

## **TERMS AND CONDITIONS – Commercial Items Under U.S. Government Contract**

1. **GENERAL ACCEPTANCE** - This purchase order (which term shall be deemed to include plans, specifications, requests, and other documents to the extent that any of the same are incorporated by reference) constitutes the exclusive agreement between the parties for the supplies/services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this purchase order: (a) acknowledgment of this purchase order; (b) furnishing of any part of the supplies/services under this purchase order; (c) acceptance of any payment for the supplies/services; or (d) commencement of performance under this purchase order. Any additional or different terms proposed by Seller are objected to and are hereby rejected unless the same shall be accepted in writing by Buyer. Failure of any party to enforce its rights under this purchase order shall not constitute a waiver of such rights or of any other rights under this purchase order or otherwise.
2. **BUYER'S AUTHORIZED REPRESENTATIVE** - (a) Buyer's Authorized Purchasing Representative is the individual authorized by Buyer's cognate procurement organization to administer and/or execute the purchase order. The Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the purchase order.  
(b) Buyer's engineering, technical personnel and other representatives 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 supplies or services being provided under this purchase order. No such action shall be deemed to be a change under the "Changes" clause of this purchase order and shall not be the basis for an equitable adjustment.
3. **ASSIGNMENT, SUBCONTRACTING, AND PLACE OF PERFORMANCE** - (a) Neither this order nor any payments thereunder are assignable or transferable, in whole or in part, without Buyer's written approval, which approval will not be unreasonably withheld. Buyer shall be entitled to the right of set-off against any amounts payable under this purchase order.  
(b) Neither this order nor any part of this purchase order may be further subcontracted without the prior written consent of Buyer.  
(c) This provision shall not apply to purchases of standard commercial articles or raw materials including casting, forgings, and rough welded structures in which Seller will perform further work.  
(d) Seller further agrees that no subcontracted piece under this purchase order shall provide for payment on a cost-plus-a-percentage/fee basis and its select subcontractors including suppliers on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this purchase order.  
(e) Seller shall notify Buyer of any change in the place of performance including but not limited to change in design, manufacturing, assembly, integration, or testing location of components or lower subassemblies, with regard to the requirements of this purchase order. Such notification shall be made to the Buyer's Authorized Purchasing Representative not less than 30 days prior to the change to the place of performance.  
(f) Buyer may charge to Seller any additional cost of inspection or requalification in connection with any change in the place of performance of this purchase order.
4. **CHANGES** - (a) Buyer's Authorized Purchasing Representative may at any time, by written order, without notice to any third party, make changes or additions within the general scope of this purchase order in any one or more of the following: (1) drawings, designs, statement of work or specifications; (2) method of shipment or packing; (3) place of inspection, delivery, or acceptance; (4) quantities, where applicable; (5) delivery schedule, where applicable; and (6) the amount of fees furnished properly.  
(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of this purchase order,

whether changed or not changed by any such written order, Seller shall notify Buyer in writing immediately and an appropriate equitable adjustment will be made in the price in time of performance, or both, by written modification of this purchase order. Any claim by Seller for such adjustment must be received within fifteen (15) days, or such other period as may be agreed on in writing by all the parties, after Seller's receipt of notice of the change. Nothing contained in this paragraph shall prevent Seller from proceeding with the contract as changed. Seller hereby acknowledges any such direction provided by anyone other than Buyer's Authorized Representative is of no force and effect and Seller accepts all risks of accepting order otherwise proceeding with such unauthorised direction.

5. **DELIVERY** - (a) The parties expressly agree that time is and shall remain a material element of this purchase order and no acts of Buyer, including without limitation, modifications to this purchase order or acceptance of late deliveries, shall constitute a waiver of this clause.  
(b) Seller will deliver acceptable supplies and services in and conformity with any delivery schedule and shipping instructions set forth in the purchase order issued to Seller by Buyer. Unless otherwise provided in this purchase order, delivery in whole or in part shall not be made more than ten (10) days prior to required delivery dates. Buyer may return seller deliveries at Seller's risk and expense. Seller shall comply with the delivery schedule but shall not make material or production commitments in advance of such time as the Seller reasonably believes necessary to meet the schedule without prior written approval by Buyer. Representatives of Buyer, the Government or both shall at all reasonable times have access to Seller's plant for the purpose of assuring delivery in accordance with the schedule.  
(c) If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to: (1) terminate this purchase order; or (2) if the such purchase order or any portion thereof, from services other than Seller and to reduce Seller's purchase order quantities accordingly at no increase in unit price, without any penalty to Buyer. Alternatively, Buyer may require Seller to provide consideration for the late delivery. This condition shall not limit Buyer's rights or remedies under the Uniform Commercial Code.
6. **DISPUTES** - Any dispute arising under this purchase order which is not settled by agreement of the parties will be litigated in the state or federal court (as applicable) of the state from which the Buyer's purchase order is issued. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this purchase order, Seller shall proceed diligently with the performance of this purchase order unless otherwise agreed between Buyer and Seller.
7. **DEFINITIONS** - The term "Commercial Item" pertaining to these terms and conditions shall be as defined in FAR 2.101 - Definitions, and is incorporated herein by reference.
8. **NOTICE TO THE BAKER OF POTENTIAL DELAYS** - Whenever Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Such occurrences shall include, but not be limited to: (1) actual or potential labor disputes or strikes; (2) fires, floods, or unusually severe weather; (3) acts of nature; (4) acts of the Government in order to conserve or conduct operations; and any other causes for delay. Neither receipt of such notice by Buyer nor any provision of these terms and conditions will be deemed to be a waiver by Buyer of any of its rights under any purchase order with Seller, including these terms and conditions, in law or otherwise.
9. **INVOICE AND PAYMENT** - When invoices are otherwise required, a separate invoice shall be issued for each shipment and should include the relevant Buyer purchase order number. Unless otherwise specified in this purchase order, no invoice shall be issued prior to shipment of goods and no payment will be made

# Judges Benchguide Criminal California

**JE Gale**



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