

Coda Octopus Engineering, Inc.
TERMS AND CONDITIONS – FIXED PRICE



1. **GENERAL/ACCEPTANCE** – The purchase order (which term shall be deemed to include plans, specifications, regulations and other documents to the extent that any of the same are incorporated by reference therein) becomes 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 and these terms and conditions: (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. Unless otherwise stated in Buyer’s specifications, the latest revision of applicable standards, specifications, or similar documents as of the date of this purchase order shall apply. Any additional or different terms proposed by Seller are objected to and are hereby rejected unless the same shall be accepted in writing by the Buyer.
2. **BUYER’S AUTHORIZED REPRESENTATIVE** – (a) The Buyer’s Authorized Purchasing Representative is the individual authorized by Buyer’s cognizant 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 the 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 purchase order nor any payments hereunder are assignable or transferable, in whole or in part, without Coda Octopus Engineering, Inc. (herein referred to as “COEI”) written approval, which approval will not be unreasonably withheld. COEI shall be entitled to the right of set-off against any amounts payable under this Purchase Order. (b) Neither the entirety nor any part of this Purchase Order may be further sub-contacted without the prior written consent of COEI. (c) This provision shall not apply to purchases of standard commercial articles or raw materials including casting, forgings, and rough welded structures on which Seller will perform further work. (d) Seller further agrees that no subcontract placed under this purchase order shall provide for payment on a cost-plus-a-percentage-of-cost-basis. Seller further agrees to 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 with regard to the requirements of this purchase order. Such notification shall be made to the cognizant COEI purchasing representative not less than (30) days prior to the change to the place of performance.
4. **CHANGES** – (a) COEI’s Purchasing Representative may at any time, by written order, without notice to any surety, 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, or other technical documents; (2) method of shipment or packing; (3) time and place of inspection, delivery or acceptance; (4) quantities, where reasonable; (5) delivery schedules, where reasonable; and (6) the amount of Buyer/Government-furnished property. (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any work under this purchase order, whether changed or not changed by any such written order, Seller shall notify COEI in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this purchase order. Any claim by Seller or such adjustment must be asserted within (15) days, or such other period as may be agreed on in writing by the parties, after Seller’s receipt of the notice of the change. Seller will make available its books and records for COEI’s examination to allow COEI, its authorized representatives, and its customer, including the U.S. Government, to verify any claim for adjustment by Seller. If COEI and Seller are unable to agree upon an equitable adjustment in the event of any change directed by COEI, the matter will be resolved in accordance with the “Disputes” provision set forth in Paragraph 15 of these terms and conditions. Pending resolution of any such adjustment, Seller will diligently pursue the performance of the order as changed.
5. **CHOICE OF LAW** – Irrespective of the place of performance, this purchase order will be construed and interpreted according to the federal common law of Government contracts as enunciated and applied to federal judicial bodies and boards of contract appeals of the federal Government. To the extent that the federal common law of Government contracts is not dispositive, the laws of the state of Delaware shall apply, not including its rules with respect to choice of laws.
6. **COMPLIANCE WITH LAWS AND REGULATIONS** – (a) Seller shall comply with any applicable laws, Executive Orders, or regulations (including export administration regulations). (b) Seller agrees to indemnify COEI against any loss, cost, liability or damage by reason of Seller’s violation of any applicable laws, Executive Order, or regulation. (c) If a Government Contract number is indicated, Seller agrees that performance of this Purchase Order is subject to the laws and regulations of the Department of Defense, Department of Energy, or other Federal Government agency, including but not limited to those identified in these terms and conditions. Any knowing willful act to falsify, conceal, or alter a material fact, or any false, fraudulent, or fictitious statement or representation, in connection with the performance of work under this order may be punishable in accordance with applicable Federal statutes.
7. **DEFAULT OF SELLER** – The provisions of FAR 52.249-8, “Default (Fixed-Price Supply and Service),” in effect on the date of this order are incorporated in this paragraph by reference as follows: Sub-paragraphs (a), (b), (e), (f), (g) and (h). Where necessary to make this FAR provision applicable to this purchase order, “Contractor” shall mean “Seller,” “Contracting Officer” shall mean “Coda Octopus Engineering” or “Government.” If bankruptcy, insolvency, dissolution, receivership or equivalent proceedings shall be instituted by or against Seller, or upon Seller’s making any assignment for the benefit of creditors or entering into any such arrangement or upon Seller’s suspension of its business or becoming insolvent, COEI shall have the right to terminate this purchase order in accordance with FAR 52.249-8.
8. **INSPECTION** – (a) COEI and its customer may inspect and test material, work in progress and supplies at all times and places, during manufacture and otherwise. COEI’s inspection may, in its sole discretion, include physical, visual and/or mechanical review, as well as any documentation necessary to substantiate the meeting of quality requirements or specific requirements set forth in the purchase order. If inspection and test are made on Seller’s premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Inspections and test by COEI shall be performed in such manner as not to delay the work unduly. COEI may charge to Seller any additional cost of inspection and test when material, work or supplies are not ready at the time such inspection and test is requested by COEI. In case of rejection, neither COEI, nor its customer, shall be liable for any reduction in value of samples used in connection with such inspection or test. (b) The inspection, review or approval by COEI of any work, or of any drawing, design, or other document, will not be deemed to relieve Seller of any of its obligations under any purchased order, or to constitute a waiver of any defects or non-conformities. The acceptance by COEI of any goods and services under any purchase order will not be deemed to limit or affect any warranty or right of indemnity granted by Seller under such purchase order, these terms and conditions or otherwise. (c) Except as otherwise agreed in writing, all shipments and supplies furnished under this purchase order shall be subject to final inspection and acceptance by COEI after receipt by COEI at destination notwithstanding any previous source inspection or acceptance, the earlier passing of title to COEI, or any prior payment by COEI, or any prior inspection of any type. Seller shall maintain an inspection and quality control system acceptable to COEI and its customer.
9. **RESPONSIBILITY FOR SUPPLIES** – Except as specifically otherwise provided in this purchase order, Seller shall be responsible for supplies meeting the requirements of this purchase order until final inspection and acceptance thereof by COEI, and shall bear all risks as to rejected supplies or supplies requiring correction after notice of rejection notwithstanding any prior acceptance.
10. **SUBSTITUTION** – Seller shall not substitute materials or accessories without written consent of COEI.

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11. **DEFECTIVE WORK** – Notwithstanding any prior acceptance, COEI, at its option, may reject or require prompt correction (in place or elsewhere), of any supplies or services which are, in COEI’s judgment, defective in material or workmanship or otherwise fail to meet the drawings, designs, statement of work, specifications or other technical documents, or other requirements of this purchase order. All supplies furnished under this purchase order shall be subject to inspection at destination notwithstanding any previous source inspection, and Seller shall be given notice of any defects, other than latent defects, with a reasonable time after receipt of the supplies and all records (such as affidavits, test reports, drawings, etc.) required to be furnished therewith. COEI may, in addition to any rights it may have by law, prepare for shipment and ship the supplies to Seller, require Seller to remove them, direct their correction in place or, with authorization by Seller, correct them and the expense of any such action, including transportation both ways, if any, shall be borne by Seller. COEI may recover by offset or otherwise any and all costs, expenses and damages paid, incurred or suffered as a result of or relating to holding, returning, replacing, correcting or rejecting defective or non-conforming goods or services. If Seller fails promptly to remove such supplies and to proceed promptly to replace or correct them, COEI may replace or correct such supplies at the expense of Seller, including any excess cost. Seller shall not again tender rejected or corrected supplies unless Seller discloses the former tender and rejection or requirement of correction. Seller shall immediately notify Buyer upon discovery of actual or potential non-conformances affecting delivered product.
12. **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 strict 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 (10) days prior to required delivery dates. Buyer may return earlier 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) fill such purchase order or any portion thereof, from sources 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 Termination for Default clause contained herein.
13. **QUANTITY** – COEI need not accept any variation in quantity except as specified in this purchase order. Over shipments may be returned to Seller at Seller’s expense, which shall include a reasonable cost to COEI’s handling, or be retained by COEI at no increase in price. To the extent that supplies covered by this purchase order are proprietary to COEI or to COEI’s customer, Seller shall not manufacture or retain for the purpose of display, or otherwise, any more such supplies, or parts thereof, than are required to be delivered under this purchase order. Any such excess supplies, or parts thereof, shall be delivered free of charge to COEI at the designated delivery point at Seller’s risk and expense or destroyed and the destruction certified by Seller.
14. **PENALTIES** – If the Seller fails to adhere to provisions in the purchase order, or these Terms and Conditions, that results in penalties from COEI’s customer to COEI, then COEI reserves the right to levy some or all of the penalties on the Seller.
15. **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 courts of the state of Utah. 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 COEI and Seller.
16. **FEDERAL, STATE AND LOCAL TAXES** – Except as may be otherwise provided in this purchase order, the price includes all applicable Federal, State and local taxes and duties.
17. **GOVERNMENT OR BUYER FURNISHED PROPERTY** – If, in connection with the performance of this purchase order, any property is furnished to Seller by COEI or by the Government, Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage of the property while in Seller’s possession or control except to the extent that this purchase order, with the prior approval of the Buyer and/or Government, provides for the relief of Seller from such liability. In the absence of such approval, Seller shall return all such property in a condition as good as when received except for reasonable wear and tear for the utilization of such property in accordance with the provisions of the prime contract. Seller shall establish and maintain a system in accordance with the provisions of FAR Subpart 45.5 for the control of Government or COEI-owned property. Seller shall also notify COEI if approval of its property system has been withdrawn by the Government.
18. **IDEMNITY** – (a) Seller will defend, indemnify and hold harmless COEI and its affiliates, and their officers, agents, employees, successors and assigns, against any claims, loss, damage or expense, including, without limitation, payment of direct, special, incidental and consequential damage, and expenses of defending claims, including attorney’s fees, for property loss and/or damage, and personal injury and/or death, which may be sustained by third parties and/or by Buyer, its agents, employees or subcontractors, at any tier, which results from Seller’s performance or nonperformance of this purchase order except for claims resulting from the sole negligence of COEI. COEI will inform Seller of any claim, demand or suit asserted or instituted against it and, to the extent of COEI’s ability to do so, permit Seller to defend the same or make settlement in respect thereof. (b) COEI, at its option, may require Seller to furnish evidence of insurance reasonably satisfactory to COEI covering the liabilities and indemnification provided above but no acceptance of such evidence by COEI shall be deemed a waiver or release of such liabilities or duty to indemnify. Seller will at all times maintain with reputable insurance companies comprehensive general liability insurance (including coverage for any liability under any COEI purchase order and these terms and conditions) in the minimum amount of \$2.0 million, or such other minimum amount specified in the relevant purchase order. At COEI’s request, Seller will name Coda Octopus Engineering as an additional insured under such policy, and will provide to COEI a certificate of such insurance providing for (10) days’ prior written notice or COEI of cancellation or material change. Seller will maintain worker’s compensation insurance sufficient to cover all of its general and special employees engaged in work pursuant to any COEI purchase order and insurance against liability for personal injury or death or destruction to property arising out of work in fulfillment of any COEI purchase order, and will provide prompt evidence to COEI of such coverage upon COEI’s request. (c) Seller shall comply with the provisions of FAR 52.215-10, 52.215-11, 52.215-12 and 52.215-13 which are incorporated herein by reference to the extent that such clauses are or become applicable to this purchase order. Seller shall indemnify and hold harmless COEI from any amount, loss and expense, including interest assessed by the Government by which this purchase order is determined by the Government to have been defectively priced because of Seller’s or Seller’s subcontractor’s failure to comply with such provisions. The rights of the parties hereunder shall survive completion or termination of this purchase order.
19. **INTELLECTUAL PROPERTY INDEMNITY** – (a) Seller shall indemnify COEI, COEI’s customer and/or the Government and their respective officers, agents and employees against liability and losses including costs for infringement of any United States or foreign patent, copyright, trademark, or other intellectual property arising out of the manufacture or delivery of supplies or performance of services under this purchase order or out of the use or disposal by, or for the account of, COEI, COEI’s customer and/or the Government of such supplies or services. The foregoing indemnity shall not apply unless Seller shall have been informed as soon as practicable by COEI, COEI’s customer and/or the Government of the suit or action or other proceedings alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof. (b) Notwithstanding the foregoing, when this Order is performed under the

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authorization and consent of the Government to infringe United States patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

20. **INVOICING AND PAYMENT** – When invoices are otherwise required, a separate invoice shall be issued for each shipment, and should include the relevant COEI 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 prior to receipt of goods and correct invoice. Payment due dates, including COEI's entitlement to take a discount, will be computed from the date of receipt of acceptable goods or the date of receipt of a correct invoice (whichever is later). Unless freight and other charges are itemized, any discount taken will be taken on the full amount of the invoice. All costs included in the invoice must be computed in accordance with the latest revision of Part 31 of FAR and allowable in accordance with the principles specified therein. No payment shall be made for costs included in the invoice that are unallowable by Part 31. COEI may offset against any amounts due under Seller's invoices: (a) any damages resulting from Seller's default under or breach of any contract (including any purchase order and these terms and conditions); (b) any amount owing from Seller to COEI; or (c) any adjustment for shortage or rejection and any costs occasioned thereby.
21. **LIENS** – Seller warrants that it has title to the goods to be delivered under this purchase order and shall deliver same free of all liens, claims and encumbrances.
22. **MILITARY SECURITY AND CYBER REQUIREMENTS** – (a) Seller shall be responsible for safeguarding all Government sensitive and classified information in accordance with the provisions of the Seller's Security Agreement with the Department of Defense and with all applicable Government requirements including, without limitation, FAR 52.204-2, "Security Requirements," which is incorporated herein by reference. Seller's critical and information systems shall comply with FAR 52.204-21 and DFARS 252.204-7012. (b) Seller agrees to insert in all subcontracts under this purchase order that involve access to government information, provisions which shall conform substantially to the language of Subparagraph (a) above and to this Subparagraph (b).
23. **NEWS OR ADVERTISING RELEASES** – No news release in any way relating to COEI or Seller concerning the purchase order shall be made by either party to any news media or to the general public without the prior approval of the other party. Seller will not, and will require its suppliers and subcontractors to not, advertise or publish the fact that COEI had order supplies or services from Seller, or the terms or nature of such order. Seller will not, and will cause its employees and other representatives to not, disclose such information in company periodicals, press releases, public lectures, sales or other promotional literature, or otherwise. The parties agree that in the event a news release is so approved and made, such news will recognize COEI and Seller.
24. **NOTICE TO THE BUYER OF POTENTIAL DELAYS** – (a) 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 COEI. 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; (3) acts of the Government in either its sovereign or contractual capacity, and any other cause for delay. Neither receipt of such notice by COEI nor any provision of these terms and conditions will be deemed to be a waiver by COEI of any of its rights under any purchase order, these terms and conditions, at law or otherwise. (b) Seller agrees to insert this clause, including this Subparagraph (b), in any purchase order or subcontractor hereunder.
25. **OFFSET NOTIFICATION** – This clause shall only apply to Orders in excess of \$50,000.00. (a) Definition: "Offset" means the obligations that COEI undertakes, in order to market or sell its products, to assist a customer country in reducing any trade imbalance caused by its purchase of COEI's products or to meet other customer country objectives. (b) To the exclusion of all others, COEI or its assignees shall be entitled to all benefits or Offset credits which might result from this purchase order. Seller shall provide documentation or information that COEI or its assignees may reasonably request to substantiate claims for Offset credits. (c) Seller agrees to use reasonable efforts to identify the foreign content of items that Seller either produces itself or procures from subcontractors for

work under this purchase order. Promptly after selection of a non-U.S. subcontractor for work under this purchase order, Seller shall notify COEI of the name, address, subcontractor point of contact (including telephone number) and dollar value of the subcontract. (d) Seller shall include the substance of this clause, in favor of COEI, in its subcontractors issued at all tiers pursuant to this purchase order.

26. **ORDER OF PRECEDENCE** – The various documents constituting this purchase shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this purchase order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items; (a) provisions required by statute, regulation or Government contract; (b) typed Purchased Order form; (c) Statement of Work; (d) this Terms and Conditions document; (e) Specifications; and (f) Drawing(s).
27. **PROPERTY RIGHTS** – (a) The rights of the U.S. Government in technical data, computer software and inventions pertaining to the supplies and/or services delivered under this purchase order are set forth in the applicable FAR and DFARS clauses incorporated by reference. Buyer shall have the right to utilize the supplies and/or services in performance of Buyer's contractual obligations to its customer, including the right to copy and modify any technical data and computer software delivered under this purchase order and the right to deliver such technical data and computer software to Buyer's customer if it is required as a deliverable under Buyer's contract with its customer. (b) This Purchase Order does not confer or grant to Seller, in any manner whatsoever, any license or right under any patent, trademark, trade secret, mask-work, copyright or other intellectual property right held by Buyer, except as needed to perform the work ordered by Buyer under this Purchase Order.
28. **PROTECTION OF INFORMATION** – (a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between COEI and Seller which relates to the subject matter of this purchase order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and paragraphs (b) through (g) of this clause shall not apply. (b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between COEI and Seller, paragraphs (c) through (g) of this clause apply. (c) For purposes of this clause, "Information" shall mean information disclosed to Seller by COEI in connection with this purchase order, which is either identified to Seller as being proprietary or which is information that a reasonable person would understand to be such information. Examples of information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specification, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to COEI's products, services, equipment or processes, as well as duplicates, copies or derivative work thereof. Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Seller from a third party without obligation of confidence. (d) Information furnished to Seller shall remain COEI's proprietary property, shall be duplicated only as authorized in writing by COEI, and shall be returned to COEI upon request or when no longer required for the performance of this purchase order. Seller shall not disclose information to any third party, and shall take all reasonable precautions to prevent the disclosure of information to third parties, including any foreign national, firm or country, and foreign nationals employed by or associated with Seller's company except as specifically authorized by COEI. Seller agrees not to use information to develop any product, service or system, or to support any third party in the development of any product, service or system. (e) Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller's proprietary data and information will be used by COEI only upon approval by Seller. (f) Seller's obligations with respect to information disclosed hereunder prior to the performance in full, termination or cancellation of this purchase order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation. (g) COEI or its representatives may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. Seller will, in all of its contracts with its

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- suppliers relating to any COEI purchase order, include provisions which secure for COEI all of the rights and protections provided for by this Paragraph.
29. **SPECIAL TOOLING (ST), SPECIAL TEST EQUIPMENT (STE) AND FACILITIES (FAC)** – Unless specifically provided to the contrary in this purchase order, Seller warrants that the price set forth in this purchase order does not include: (a) any amount representing rent for the use of Government-owned ST, STE, or FAC; or (b) as a direct charge to this purchase order, the cost of any ST, STE, or FAC as the same are defined in Part 45 of the Federal Acquisition Regulation. Any such ST, STE, or FAC to be charged to COEI will be covered by a separate purchase order.
30. **STOP-WORK ORDER** – In accordance with provisions of the “Stop-Work Order” clause set forth in FAR 52.242-15 in effect on the date of this order, COEI may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by any purchase order for a period of (90) days after the order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of such an order, Seller will immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the indicated (90) day period, COEI will take the actions prescribed in FAR 52.242-15.
31. **TERMINATION** – Without limiting COEI’s right to cancel this order for default of Seller as provided above, COEI may terminate all or any part of work under this purchase order and process Seller’s claims therefore in accordance with the provisions of the “Termination for Convenience of the Government (Fixed-Price)” clause set forth in FAR 52.249-2 in effect on the date of this order. Where necessary to make FAR52.249-2 applicable to this purchase order, “Contractor” shall mean “Seller”, “Contracting Officer” shall mean “Coda Octopus Engineering” and “Government” shall mean “Coda Octopus Engineering” or the “Government.” In paragraph (e) of FAR 52.249-2, change “1 year” to “6 months or any extension thereto.” Where necessary to make FAR 52.249-2 applicable to this purchase order, “Contractor” shall mean “Seller”, “Contracting Officer” shall mean “Coda Octopus Engineering” and “Government” shall mean “Coda Octopus Engineering” or the “Government.”
32. **TOXIC SUBSTANCES CONTROL ACT** – Seller warrants that each and every chemical substance delivered under this purchase order shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substance Control Act (15 U.S.C. 2601).
33. **WARRANTY** – (a) Seller warrants at the time of delivery to COEI that the supplies covered by this purchase order will conform to the design, specifications, drawings, samples or other descriptions referred to in this purchase order; will be free from defects in material and workmanship; will be free from all liens and encumbrances; and, to the extent that the Seller knows or has reason to know of the purpose for which the supplies are intended, will be fit and sufficient for such purpose. All warranties will survive acceptance of, and payment for, the relevant supplies and services. The warranties contained in this paragraph shall run to COEI and to its customers for a period of 3 (three) years after delivery to COEI’s end-customer. (b) Seller further warrants that supplies and services provided under this purchase order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which would interfere in any manner with COEI’s property rights as described above in Paragraph 28, Protection of Information.
34. **INTEGRATION AND MERGER** – This contract, together with any purchase orders issued pursuant to this contract, including attachments and documents incorporated herein by reference, constitutes the entire agreement between COEI and Seller, and supersedes all prior representations, agreements, understanding, and communications between COEI and Seller. No amendment or modification of this contract or a purchase order shall be binding upon either part unless it is set forth in a written instrument signed by authorized representatives of both COEI and Seller. The rights and remedies afforded to either party pursuant to any part or provision of this contract or purchase order are in addition to any other rights and remedies afforded by another other parts or provisions of this contract or a purchase order, by law, or otherwise.
35. **EXPORT RELATED REQUIREMENTS** – (a) Export Compliance. Performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751-2796 (Arms Export Control Act) and 22 code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401-2420 (Export Administration Act) and 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the “Export Laws and Regulations”). Seller represents that it is a U.S. Person as that term is defined in the Export Laws and Regulations. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there-under. (b) Foreign Personnel. Seller shall not give any Foreign Person access to Technical Data or software as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient’s citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the “Immigration and Naturalization Act”), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller’s request under this paragraph (b) shall relieve it if its obligations to comply with the provision of paragraph (a) or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph (a), nor constitute consent for Seller to violate any provision of the Export Laws and Regulations. (c) Indemnification, Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney’s fees, arising out of claims, suit, allegations or charges of Seller’s failure to comply with the provisions of the Export Laws and Regulations and breach of paragraph (a). Any failure of Seller to comply with the requirements contained in paragraph a shall be a material breach of this agreement.
36. **FEDERAL ACQUISITION REGULATION (FAR), DOD FAR SUPPLEMENT (DFARS)** – Additional clauses set forth in the FAR and DFARS as in effect of the date of this purchase order may be incorporated on the purchase order. Where necessary to make the clauses applicable to this purchase order, “Contractor” shall mean “Seller,” “Contracting Officer” shall mean “Coda Octopus Engineering and the “Government” shall mean any “Coda Octopus Engineering” or the “Government” whenever appearing in the clauses.