

# **GENERAL TERMS AND CONDITIONS OF PURCHASE (Supplies)**

## **PURCH-1000**

Hereinafter, Areté Associates is referred to as "BUYER" or "Areté", and the SELLER identified on the face of the Order is referred to as "SELLER", meaning the party with whom Areté is contracting. "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Order", "Subcontract" or other designation, including these General Terms and Conditions. "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this contract.

### **1) ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

- a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. SELLER's acknowledgement, acceptance of payment, commencement of performance, shall constitute SELLER's unqualified acceptance of this contract.
- b) Unless expressly accepted in writing by Areté, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgement are objected to by Areté and shall have no effect.
- c) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope of the intent of the provisions of this contract.

### **2) ASSIGNMENTS AND SUBCONTRACTS**

This Order is not assignable and shall not be assigned by SELLER without the prior written consent of BUYER. Further, SELLER agrees to obtain BUYER's approval before subcontracting this order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials.

### **3) CALIFORNIA LAW TO GOVERN**

The Order shall be governed by subject to and construed according to the laws of the State of California, a uniform commercial code state, without regard to its conflict of law provisions.

### **4) CASH DISCOUNTS**

In connection with the discount, if any, offered by SELLER for prompt payment, time will be computed from the latest of (i) the scheduled delivery date, (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received by Areté. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of BUYER's check or the date of BUYER's wire transfer of funds.

### **5) COMMUNICATION WITH ARETÉ CUSTOMER**

SELLER shall not communicate with ARETE's customer or higher tier customer in connection with this Contract, except as expressly permitted by ARETE. This clause does not prohibit SELLER from communicating with the U.S. Government with respect to (1) matters SELLER is required by law to communicate to the Government, (2) an ethics or anticorruption matter, (3) any matter for which this Contract, including a FAR or FAR Supplement clause included in this Contract, provides for direct communication by SELLER to the Government, or (4) if SELLER is a small business concern, any material matter pertaining to payment or utilization.

### **6) CHANGES**

- a) The Areté Purchasing Representative may, by written notice to SELLER at any time before complete delivery is made under this order, make changes within the general scope of this order in any one or more of the following: (a) drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for buyer in accordance with the drawings, designs, or specifications; (b) quantity; (c) place of inspection, acceptance or point of delivery, (d) method of shipment or routing; or (e) changes in the amount of BUYER furnished property.
- b) If any such change causes a material increase or decrease in the price, or of the time required for the performance of any part of the work under this order, whether or not changed by the order, or otherwise affects any other terms and conditions of this order, the Purchasing Representative shall make an equitable adjustment in the the order price, delivery schedule, or both, or other affected terms of the order. SELLER must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written change order from BUYER. No such adjustment or any other modification of the terms of this order will be allowed unless authorized by BUYER by means of a purchase order revision. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the SELLER from proceeding with the order as changed without interruption and without awaiting settlement of any such claim.

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### **7) CONTRACT DIRECTION**

- a) Only the Areté Purchasing Representative has authority on behalf of Areté to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.
- b) Areté engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the Areté Procurement Representative.

### **8) CHANGES IN PROCESS OR METHOD OF MANUFACTURING**

SELLER agrees that it will not invoke any changes affecting form, fit or function during the term of this order without BUYER's prior written consent. SELLER further agrees that any contemplated changes affecting form, fit or function will be submitted to BUYER in sufficient time to enable BUYER a reasonable opportunity in which to evaluate such changes.

### **9) PARTS OBSOLESCENCE**

BUYER may desire to place additional orders for Work purchased hereunder. SELLER shall provide BUYER with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Work purchased under this Contract.

### **10) COMPLIANCE WITH LAWS**

- a) SELLER, in performance of this contract, agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, 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, at its expense, shall provide reasonable cooperation to BUYER in conducting any investigation regarding the nature and scope of any failure by SELLER or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations and ordinances that may affect the performance of SELLER's obligations under this Contract.
- b) SELLER shall comply with all applicable U.S. export control laws and regulations, specifically including but not limited to the Arms Export Control Act, 22 U.S.C.2751-2794, and the International Traffic in Arms Regulations (ITAR) 22.C.F.R 120, et seq, and the Export Administration Regulations, 15 C.F.R. 730-774. SELLER agrees to notify Areté if any deliverable under this Contract is restricted by export control laws or regulations. The Party providing Items or services under this contract shall, upon request, notify the other Party of the Items or services' export classification (e.g., the Export Control Classification Numbers or United States Munitions List [USML] category and subcategory) as well as the export classification of any components or parts thereof if they are different from the export classification of the Item at issue. The Parties acknowledge that this representation means that an official capable of binding the Party providing such Items or services knows or has otherwise determined the proper export classification. Each Party agrees to reasonably cooperate with the other in providing, upon request of the other Party, documentation or other information that supports or confirms this representation. If the export classification changes, SELLER shall notify the BUYER's Purchasing Representative in writing. SELLER represents that an official authorized to bind the SELLER has determined that the SELLER or the designer, manufacturer, supplier or other source of the Work has properly determined their export classification. Without limiting the foregoing, SELLER shall not transfer any export controlled item or data, including transfers to dual/third country nationals employed by or associated with, or under contract to SELLER or SELLER's lower tier suppliers, unless authorized in advance by an export license agreement (e.g. Technical Assistance Agreement (TAA) or Manufacturing Licensing Agreement (MLA)), license exception or license exemption (collectively, "Export Authorization"), as required.
- c) SELLER shall (i) comply with all applicable country laws relating to anti-corruption or anti-bribery; (ii) comply with the requirements of the Foreign Corrupt Practices Act, as amended, (FCPA) (15 U.S.C. §§78dd-1, et. seq.), regardless of whether SELLER is within the jurisdiction of the United States.
- d) If BUYER's contract cost or fee is reduced or if BUYER's costs are determined to be unallowable, or if any fines, penalties, or interests are assessed on BUYER as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, BUYER may make a reduction of corresponding amounts (in whole or in part) in the costs and fee of this Contract or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded. Such sums shall not be considered allowable costs under any provision of this Contract.
- e) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, costs of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

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### **11) CONFIDENTIALITY AND PROTECTION OF INFORMATION**

- a) Information provided or made available by BUYER to SELLER remains the property of BUYER. SELLER shall comply with the terms of any proprietary information agreement with BUYER and comply with all proprietary information markings and restrictive legends applied by BUYER to anything provided hereunder to SELLER. SELLER shall not use any BUYER provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of BUYER, or notification to BUYER in the event the third party is the US Government. SELLER shall maintain data protection processes and systems sufficient to adequately protect BUYER provided information and comply with any law or regulation applicable to such information.
- b) SELLER agrees not to assert any claim against BUYER with respect to any information which SELLER shall have disclosed or may hereafter disclose to BUYER in connection with the items or services covered by this order.
- c) If SELLER becomes aware of any compromise of information provided by BUYER to SELLER, its officers, employees, agents, suppliers, or subcontractors (an "incident") SELLER shall take appropriate immediate actions to investigate and contain the incident and any associated risks, including prompt notification to SELLER after learning of the incident. As used in this Section, "compromise" means that any information provided by BUYER has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction or alteration other than as required to perform the Work. SELLER shall provide reasonable cooperation to BUYER in conducting any investigation regarding the nature and scope of any incident. Any costs incurred investigating or remedying incidents shall be borne by SELLER. Except as may be expressly set forth in this Terms and Conditions Document with the Government Contracting Officer's express consent, the Subcontractor shall not acquire any direct claim or direct course of action against the US Government.
- d) The provisions set forth above are in addition to and do not alter, change, or supercede any obligations contained in a proprietary information agreement between the parties

### **12) COUNTERFEIT WORK**

- a) For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.
- b) SELLER agrees and shall ensure that Counterfeit Work is not delivered to BUYER.
- c) SELLER shall only purchase products to be delivered or incorporated as Work to BUYER directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by BUYER.
- d) SELLER shall immediately notify BUYER with the pertinent facts if SELLER becomes aware or suspects that it has furnished Counterfeit Work. When requested by BUYER, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.
- e) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- f) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation BUYER's costs of removing Counterfeit Work, of reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies BUYER may have at law, equity or under other provisions of this Contract.
- g) SELLER shall include paragraphs (a) through (e) and this paragraph (g) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to BUYER.
- h) SELLER warrants that any hardware, software and firmware goods delivered under this Order:
  - i) Shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to damage, destroy or alter any software or hardware; reveal, damage, destroy, or alter any data; disable any computer program automatically; or permit unauthorized access to any software or hardware;
  - ii) Shall, without the written consent of BUYER, not contain any third party software (including software that may be considered free software or open source software) that (a) may require any software to be published, accessed or otherwise made available; or (b) may require distribution, copying or modification of any software free of charge.

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#### **13) DEFAULT**

- a) BUYER may, by written notice to SELLER, cancel all or part of this Order if (i) SELLER fails to deliver the goods within the time specified by this Order or any written extension; (ii) SELLER fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, within ten (10) days after receipt of notice from BUYER specifying the failure, does not cure the failure or provide BUYER with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to BUYER's Authorized Procurement Representative; or (iii) in the event of SELLER's suspension of business, insolvency, appointment of a receiver for SELLER's property or business, or any assignment, reorganization or arrangement by SELLER for the benefit of its creditors.
- b) SELLER shall continue work not canceled. If BUYER cancels all or part of this Order, BUYER may procure or otherwise obtain, upon such terms and in such manner as BUYER may deem appropriate, Work similar to that terminated. SELLER, subject to the exceptions set forth below, shall be liable to BUYER for any excess costs of such similar Work.
- c) BUYER may require SELLER to transfer title and deliver to BUYER, as directed by BUYER, any (i) completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Order rights (collectively, "Manufacturing Materials") that SELLER has specifically produced or acquired for the canceled portion of this Order. Upon direction from BUYER, SELLER shall also protect and preserve property in its possession in which BUYER or its Customer has an interest.
- d) BUYER shall pay the Order price for goods delivered and accepted. Payment for Manufacturing Materials accepted by BUYER and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" article of this Order, except that SELLER shall not be entitled to profit. BUYER may withhold from any amount due under this Order any sum BUYER determines to be necessary to protect BUYER or BUYER's customer against loss because of outstanding liens or claims of former lien holders.
- e) If, after cancellation, it is determined that SELLER was not in default, the rights and remedies of the Parties shall be as if the Order had been terminated according to the "Termination for Convenience" article of this Order.

#### **14) DELIVERY**

SELLER's timely performance is a critical element of this Contract. If SELLER becomes aware of a difficulty in performing the Work, SELLER shall timely notify Areté, in writing, giving pertinent details. This notification shall not change any delivery schedule. The date specified for delivery is the required delivery date at BUYER's plant, unless otherwise specified. BUYER reserves the right to refuse any Work and to cancel all or any part hereof if SELLER fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If SELLER's deliveries will not meet agreed schedule, BUYER may require SELLER to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by the SELLER. BUYER is not bound to accept future shipments or performances of services, and retains the right to return all or any part of the goods because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages. Such rights shall be in addition to any other remedies provided hereunder or provided by law or otherwise. Delivery shall not be deemed to be complete until goods have been actually received and accepted by BUYER, notwithstanding delivery to any carrier or until orders for services have been performed, received and accepted.

#### **15) DISPUTES**

In the event that any controversy or dispute between BUYER and SELLER arising out of or relating to the SELLER services, including, but not limited to any disputes in connection with the validity, construction, application or enforcement of the terms of this Order occurs, it shall be resolved by mutual negotiation and direct discussions. If no resolution is reached, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation using the Commercial Mediation Rules the American Arbitration Association, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, shall be settled by arbitration using the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In rendering the award, the arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of California. The Arbitrator(s)' award may include compensatory damages against either Party but under no circumstances will Arbitrator(s) be authorized to nor shall they award punitive damages or consequential, incidental, or multiple damages against either Party.

#### **16) ELECTRONIC CONTRACTING**

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

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### **17) ETHICAL BUSINESS CONDUCT**

Areté maintains a company ethics program that promotes fair and ethical dealings with all organizations who provide goods and services to our company. We strongly encourage our supply chain to have proactive and meaningful ethics programs established within their organizations. Arété maintains an Ethics Hotline to provide our employees and supply chain members an opportunity to ask questions and obtain information regarding ethics compliance matters or report concerns about business ethics or conduct. All calls are confidential, and a timely response will be provided. SELLERS can contact Arété's Ethics Program Director at 818-885-2227.

### **18) GRATUITIES/KICKBACKS**

SELLER shall not offer or give a kickback or gratuity in the form of entertainment, gifts, or otherwise, for the purpose of obtaining or rewarding favorable treatment as an Arété supplier. By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

### **19) INDEPENDENT CONTRACTOR RELATIONSHIP**

It is understood and agreed that SELLER shall be an independent contractor in all its operation and activities hereunder; and that the employees furnished by SELLER to perform work under this Contract shall be SELLER's employees exclusively without any relation whatever to BUYER as employees or as independent contractors; that such employees shall be paid by SELLER for all services in this connection; that SELLER shall carry worker's compensation insurance and that SELLER shall be responsible for all obligation and reports covering social security, unemployment insurance, worker's compensation, income tax, and other reports and deductions required by Local, State and /or Federal Law.

### **20) INSPECTION and ACCEPTANCE**

- a) BUYER and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract.
- b) BUYER's final inspection and acceptance shall be at destination, unless otherwise stated in this Contract. In the event that the Work contain defects in material or workmanship or, as to services, are not performed in accordance with the specifications and instructions of BUYER, BUYER may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of BUYER necessary to enable such Work to comply in all respects with Contract requirements.
- c) After notification to SELLER that goods are defective, all risk of loss with respect to such goods shall be in SELLER and SELLER shall pay all packing and shipping charges in connection with defective goods returned by the BUYER.
- d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

### **21) INSURANCE**

- a) SELLER shall maintain, unless waived in writing by Arété's Purchasing Representative, for the performance of this Contract:
  - i) workers compensation insurance meeting the statutory requirements where Work will be performed;
  - ii) Commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit;
  - iii) Other insurance as Arété may require.
- b) SELLER shall provide Arété 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 Arété as an additional insured to the CGL and AL policies for the duration of this Contract. If requested, SELLER shall provide Arété 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 Arété and is not contributory with any insurance which Arété may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for maintaining insurance coverage herein are freestanding and are not affected by any other language in this Contract.

### **22) WORK ON ARÉTÉ AND THIRD PARTY PREMISES**

- a) "Premises" as used in this clause means premises of Arété, its customers, or other third parties where Work is being performed.
- b) In the event that SELLER, its employees, agents, or subcontractors enter the Premises for any reason in connection with this Contract then SELLER and its subcontractors, shall comply with all Arété security, safety, rules of conduct, badging and personal identity, and related requirements while on Premises.

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- c) Prior to entry onto Premises, SELLER shall coordinate with Areté to gain access to facilities. SELLER shall provide information reasonably required by Areté to ensure proper identification of personnel, including but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status. Areté may, at its sole discretion, have SELLER remove any specified employee of SELLER from Areté's premises and request that such employee not be reassigned to any Areté premises under this Contract.
- d) SELLER shall ensure that SELLER personnel: (i) do not remove any BUYER, customer, or third party assets from Premises without Buyer's authorization, use BUYER, customer, or third party assets only for purposes of this Contract; (ii) only connect with, interact with or use computer resources, networks, programs, tools or routines authorized by BUYER; and (iii) do not share or disclose user identifiers, passwords, cipher keys, or computer dial port telephone numbers. BUYER may periodically audit SELLER's data residing on SELLER, customer, or third party assets on Premises.
- e) SELLER shall promptly notify BUYER and provide a report of any accidents or security incidents involving loss of or misuse or damage to BUYER, customer, or third party intellectual or physical assets, and all physical altercations, assaults or harassment. Additionally, SELLER shall immediately report to BUYER all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job related injuries or illnesses) affecting the Work. Upon BUYER request, SELLER will provide BUYER with a copy of any reports of such incidents SELLER makes to governmental authorities.
- f) SELLER shall defend, indemnify and hold harmless BUYER, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses of litigation and/or settlement, and court costs by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers employees, agents, suppliers, or subcontractors while performing Work on Premises.

### **23) 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 usefulness or safety, without written authorization from BUYER.

### **24) PACKING AND SHIPMENT/EXCESS**

- a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the Contract number, line item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c) Unless otherwise specified, delivery shall be FOB Place of Shipment.
- d) Shipments must equal exact amounts ordered unless otherwise agreed by BUYER in writing. BUYER reserves the option to return, at SELLER's expense, any shipment of products either in excess of the amount stated on the face of the purchase order or received at BUYER's facility more than ten (10) days in advance of the agreed upon schedule. Such shipments will be held at SELLER's risk and expense including reasonable storage charges while awaiting shipping instructions.

### **25) PATENTS AND INTELLECTUAL PROPERTY**

- a) Unless otherwise stated in this Contract, SELLER agrees that BUYER shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, materials, business information and other information ("Intellectual Property") conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to BUYER, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at BUYER's request and expense, all documentation necessary to perfect title therein in BUYER. SELLER agrees that it will maintain and disclose to BUYER written records of, and otherwise provide BUYER will full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of BUYER. SELLER agrees to assist BUYER, at BUYER's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause
- b) Items delivered under this Contract such as operation and maintenance manuals shall be delivered with the right to copy for internal use and/or copy and deliver with the right to use to BUYER's Customers.
- c) SELLER warrants that the Work performed or delivered under this Contract shall not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to, at its expense, defend, indemnify and hold harmless BUYER and its customers from and against any claims, damages, losses, costs and expenses including reasonable attorneys fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

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- d) To the extent that any of SELLER's pre-existing Intellectual Property are used, included or contained in the Work or deliverable items and not owned by Areté pursuant to this or a previous agreement with SELLER, SELLER grants to Areté an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing Intellectual Property; and (ii) authorize others to do any, some, or all of the foregoing.
- e) The tangible medium storing copies of all reports, memoranda or other materials in written form, including machine-readable form, prepared by SELLER pursuant to this Contract and furnished to BUYER hereunder shall become the sole property of BUYER.

#### **26) PAYMENT, TAXES, AND DUTIES**

- a) Invoices shall include the following information: purchase order number, product number, product description, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. Bill of lading or express receipt shall accompany each invoice.
- b) Payment of invoice shall not constitute acceptance of Work and shall be subject to adjustment for errors, shortages, defects in the products or other failure of SELLER to meet the requirements of this order. If any term of this purchase order does not appear on or agree with SELLER's invoice as rendered, SELLER agrees that Areté may change the invoice to conform to this purchase order and make payment accordingly.
- c) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) BUYER's receipt of properly prepared invoice; (3) actual delivery of the Work; or (4) final acceptance of delivered items by the BUYER. BUYER may offset against any payment hereunder any amount owed to BUYER by SELLER.
- d) Unless otherwise stated in this order, prices shown on the face of this order include, and SELLER is liable for and shall pay, all Federal, State, Local or other taxes, duties, tariffs, or similar fees imposed by any government, all of which shall be separately stated on SELLER's invoice. Prices shall not include any taxes, duties, tariffs or similar fees for which BUYER has furnished a valid exemption certificate or other evidence of exemption.

#### **27) PRECEDENCE**

Any inconsistencies in this Order shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order document, including any continuation sheets and referenced attachments thereto including special terms and conditions, (2) this Terms and Conditions document; (3) the Statement of Work including any specifications or other attachments thereto.

#### **28) PRICES**

SELLER warrants that the prices to be charged for products or services ordered by Areté are not in excess of prices charged to other customers for similar quantities and delivery requirements. Any price decrease applicable to the products or services which are similar to the products or services ordered herein shall automatically reduce the unit price of the unshipped products or services not yet rendered by a comparable percentage, at the time of the price decrease.

#### **29) QUALITY CONTROL SYSTEM**

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 Contract. Records of all quality control inspection work by SELLER shall be kept complete and available to BUYER and its customers.

#### **30) RECORD RETENTION**

Unless otherwise specified, SELLER shall retain all records related to this Contract for three (3) years from the date of final payment. Records include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to Areté or its customer upon request.

#### **31) RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior written approval of Areté. SELLER shall not use "Areté", "Areté Associates", or any other trademark or logo owned by Areté, in whatever shape or form, without the prior written consent of Areté. SELLER agrees that prior to the issuance of any publicity or publication of any advertising which in either case makes reference to this order or to BUYER, SELLER will obtain the written permission of BUYER with respect thereto.

## **GENERAL TERMS AND CONDITIONS OF PURCHASE (Supplies)**

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#### **32) RESPONSIBILITY FOR BUYER'S PROPERTY**

- a) BUYER may, by written authorization, provide to SELLER property owned by either Areté or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- b) Title to Furnished Property shall remain in Areté or its customer. SELLER shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of BUYER's property and all property to which BUYER acquires an interest by virtue of this Order, or property that may be provided to SELLER by BUYER or BUYER's customer.
- c) Except for reasonable wear and tear, SELLER assumes all risk of loss, destruction or damage of such property while in SELLER's possession, custody or control, including any transfer to SELLER's subcontractors. SELLER shall not use such property other than in performance of this Order without BUYER's prior written consent.
- d) Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this contract, and good commercial practice.
- e) SELLER shall notify BUYER's Authorized Procurement Representative if BUYER's property is lost, damaged or destroyed. As directed by BUYER, upon completion, termination or cancellation of this Order, SELLER shall deliver such property, to the extent not incorporated in delivered goods, to BUYER in good condition subject to ordinary wear and tear and normal manufacturing losses.
- f) SELLER agrees, if and when requested by BUYER to procure a policy or policies of insurance in form satisfactory to BUYER including endorsement specifically naming BUYER as an insured, insuring all property of BUYER or its customers which is connected with this order and of which SELLER has care, custody, control or the right of control against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism. Satisfactory evidence of such insurance shall be submitted to BUYER within a reasonable period of time after request.
- g) If FAR 52.245-1 is incorporated by reference into this Contract, it shall take precedence in the event of any conflicts with paragraphs b through f above.

#### **33) SEVERABILITY**

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

#### **34) STOP WORK**

SELLER shall stop Work for up to 90 days in accordance with any written notice received from BUYER, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the occurrence of costs allocable to the Work during the period of Work stoppage. Within such period, BUYER shall either terminate in accordance with the provisions of this Contract 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 provisions affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within 30 days after the date of notification to continue.

#### **35) SURVIVABILITY**

If this Contract expires, is complete, or is terminated, SELLER shall not be relieved of those obligations contained in the following clauses: Applicable Laws, Counterfeit Work, Export Control, Disputes, Electronic Contracting, Indemnity, Insurance, Language, Confidentiality, Intellectual Property, Release of Information, Warranty/Counterfeit Goods, Entry on Areté Property, Record Retention.

#### **36) TERMINATION FOR CONVENIENCE**

- a) BUYER may terminate work remaining under this purchase order in whole, or from time to time, in part by giving written notice to SELLER specifying the extent to which performance of work is terminated and the time at which such termination becomes effective. After receipt of such notice and except as otherwise directed by BUYER, SELLER shall stop all work under this order to the extent specified in the notice of termination. Within thirty (30) days after receipt of the notice of termination, SELLER shall submit to BUYER its written termination claim. Failure of SELLER to submit its termination claim as provided herein shall constitute an unconditional and absolute waiver by SELLER of any claim arising from BUYER's notice of termination.
- b) SELLER shall reasonably assess costs for raw materials, work in process and subassemblies as may be included within its termination claim to determine whether or not such items may be used by SELLER for the manufacture of associated products or diverted for any other purpose, and to correspondingly reduce its termination claim by the value of such items. When settlement has been made, title to any of such items determined not usable by SELLER and charged to BUYER as the termination claim shall vest in BUYER upon payment of the claim and shall forthwith be delivered to BUYER.



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- c) SELLER's termination claim shall consist solely of the following:
  - i) Completed products accepted by BUYER and not previously paid for, the sum determined by multiplying the number of such products by the unit price as specified in this order, and,
  - ii) The total of (i) the cost of work in process not to exceed the average unit cost multiplied by the number of units in process, however, if it appears that SELLER would have sustained a loss on the entire purchase order had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. Such amounts shall not include any costs attributable to SELLER's products paid or to be paid under subparagraph (e)(1) above. The total sum to be paid to SELLER shall not exceed the total order price minus the amount of payments otherwise made and the price of work not terminated under this order.
- d) In no event shall SELLER be entitled to incidental or consequential damages, anticipated or projected profits, costs of preparing claims, attorneys' fees, costs of tooling or equipment or sales or agents' commissions on the terminated quantity.
- e) BUYER reserves the right to verify claims hereunder by SELLER making available relevant books, records, and inventories to a mutually agreed upon third party audit agency. In the event material discrepancies are found during the audit process, SELLER shall pay for the audit.

#### **37) WAIVERS/APPROVALS/REMEDIES**

The failure of either party to enforce any of the provisions of this order or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such a provision or law. BUYER's approval of designs or documents shall not relieve SELLER of its obligation to comply with the requirements of this contract. The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provide by law or in equity.

#### **38) WARRANTY**

- a) SELLER warrants that all goods or items delivered under this Order shall conform to all specifications and requirements of this Order and shall be free from defects in materials and workmanship. To the extent goods are not manufactured pursuant to detailed designs and specifications furnished by BUYER, the goods shall be free from design and specification defects. This warranty shall survive inspection, test and acceptance of, and payment for, the goods. This warranty shall run to BUYER and its successors, assigns and customers. Such warranty shall begin after BUYER's final acceptance, and extend for the period of one (1) year. BUYER may, at its option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective or non-conforming goods. Return to SELLER of defective or nonconforming goods and redelivery to BUYER of corrected or replaced goods shall be at SELLER's expense. Goods required to be corrected or replaced shall be subject to this article and the Acceptance article of this Order in the same manner and to the same extent as goods originally delivered under this Order, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, SELLER shall promptly comply with BUYER's direction to: (i) repair, rework or replace the goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that SELLER did not breach this warranty, the parties shall equitably adjust the Order price.
- b) SELLER agrees to indemnify and hold BUYER harmless from all claims, liability, loss, damage and expense including special, consequential and incidental damages incurred or sustained by BUYER by reason of any breach of any warranty with respect to the Work which are purchased in accordance herewith.

#### **39) INDEMNITY**

SELLER shall defend, indemnify, and hold harmless BUYER, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this Contract.

## **GENERAL TERMS AND CONDITIONS OF PURCHASE (Supplies)**

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#### **ADDENDUM TO ARETÉ ASSOCIATES GENERAL TERMS AND CONDITIONS OF PURCHASE (Supplies)**

*Applicable IF this Order is issued under a higher-tier U.S. Government contract for the purchase of Non-commercial goods or services as defined by the Federal Acquisition Regulations. The following provisions replace or augment, as directed below, the provisions in Areté's General Terms and Conditions of Purchase incorporated in this Order.*

**1. PATENTS AND INTELLECTUAL PROPERTY UNDER GOVERNMENT CONTRACT (NON-COMMERCIAL) *The "Patents and Intellectual Property provision of Areté's General Terms and Conditions is replaced in its entirety by the following:***

(a) Seller warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefore, Seller agrees to defend, indemnify, and hold harmless Areté and its customers from and against any claims, 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 Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(b) Seller's obligation to defend, indemnify, and hold harmless Areté and its customers under Paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Arête's Prime Contract for infringement of a U.S. patent and Areté and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys' fees by a third party.

(c) In addition to the Government's rights in data and inventions Seller agrees that Areté in the performance of its Prime contract obligation, shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Contract.

**2. PRIORITY RATING. *This provision is added to the Order:***

If so identified as "DX---" or "DO-xxx", this Contract is a "rated order" certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

**3. SURVIVABILITY. *The following is added to the "Survivability" provision of Areté's General Terms and Conditions:***

In addition, those U. S. Government flowdown provisions incorporated into this Order that by their nature should survive.

**4. COMPLIANCE WITH LAWS. *The following paragraphs are added to the "Compliance with Laws" provision of Areté's General Terms and Conditions:***

(e) If (i) Areté's contract price or fee is reduced; (ii) Areté's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on Areté; or (iv) Areté incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, Areté may proceed as provided for in (g) below.

(f) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if Seller or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon Areté's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on Areté's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) Areté's contract price or fee is reduced; (B) Areté's costs are determined to be unallowable; (C) any fines, penalties, or interest are assessed on Areté; or (D) Areté incurs any other costs or damages; Areté may proceed as provided for in (g) below.

(g) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (e) and (f) above, Areté may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded. In the case of withholding(s), Areté may withhold the same amount from Seller under this Contract.