

# SEAKR Engineering, Inc.

## GENERAL COMMERCIAL TERMS AND CONDITIONS

### Part 1 - GENERAL PROVISIONS

1. Acceptance of Order
2. Assignment
3. Changes
4. Citizenship Status
5. Compliance With Laws
6. Contract
7. Counterfeit Parts
8. Disputes
9. Excess Quantities
10. Export Control
11. Force Majeure
12. Indemnities Against Patent and Copyright Infringement
13. Independent Contractor
14. Inspection and Acceptance
15. Insurance for Work on SEAKR Premises
16. Intellectual Property
17. Language
18. Limitation of Liability
19. New Material
20. Order of Precedence
21. Packing and Shipping
22. Payments
23. Price and Delivery
24. Priority Rating
25. Product Changes
26. Proprietary Information
27. Publicity
28. Quality Control System
29. Right of Access
30. SEAKR Furnished Property
31. Stop Work
32. Sub-tier Suppliers
33. Survivability
34. Termination
35. U.S. Government Contract
36. Waiver and Severability
37. Warranty

### Part 2 - CERTIFICATIONS AND REPRESENTATIONS

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**DEFINITIONS:** As used in this Order, the following terms shall have the meaning set forth as follows:

The terms "SEAKR" means SEAKR Engineering, Inc. as represented by an authorized representative; and "Order" means the contract, subcontract, or purchase order, if any, between SEAKR and SELLER. The terms "SELLER" means the addressee of this Order or inquiry, and "Supplies" means the material, articles, services, or other items ordered by this Order.

### Part 1 - GENERAL PROVISIONS

#### 1. Acceptance of Order

This Order is an offer to purchase Supplies as described in the Purchase Order (PO). SEAKR recognizes that SELLER may desire to utilize its own form of acknowledgment of this Order. All material and non-material provisions in SELLER's form of acceptance which modify, conflict with, contradict, or are in addition to any provision in this Purchase are rejected by SEAKR and shall be deemed to be waived by SELLER, unless expressly agreed to in writing by SEAKR.

#### 2. Assignment

SELLER shall not assign this Order or any rights under this Order without the prior written consent of SEAKR, and no purported assignment by SELLER shall be binding on SEAKR without written notice.

#### 3. Changes

SEAKR may at any time, by a written notice, make changes in the specifications, designs or drawings, samples, or other description to which the articles are to conform, in methods of shipment and packaging, or in time and place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the

work under this Order, a mutual agreeable adjustment shall be made if necessary, to the price and/or this delivery schedule. Any claim by SELLER for an adjustment must be made in writing within twenty (20) days of the receipt of any such notice. Nothing in this clause shall excuse the SELLER from proceeding without delay to perform this Order as changed.

#### 4. Citizenship Status

SEAKR may be required to obtain information concerning citizenship or immigrant status of SELLER's personnel or SELLER's subcontractor personnel entering the premises of SEAKR. SELLER agrees to furnish this information before commencement of work and at any time thereafter before substituting or adding new personnel to work on SEAKR's premises. Information submitted by SELLER shall be certified by an authorized representative of SELLER as being true and correct. Proper identification of personnel may include, but not be limited to verification of citizenship, lawful permanent resident status, protected individual or other status.

#### 5. Compliance With Laws

SELLER shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, and pay all fees, and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.

SELLER shall provide to SEAKR with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its State approved counterpart.

## 6. Contract

This Order is the parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. Any additional or different terms and conditions contained in any prior quotation or that may be contained in any acknowledgement of this Order shall be deemed objected to by SEAKR without further notice of objection and shall be of no effect nor under any circumstances be binding upon SEAKR. SELLER shall be deemed to have assented to all terms and conditions hereof if any of the goods are shipped or services provided to SEAKR. The contract resulting from acceptance of the Order shall be construed according to the laws of the State of Colorado.

## 7. Counterfeit Parts

SELLER hereby warrants that all hardware furnished is authentic. If suspect/counterfeit parts are furnished under this Order and are found in any of the goods delivered hereunder, such items will be impounded by SEAKR. SELLER shall immediately notify SEAKR with the pertinent facts if SELLER becomes aware or suspects that it has furnished counterfeit parts. SELLER shall promptly replace such suspect/counterfeit parts with parts acceptable to SEAKR and SELLER shall be liable for all costs relating to the removal and replacement of said parts, including without limitation SEAKR's and its customer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of SELLER's goods after counterfeit parts have been exchanged. SELLER shall be fully liable for all such costs, even if such cost might be considered indirect, special or consequential damages. SELLER's liability for suspect/counterfeit parts shall not expire until 5 years after delivery. At SEAKR's request, SELLER shall return any removed counterfeit parts to SEAKR in order that SEAKR may turn such parts over to its Government customer for further investigation.

## 8. Disputes

In the event that the parties cannot settle any claim or controversy arising out of this Order themselves, the parties agree to attempt in good faith to resolve such claim or controversy by mediation. Any dispute that is not settled by agreement of the parties or by such mediation within thirty (30) days may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceeding or other settlement of any dispute arising under this Order, SELLER shall proceed diligently with the performance of this Order in accordance with the decision of SEAKR.

## 9. Excess Quantities

The deliverables shall not be supplied in reduced or excess quantities than specified in the PO. SELLER shall be liable for and prepay handling charges and return shipment costs for any excess quantities.

## 10. Export Control

SELLER acknowledges and agrees that this Order may be subject to applicable U.S. Export Administration Laws and Regulations. SELLER further agrees to comply strictly with all U.S. export laws and regulations including but not limited to the requirements of the Arms Export Control Act, the International Traffic in Arms regulations (ITAR), Export Administration Act and the Export Administration Regulations (EAR) and assume sole responsibility for obtaining licenses to export or re-export as may be required. (b) SELLER agrees to

notify SEAKR if any deliverable under this Order is restricted by U.S. export control laws or regulations. (c) SELLER shall immediately notify the SEAKR Procurement Representative if SELLER is listed in a Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency. (d) SELLER shall not give any Foreign Person access to Technical Data, software or Defense Articles. (e) SELLER shall indemnify and hold harmless SEAKR for any and all liability or expense incurred by SEAKR as a result of SELLER's failure to comply with the export laws and regulations of the United States in the performance of this Order.

## 11. Force Majeure

Neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, act of any Government authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of SELLER and if such delay arises out of causes beyond the reasonable control of both SELLER and the subcontractor, and without fault or negligence of either of them, SELLER shall not be liable to SEAKR for damages unless the articles or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the SELLER to meet the required delivery schedule. SELLER shall notify SEAKR in writing within ten (10) days after the beginning of any such cause.

## 12. Indemnities Against Patent and Copyright Infringement

SELLER will defend SEAKR against any suit arising out of any actual or alleged patent or copyright infringement of a valid patent or copyright, to the extent based on the Product as delivered by SELLER, and indemnify for any final judgment assessed against SEAKR resulting from such suit provided that SEAKR notifies SELLER at such time as it is apprised of the third-party claim, and agrees to give sole and complete authority, information and assistance (at SELLER's expense) for the defense and disposition of the claim. SELLER will not be responsible for any compromise or settlement made without SELLER's consent.

SELLER will have no obligation or liability with respect to: (a) Products provided pursuant to SEAKR's designs, drawings or manufacturing specifications; (b) Products used other than for their ordinary purpose; (c) claims of infringement resulting from combining any Product furnished hereunder with any article not furnished by SELLER; or (d) any modification of the Product other than a modification by SELLER. Further, SEAKR agrees to indemnify and defend SELLER to the same extent and subject to the same restrictions set forth in SELLER's obligations to SEAKR as set forth in this "Indemnities Against Patent and Copyright Infringement" section for any suit against SELLER based upon a claim of infringement resulting from (a), (b), (c), or (d) of the preceding paragraph. Because SELLER has exclusive control of resolving infringement claims hereunder, in no event will SELLER be liable for SEAKR's attorney fees or costs.

If a claim is made or if SELLER believes that a claim is likely, SELLER may, at its option, and at its expense, (i) procure for SEAKR the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) accept return of the Product or terminate SEAKR's license to use the infringing Product and grant SEAKR a credit for the

purchase price or license fee paid for such product. Further, SELLER may cease shipping infringing Products without being in breach of this Agreement.

Any liability of SELLER under this "Indemnities Against Patent and Copyright Infringement" is subject to the provisions of the "Limitation of Liability" section of this Agreement. This "Indemnities Against Patent and Copyright Infringement" section states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.

### **13. Independent Contractor**

(a) SELLER is an independent contractor in all its operations and activities identified in this Order. The employees used by the SELLER to perform the work and services under this Order shall be the SELLER's employees exclusively without any relation whatsoever to SEAKR. (b) SELLER shall be liable for any and all costs and expenses the SELLER incurs in the performance of any of its obligations under this Order.

### **14. Inspection and Acceptance**

Whether or not an inspection point is provided in the Order, all supplies shall be subject to inspection and testing by SEAKR or SEAKR's customer at all reasonable times, and places, including after arrival at destination and, when practicable, during manufacture. SELLER is responsible for providing appropriate test and inspection equipment in the event SEAKR requests an inspection audit. If any goods are found to be defective in material or workmanship, or otherwise are not in conformity with this Order, SEAKR has the right to reject such goods or require their correction. Verification by SEAKR or SEAKR's customer shall not absolve the supplier of the responsibility to provide acceptable product, nor shall it preclude subsequent rejection by SEAKR. Except as otherwise specified in this Order: (a) SELLER is responsible for all goods and for the risk of loss to the designated delivery point, regardless of the point of inspection, and (b) SELLER shall bear all risks as to rejected goods after notice of rejection, and (c) SELLER shall pay all shipping costs on rejected goods.

### **15. Insurance for Work on SEAKR Premises**

In the event that SELLER, its employees, or any subcontractor thereof perform work on SEAKR's premises for any reason in connection with this Order, SELLER and its subcontractors shall maintain for the performance of this Order workers compensation, commercial (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit and such other insurance as SEAKR may require. SELLER shall provide SEAKR thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to maintain the required insurance. SELLER shall name SEAKR as an additional insured to the CGL and AL policies for the duration of this Order. If requested, SELLER shall provide SEAKR with a "Certificate of Insurance" evidencing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of SEAKR and is not contributory with any insurance which SEAKR may carry.

### **16. Intellectual Property**

Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to the PO. (a) SELLER agrees that SEAKR shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Order by or on behalf of SELLER. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to SEAKR, including without limitation, all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at SEAKR's request and expense, all documentation necessary to perfect title therein to SEAKR. (b) SELLER warrants that the work performed and delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify and hold harmless SEAKR and its customers from and against any claim, damages, losses, costs and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the work performed or delivered under this Order infringes or otherwise violates the intellectual property rights of any person or entity.

### **17. Language**

SELLER agrees that the authorized language for any and all documentation that is to be exchanged between the parties in the performance of this Order shall be the English language.

### **18. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE PERFORMANCE OF THE ORDER

### **19. New Materials**

The work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its useful life or safety.

### **20. Order of Precedence**

Any inconsistencies in this Order shall be resolved in accordance with the following descending order of precedence: (a) Face of the Purchase Order and applicable continuation sheets including any Special Provisions; (b) these General Terms and Conditions; and if applicable, (c) Statement of Work, and (d) Specifications (Source Control Drawing - SCD) and/or SEAKR drawing.

### **21. Packaging and Shipping**

(a) Unless otherwise specified, all supplies are to be packed in accordance with SELLER's best commercial practice. (b) A complete packing list shall be enclosed with all shipments, including the SEAKR purchase order number, item number, dates of shipment, and the names and addresses of consignor and consignee. If applicable, SELLER shall mark containers or packages with necessary lifting, loading and shipping information. Bills of lading shall include the PO number. (c) Unless otherwise specified, delivery shall be FOB Destination.

## **22. Payments**

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) SEAKR's receipt of the SELLER's proper invoice; (2) scheduled delivery date of the goods or service; or (3) actual delivery of the goods or service. (b) SEAKR shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Order or any other Order between the parties. (c) Payment shall be deemed to have been made as of the date of mailing SEAKR's payment.

## **23. Price and Delivery**

(a) Unless otherwise stated in this Order, prices specified include all federal, state, and local taxes. SELLER warrants that the price of all supplies set forth herein does not exceed that price which is charged by SELLER to any other commercial customer purchasing similar services or goods of like quantity, quality and circumstance. Prices shall not include any taxes, burdens, or other charges for which SEAKR has furnished SEAKR's tax exemption information. (b) Time is of the essence. Deliveries are to be made according to the quantities, dates, and times specified in SEAKR's schedules. SEAKR may, from time to time, change or direct temporary suspension of delivery schedules. SELLER will notify SEAKR in advance of any actual or potential delay in meeting the delivery schedule. If, for any reason, SELLER does not comply with SEAKR's delivery schedule, SEAKR, may, at its option and without liability, either approve a revised delivery schedule or cancel this Order. If SELLER's shipment is late, SELLER shall pay the cost difference between the specified shipping method and the actual expedited rate.

## **24. Priority Rating**

If a priority rating is indicated on the face of this PO, by reference, the Order shall include FAR 52.211-15, Defense Priority and Allocation Requirements. SELLER will be required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR Part 700).

## **25. Product Changes**

SEAKR has relied upon the product description and the process definition in issuing this Order to SELLER. SELLER shall notify SEAKR in the event of a change to the product ordered in this Order and/or any change in the process definition. To the extent that such a change modifies the product(s) in this Order, SEAKR shall have the right to approve such change.

## **26. Proprietary Information**

(a) Information provided by SEAKR to SELLER remains the property of SEAKR. SELLER agrees to comply with the terms of any Non-Disclosure Agreement with SEAKR and to comply with all Proprietary Information marking and restrictive legends applied by SEAKR to any data provided hereunder to SELLER.

(b) SELLER agrees not to use any SEAKR provided information for any purpose except for the express performance of this Order. SELLER may disclose SEAKR provided information to its suppliers as required for the performance of the Order, provided that each supplier first assumes by written Proprietary Information / Non-disclosure agreement the same obligations imposed on the SELLER under this Order relating to such SEAKR provided information.

## **27. Publicity**

Without SEAKR's written approval, SELLER shall not, and SELLER's subcontractors of any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same, regarding this Order or the Supplies or program to which it pertains.

## **28. Quality Control System**

(a) SELLER shall provide and maintain a quality control system to an industry-recognized Quality Standard and in compliance with any other specific quality requirements identified in this PO. (b) Records of all quality control inspection work by SELLER shall be kept complete and available to SEAKR and its customers. (c) SEAKR reserves the right to audit SELLER's quality control system. Once SELLER's system is approved by SEAKR, SELLER agrees to notify SEAKR in advance with regards to any changes in facility location, processes, or procedures that may affect the quality system.

## **29. Right of Access**

SEAKR, its customer(s) and applicable regulatory authorities shall have the right to access all SELLER facilities involved in the Order and to all applicable records.

## **30. SEAKR Furnished Property**

(a) SEAKR may provide to SELLER property owned by either SEAKR or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Order. (b) Title to Furnished property shall remain in SEAKR or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to identify its ownership. (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify SEAKR of any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. (d) At SEAKR's request, and/or upon completion of this Order, the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by SEAKR.

## **31. Stop Work**

(a) SELLER shall Stop Work for up to ninety (90) days in accordance with any written notice received from SEAKR, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, SEAKR shall either terminate in accordance with the provisions of this Order or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within twenty (20) days after date of notice to continue.

### 32. Sub-tier Suppliers

To the extent that SELLER utilizes sub-tier suppliers in the performance of this Order, the SELLER shall flowdown all applicable requirements in the Order, including, but not limited to key characteristics.

### 33. Survivability

If this Order expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions: (1) Applicable Law (2) Export Control (3) Independent Contractor Relationship (4) Proprietary Information (5) Intellectual Property (6) Publicity (7) Warranty.

### 34. Termination

SEAKR shall have the right to cancel this Order or any part thereof at any time: (a) Without Cause – In case of cancellation by SEAKR of all or any part of this Order without cause, SELLER shall be entitled to its cost already incurred in the performance of the work canceled, plus a reasonable profit on such costs, which together may not exceed the Order price of the work canceled. Any cancellation claim must be submitted to SEAKR within thirty (30) days after the effective date of cancellation. The provision of this subparagraph shall not limit or affect the right of SEAKR to cancel this Order for breach of contract and shall not apply to a breach of contract. (b) Breach of Contract - If SELLER fails to perform, or ignores written notification that SEAKR considers the SELLER to be in default, SEAKR may, within ten (10) days of providing that written notification, and in addition to any other right or remedy provided by this Order or by law, cancel all or part of the purchase order by written notice to SELLER without liability.

### 35. U.S. Government Contract

If this Order is issued under a government contract or subcontract, as indicated in the PO, all necessary General Provisions of the Federal Acquisition Regulation (FAR), including the FAR clauses listed in the document entitled, "FAR Flowdown Provisions - Commercial Items, Components and Services", will apply, if applicable.

### 36. Waiver & Severability

If SEAKR fails to enforce any provision of this PO, that provision and all others shall continue in full force and effect. If any provision of this Order is found to be illegal or otherwise unenforceable by any court of other judicial or administrative body, the other provisions of this Order shall not be affected, and shall remain in full force and effect.

### 37. Warranty

SELLER hereby warrants that its hardware and/or software shall be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery. In the event any defects in material and/or workmanship are discovered by SEAKR, SEAKR shall promptly notify the SELLER in writing of such defects. The repair or replacement shall be at the discretion of SEAKR. All packaging and transportation (prepaid) cost to return the defective product and provide repaired or replacement products to SEAKR shall be the responsibility of the SELLER.

## Part 2 – Certifications and Representations

(a) This clause contains certifications and representations that are material statements of fact by the SELLER upon which SEAKR will rely upon in making awards to the SELLER. By submitting its written offer, or providing oral offers/quotations at the request of SEAKR, or accepting any Order, the SELLER certifies the certifications and representations as set forth below in this clause. These certifications shall be applicable whenever these terms and conditions are represented in any Order, agreement or other contractual document, or any quotations, request for quotation (oral or written), request for proposal solicitation (oral or written) issued by SEAKR. SELLER shall immediately notify SEAKR of any change of status with regard to these certifications and representations.

(b) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same full force and effect as if they were given in full text, and applicable to any order agreement, or subcontract. In each clause incorporated below, substitute "SEAKR" for "Government".

#### (1) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

SELLER certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Order. This certification and disclosure is a prerequisite for making or entering into this Order imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

#### (2) FAR 52.209-5 Certification Regarding Responsibility Matters

(i) SELLER certifies that, to the best of its knowledge and belief, that SELLER and or any of its Principals (as defined in FAR 52.209-5) are not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal Agency. (ii) SELLER shall provide immediate written notice to SEAKR if, at any time prior to award of any Order, it learns that its certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.

#### (3) FAR 52.222-22 Previous Contracts and Compliance Reports.

SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity Clause (FAR 52.222-26), (i) SELLER has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

#### (4) FAR 52.222-25 Affirmative Action Compliance.

SELLER represents (i) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (ii) that in the event such a program is required, and does not presently exist, the SELLER will develop and place into operation such a written Affirmative Action Compliance Program within 120 days from the award of this Order.