilities may require the individuals assigned to be U.S. citizens. Before assigning any foreign nationals to work in Buyer facilities in support of this purchase order, Seller shall obtain prior written approval from Buyer. Seller shall also screen all individuals who have access to Buyer facilities against the U.S. Government's Denied Parties List. If Seller does not have access to the Denied Parties List, names of the individuals shall be provided to Buyer for screening by Buyer.

#### **SECTION 21. HAZARDOUS MATERIALS**

Seller shall notify Buyer in writing if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other health, safety and/or environmental regulations. Seller shall furnish: all appropriate shipping certification; labeling in compliance with the Workplace Hazardous Materials Information System; Material Safety Data Sheets in compliance with the Workplace Hazardous Materials Information System; and instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by Buyer's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations."

#### **SECTION 22. ORDER COMPLETION AND CLOSEOUT:**

Subcontractor agrees to close out this order within the following schedule:

- (1) Firm fixed price orders: final invoice must be submitted no later than 45 days following final delivery and must be marked as FINAL INVOICE.
- (2) Fixed Price/Labor Hour orders: final invoice must be submitted no later than 45 days following final delivery and must be marked as FINAL INVOICE.
- (3) Time and Material orders: Quick closeout procedures shall be used to the maximum extent possible (reference FAR 42.708). Closing documents using quick closeout procedures shall be submitted within six (6) months of completion of the order. Where quick closeout is not authorized, closing documents shall be submitted within 24 months of completion of the order.

Failure to submit documents within the specified period will result in a unilateral closeout of the order by the Buyer.