



Qwest Government Services Inc.
Purchase Order
Terms and Conditions (rev. 8-31-04)

1. Customer = Qwest Government Services, Inc or any of its affiliates.
 2. Supplier = Whomever is selling the product or service to
 3. QGSI.
 4. Customer may require reperformance of nonconforming
 5. Services at no increase in price.
 6. Terms of a Qwest Master Subcontract are incorporated herein.
1. **ACCEPTANCE** – (a) An Order is a document issued by Customer for the purchase of Materials or Services. (b) Acceptance of an Order shall be unqualified, unconditional, and subject to and expressly limited to the terms and conditions herein. **Customer objects to and rejects additional or different provisions that may appear in any document furnished by Supplier unless such provision is expressly agreed to in writing and signed by Customer.** Customer's acceptance of or payment for material shipped or services performed shall constitute acceptance of such material or service subject to the provisions herein only, and shall not constitute acceptance of any counter proposal submitted by Supplier not otherwise accepted in writing and signed by customer.
 2. **SHIPPING AND INVOICING** - (a) Material shall be shipped in accordance with freight terms and FOB point as otherwise specified on the Order. Customer may state shipping instructions on the Order. Supplier shall at no additional charge, furnish adequate packing to ensure safe delivery. Supplier shall enclose a packing memorandum with every Order that is shipped. All subordinate documents and packages shall bear the Order number, shipping and routing instructions and may be altered by mutual oral agreement. (b) Detailed invoices shall be rendered in triplicate to the address shown on the Order and shall show the Order number through routing and weight (within twenty-four hours after shipment). Separate invoices shall be rendered for each shipment or Order. Invoices not providing details as to prices of items as shown on the Order shall be returned for correction. Where prepaid freight charges are authorized Supplier shall include such charges on invoices and ship Material as instructed on the Order. Freight charges shall be added to and stated separately on the invoice and shall be accompanied by legible copies of prepaid freight bills and bills of lading.
 3. **ACCEPTANCE OF MATERIAL** - Acceptance of Material occurs at the time Material is delivered to and receipted for at the location shown on the Order and Customer has had a reasonable opportunity to inspect Material for conformance. Acceptance shall not be deemed to cover defects, which were not obvious at the time of inspection. In no event shall Qwest be liable to Supplier for consequential damages resulting from any defects or deficiencies identified in accepted items.
 4. **ACCEPTANCE OF SERVICES** - Acceptance of Services occurs after the service has been successfully performed, tested, and signed off by an authorized Qwest Government Services employee.
 5. **DEFECT / DEFICIENCY IN ACCEPTED MATERIALS OR SERVICES** If Qwest is not satisfied with any Material, Qwest will so notify Supplier within sixty (60) days after Supplier's delivery of such Material. Supplier will, at its own expense, repair or replace the Material within fifteen (15) days after receipt of Qwest's notice of deficiency. The foregoing procedure will be repeated until Qwest accepts or finally rejects the Material in its sole discretion. In the event that any Material contains a defect or nonconformity not apparent on examination, Qwest reserves the right to repudiate acceptance of such Material. In the event that Qwest finally rejects any Material, or repudiates acceptance of any Material, Supplier will refund to Qwest all fees paid by Qwest with respect to the Material. If Qwest is not satisfied with any Service, Qwest will so notify Supplier within thirty (30) days after Supplier's performance of such Service. Supplier will, at its own expense, re-perform the Service within fifteen (15) days after receipt of Qwest's notice of deficiency. The foregoing procedure will be repeated until Qwest accepts or finally rejects the Service in its sole discretion. In the event that Qwest finally rejects any Service, Supplier will refund to Qwest all fees paid by Qwest with respect to the Service.
 6. **SUPPLIER'S INFORMATION** – No specifications, drawings, sketches, models, samples, tools, technical information or data written, oral or otherwise furnished by Supplier to Customer hereunder or in contemplation hereof shall be considered by Supplier to be confidential or proprietary unless agreed to by Customer and Supplier.
 7. **CUSTOMER'S INFORMATION** – Any specification, drawings, sketches, models, samples, tools, technical or business information data, written, oral or otherwise (all hereinafter designated "information") furnished to Supplier hereunder or in contemplation hereof shall remain Customer's property. All copies of such information in written, graphic or other tangible form shall be returned to Customer at its request. Unless such information was previously known to Supplier free of any obligation to keep it confidential, or has been or is subsequently made public by customer or a third party, it shall be kept confidential by Supplier, shall be used only in the filling of orders, or in performing hereunder, and may be used for other purposes only upon such terms as may be agreed upon between the parties in writing.
 8. **WORK FOR HIRE** - (i) Supplier shall promptly disclose to Qwest all material (including Software, Documentation, reports, programs, source code, manuals, flow charts, tapes, card decks, listings and any other programming materials and all inventions, whether or not patentable) forming any portion of the effort under this Purchase Order created, composed, made or conceived by Supplier or Supplier Personnel during the performance of its work under this Purchase Order (Work). The Parties agree that all copyrightable material to be delivered to Qwest pursuant to this Agreement is a work made for hire, that all portions of the Work created or acquired by Supplier pursuant to this Agreement, including all copyrights, any extension or renewals, and all related work, shall be the exclusive property of Qwest, and that Qwest shall have the right, at its own expense, to obtain and to hold in its own name copyrights, registrations, patents, or such other protection as may be appropriate to said Work. Supplier warrants and shall provide Qwest and its assigns the full, sole and continuing right (without any payments or liabilities to any person) to use the Work and to publish, perform, reproduce and distribute throughout the world any or all portions of the Work, either as a complete unit or in segments, in any way Qwest sees fit and for any purpose whatsoever. Supplier shall insert a proper statutory copyright notice at an appropriate location on copyrightable material, and on all portions and on all related items which may be subject to copyright protection, which copyright notice shall specify Qwest as the sole copyright owner. Supplier further agrees to give Qwest or any person designated by Qwest, at Qwest's expense, all such information and to execute all such additional documents including, without limitation, patent applications, as may be reasonably required to perfect the rights referred to herein. In the event Supplier or third party is deemed to be the author for copyright purposes of any such materials and Work under this Agreement, Supplier agrees to assign or cause such third party to assign, and assigns to Qwest whatever copyrights exist in copyrightable materials and Work. Supplier agrees to execute and have its personnel execute any documents (including patent applications and assignments) reasonably requested by Qwest, at Qwest's expense, to provide Qwest the right to own, use and protect the Work under this subparagraph. (ii) Any writings, inventions, improvements or discoveries, whether or not copyrightable or patentable, which are written, conceived, made or discovered by Supplier including any features or concepts considered to be new or different, and are in any way related to Supplier's performance of this Agreement shall be promptly



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disclosed to Qwest. (iii) Notwithstanding the foregoing provisions, the Parties acknowledge that in some cases the Work, or a portion thereof, may use, incorporate or be dependent upon patents, copyrights, trade secrets and/or other intellectual property that is either owned by Supplier, the ownership of which by Supplier pre-dates the Purchase Order for the affected Work (the "Pre-Existing Contractor IP") or is owned by third parties ("Third Party IP"). Supplier shall disclose to Qwest prior to entering into any Purchase Order for Work hereunder, but in any case in advance of commencing any affected Work hereunder, the extent to which such Work, or any portion thereof, will use, incorporate or be dependent upon any such Pre-Existing Contractor IP or Third Party IP, and whether or not so identified to Qwest:

(a) Supplier hereby grants to Qwest a non-exclusive, fully-paid, irrevocable and perpetual license to use such Pre-Existing Supplier IP as necessary or appropriate to Qwest's enjoyment of its rights of ownership to the Work, including but not limited to the rights to copy, distribute, and sublicense such Pre-Existing Supplier IP and to make derivative works therefrom. Supplier represents and warrants that Supplier has sufficient right, title and interest to grant the foregoing license in the Pre-Existing Contractor IP to Qwest.

(b) Supplier shall further use its best efforts to obtain for Qwest license rights to any such Third Party IP as are necessary or appropriate to Qwest's ownership and use of the Work.

(c) Supplier agrees to give Qwest or any person designated by Qwest, at Supplier's expense, all such information and to execute all such additional documents as may be reasonably required to perfect Qwest's rights to the license granted pursuant to the paragraphs above.

9. HAZARDOUS MATERIALS/SUBSTANCES – Supplier shall identify Material containing a hazardous substance including, but not limited to, those governed by the Resource Conservation and Recovery Act, Hazardous Materials Transportation Act, and Toxic Substance Control Act and any similar acts and regulations thereunder. Each self-contained unit and carrier shall be marked identifying the existence of a hazardous material or substance and its name

10. TERMINATION FOR CONVENIENCE - Customer may terminate this Purchase Order, in whole or in part, at any time upon notice to the Supplier. Termination charges, if any, shall be subject to negotiation between the parties, but in no event shall they exceed either: (a) the purchase price under this Purchase Order, or (b) Supplier's actual costs, determined in accordance with generally accepted accounting principles, as of the date the termination notice is received by Supplier. Nothing in this paragraph shall be construed to affect the Customer's rights against the Supplier in the event of a termination due to breach of this Purchase Order.

11. TERMINATION FOR DEFAULT - Time is of the essence. If Supplier is in breach or default of any terms, conditions or covenants of this Purchase Order and the breach or default continues for ten (10) days after Customer has notified Supplier of such failure, then, in addition to all other rights and remedies of law or equity, Customer may cancel this Purchase Order in whole or in part without any obligation or liability on the part of Customer whatsoever except as to payment for material and services already received and accepted by Customer.

12. VARIATION IN QUANTITY - No variation in the quantity of any item called for under this Purchase Order will be accepted unless such variation is the result of loading conditions, shipping, packing or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Purchase Order.

13. PAYMENT – Payment terms will be specified on the purchase order, unless payment terms more favorable to the Customer can be found on the invoice and are elected by the Customer. Payment may be made on partial deliveries accepted by the Customer when

the amount due on such deliveries so warrants. For any discount offered, time will be computed from the date an acceptable invoice is received by the Customer or receipt and acceptance of material, whichever is later. Payment is deemed to be made for the purposes of earning the discount, on the date of mailing postmark of the Customer's check.

14. TITLE, RISK OF LOSS - Title and risk of loss and damage shall pass from the Supplier to the Customer upon delivery and acceptance of conforming product by Customer or Customer's representative at the designated destination.

15. WARRANTY - Supplier warrants that the material furnished or Services provided will be new, merchantable, free from defects in design, material and workmanship, shall conform to all specifications, drawings, samples and all representations expressed or implied by law for a period of twelve (12) months from acceptance; and that at the time of delivery such material shall be free of all liens or claims or other encumbrances of any kind. If Supplier knows or has reason to know the particular purpose for which Customer intends to use the material or services, Supplier warrants the Material will be fit for this particular purpose. This warranty shall survive inspection, test, acceptance, use and payment.

Defective material will at Customer's option, either be returned to Supplier for repair or replacement with risk of intransit loss and damage borne by Supplier and freight paid by Supplier or be repaired or replaced by Supplier on site. Any replacement, repair modifications, installation or other service performed by Supplier shall be warranted as herein provided. If the Supplier is not the manufacturer of the product, the Supplier shall pass through to the Customer the complete manufacturing warranty and shall cooperate with customer in making any claims under such warranty.

16. INDEMNITY - Supplier shall indemnify Customer, its agents, employees and officers against all claims, losses, actions, damages, expenses and all other liabilities, including costs and attorney's fees, arising out of or resulting from use of Supplier's material purchased hereunder, or from any act or omission by Supplier, its agents or subcontractors, attributable to bodily injury or death of any person or damage to or destruction of any property, whether belonging to Customer or to another, excepting only damages to the extent caused solely (except where prohibited by local law) by Customer's negligence.

17. ASSIGNMENT - Neither this Purchase Order nor any interest therein nor claim thereunder shall be assigned or transferred by the Supplier except as expressly authorized in writing by the Customer. The Customer reserves the right to assign this Purchase Order to any affiliated company or a successor in interest.

18. RELEASE OF INFORMATION - No release of any information, or confirmation or denial of same, with respect to this Purchase Order or subject matter thereof, will be made without the prior coordination and express written approval of the Customer. This includes but is not limited to news releases, interviews with news media representatives, advertisements, brochures and the like.

19. PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INDEMNIFICATION - Supplier shall indemnify Customer for any loss, damage, expense or liability including costs and attorney's fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright or trade secret relating to any item furnished pursuant to this Purchase Order. Supplier will defend and/or settle at its own expense any action brought against Customer to the extent that it is based on a claim that items furnished to Customer by Supplier pursuant to this Purchase Order infringe any patent, trademark, copyright or trade secret. Supplier shall also refund to Customer any amount paid pursuant to this Purchase Order if such items become unusable as a result of any such infringement or claim.

20. DISPUTES - In the event of a dispute between the parties relating to this Purchase Order or the work performed hereunder, the parties



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will resolve such dispute under the provisions of Article 21, Arbitration. Disputes that qualify as claims between Qwest and the Customer as defined in FAR 52.233-1, Disputes, may be brought forward to Customer by Qwest, in Qwest's sole discretion. The Subcontractor agrees to provide all necessary supporting data and claim certification as required by FAR 52.233-1 to enable Qwest to present such claim to the Customer. In any event, the Subcontractor shall proceed diligently with performance under this Agreement, pending final resolution of any request for relief, arbitration or claim arising under this Agreement. Should Qwest sponsor a claim the Subcontractor presented to Qwest to the Customer or a Board of Contract Appeals, Qwest will maintain control of the proceedings, but this shall be prosecuted at the Subcontractor's expense. The Subcontractor shall provide all reasonable support to Qwest's prosecution of the claim.

- 21. ARBITRATION** – (a) Any claim, controversy or dispute, whether sounding in contract, statute, tort, fraud, misrepresentation or other legal theory, whenever brought and whether between the parties to this Agreement or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration as prescribed in this Article. (b) The Federal Arbitration Act, 9 U.S.C. § 1-16, not state law, shall govern the arbitrability of all claims. A single arbitrator engaged in the practice of law shall conduct the arbitration under the then current rules of the American Arbitration Association (AAA), unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose, and all expedited procedures prescribed by the AAA rules shall apply. (c) The arbitrator shall only have authority to award compensatory damages and shall not have authority to award punitive damages, other non-compensatory damages or any other form of relief; provided, however either party may apply to any court having jurisdiction thereof for the entry of injunctive relief to maintain the status quo until such time as the arbitration award is rendered or the controversy is otherwise resolved. Each party shall bear its own costs and attorneys' fees and the parties shall share equally the fees and expenses of the arbitration. The arbitrator's decision and award shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. (d) If any party files a judicial or administrative action asserting claims subject to arbitration, as prescribed herein, and another party successfully stays such action and/or compels arbitration of said claims, the party filing said action shall pay the other party's costs and expenses incurred in seeking such stay and/or compelling arbitration, including reasonable attorneys' fees.
- 22. NOTICE OF LABOR DISPUTES** - Whenever the Supplier has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, the Supplier shall immediately give notice thereof to the Customer. Such notice shall include all relevant information with respect to such dispute. Supplier agrees to include a similar requirement in any subcontract under this Purchase Order.
- 23. FORCE MAJEURE** – Supplier or Customer may delay delivery or acceptance occasioned by causes beyond Supplier's or Customer's reasonable control. If such delay exists beyond a period of five (5) days, the Customer, at its option, shall have the right to: (a) terminate the Order, in whole or part, (b) suspend the Order for the duration of the delaying cause, (c) resume performance under the Order once the delaying cause ceases, (d) extend the effective dates up to the length of time the contingency endured, all without liability to the Supplier.
- 24. SET-OFF PROVISION** - In the event the Supplier shall fail in any way to perform hereunder, the Customer may offset, as appropriate, any performance or payment due by the Customer under this or any other agreement between the parties.

- 25. WAIVER** - Customer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Customer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
- 26. DEFAULT** – If Supplier is in breach or default of any terms, conditions, or covenants of this agreement and the breach or default continues for ten (10) days after Customer has notified Supplier, then in addition to all other rights and remedies at law or equity, Customer may cancel the Order and/or this agreement without any obligation or liability on the part of Customer whatsoever except as to payment for Materials or Services already received and accepted by Customer.
- 27. INSPECTION** - All material and workmanship furnished under this Purchase Order may be inspected and tested at all times and places either before, during or after manufacture, by inspectors designated by the Customer or by the United States Government. If inspection and test are made on the premises of the Supplier, the Supplier shall furnish without additional charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to delay the work unduly. The exercise of this right of inspection and test, however, shall in no way relieve the Supplier of its obligation to furnish all articles or materials in strict accordance with the terms and conditions of the Purchase Order, nor shall such inspection be deemed acceptance.
- 28. COMPLIANCE WITH LAWS** – (a) Supplier warrants that all equipment, materials, supplies, work and other items supplied pursuant to this Purchase Order shall comply with all applicable federal, state, county and local laws, ordinances and regulations, regardless of whether the Customer has furnished a specification for the material to be procured hereunder.
(b) Supplier and Customer, while on the premises of the other, shall comply with all plant rules and regulations, including, where required by Government Regulations, submission of satisfactory clearance from the U.S. Department of Defense and other Federal authorities.
(c) Supplier further warrants that the material provided pursuant to this Purchase Order is in compliance with all applicable provisions of the Occupational Safety and Health Act of 1970 (Public Law 91-596), as amended, and all other federal, state, county and local laws, ordinances, regulations and codes which may be applicable to such material; and, in addition to any other rights or remedies the Customer may have, the Supplier shall indemnify, defend and hold harmless the Customer from and against any and all claims, loss, or liability arising from the failure of such material to comply therewith.
- 29. CHOICE OF LAW AND SEVERABILITY** - This Purchase Order shall be governed by the laws of the State of New York. All sections and subsections of this Agreement are severable, and the unenforceability or invalidity of any of the sections or subsections of this Agreement shall not affect the validity or enforceability of the remaining sections or subsections of this Agreement, but such remaining sections or subsections shall be interpreted and construed in such a manner as to carry out fully the intention of the parties."
- 30. LITIGATION EXPENSES** - In the event that suit or action of any kind arise between Customer and Supplier under this Purchase Order, the prevailing party shall be entitled to recover reasonable attorney's fees, at trial and on appeal.
- 31. RECORDS AND AUDITS** - Supplier shall maintain complete and accurate records, which relate to Customer's compensation payable to Supplier for material or services furnished hereunder, in accordance with generally accepted commercial accounting principles for a period of not less than four (4) years from the date of the Order. Customer shall have access to such records for the purpose of audit during the respective period Supplier is required to maintain such records.



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| <p>32. CHANGES - The Customer may at any time, by written order, without notice of any surety, make changes or additions within the general scope of the Purchase Order, to drawings, designs, specifications, instructions, method of shipment or packing, or place of inspection, delivery or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Purchase Order, Supplier shall notify the Customer in writing immediately and an appropriate equitable adjustment will be made in the price, the delivery schedule, or both by written modification of this Purchase Order. Any claim by Supplier for such adjustment must be asserted within 15 days, or such other period as may be agreed on in writing by the parties, after Supplier's receipt of notice or knowledge of the change. Nothing herein shall excuse Supplier from proceeding with the Purchase Order as changed within the general scope of this order.</p> | <p>52.222-37
52.444-06
52.247-64
52.249-02
52.249-05</p> | <p>EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)
Subcontracts for Commercial Items
Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241)
Termination for Convenience of the Government (Fixed-Price) (9/96)
Termination for Convenience of the Government (Services) (Short Form) (APR 1984)</p> |
| <p>33. FEDERAL, STATE AND LOCAL TAXES - Except as otherwise provided herein, the Purchase Order price includes all applicable federal, state and local taxes.</p> | | |
| <p>34. PRIORITY RATING - If this is a rated Purchase Order certified for national defense use, as shown elsewhere in this Purchase Order, the Supplier is required to follow all the provisions of the Defense Priorities and Allocations System (DPAS), Industrial Mobilization Regulations (15 CFR 350).</p> | | |
| <p>35. ENTIRE AGREEMENT - It is expressly agreed by the parties hereto that this Purchase Order constitutes the entire and only agreement between the parties hereto; that there are no agreements, understandings, or covenants between the parties hereto of any kind, nature or description, express or implied, oral or otherwise, which have not been set forth herein.</p> | | |
| <p>36. ORDER OF PRECEDENCE - Any inconsistencies in the terms of this order and a Qwest Master Subcontract Agreement shall give precedence to the Qwest Subcontract Agreement.</p> | | |
| <p>37. FAR FLOWDOWN CLAUSES - The following clauses of the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) are incorporated herein by reference with the same force and effect as if they were given in full text. The Federal Acquisition Regulation is available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. (Substitute "Supplier" for "Contractor" and "Offeror" throughout these clauses).</p> | | |
| <p>52.219-8</p> | <p>UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN OWNED SMALL BUSINESS CONCERNS (OCT 1995)</p> | |
| <p>52.219-9</p> | <p>SMALL BUSINESS, SMALL DISADVANTAGED AND WOMEN OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG. 1996) (applicable if this Purchase Order exceeds \$500,000 and the Supplier is not a small business; see footnotes 1 and 2; the Supplier's subcontracting plan shall be deemed incorporated herein by reference upon its written approval by Customer.)</p> | |
| <p>52.222-4</p> | <p>CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL. 1995) (add the following to paragraph (c): "Supplier shall indemnify and reimburse Customer for any sums withheld from Customer by the Contracting Officer on account of liabilities of the Supplier or its subcontracts under this clause." applicable as prescribed at FAR 22.305.)</p> | |
| <p>52.222-26</p> | <p>EQUAL OPPORTUNITY (APR 1984)</p> | |
| <p>52.222-35</p> | <p>AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1984)</p> | |
| <p>52.222-36</p> | <p>AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)</p> | |