



Purchasing Terms and Conditions

Type: Reference

ISO Section: 7.4.2-2

Document # 12767-000

Page 1 of 7

1.0 Purpose and Scope

The purpose of this document is to define Vanguard standard Terms and Conditions. This document is to be used by Purchasing and is to be given to Suppliers when placing orders with that may affect product or service quality.

2.0 References

For internal documents, see Agile BOM tab

3.0 Definitions

See Acronyms & Definitions document

4.0 General

No general information applies

5.0 Terms and Conditions

1. Order Acceptance

- 1.1. Seller's commencement of work on the goods or services covered under any Vanguard EMS, Inc. ("Vanguard" or "Company") Purchase Order ("P.O." or "Order") or any conduct by Seller which in fact recognizes the existence of a contract between Vanguard and Seller pertaining to the subject matter hereof shall constitute an unqualified acceptance by Seller of the terms and conditions contained herein. Any and all terms proposed in Seller's acceptance of Vanguard's offer which add to, vary from, or conflict with the terms herein are hereby objected to by Vanguard. Any order acknowledgment, invoice or other instrument issued by Seller is solely for Seller's internal administrative purposes, and all terms and conditions contained therein shall be void and of no force or effect in the event of a dispute.
- 1.2. If this Order has been issued by Vanguard in response to an offer and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Order by Vanguard shall constitute an acceptance of such offer subject to the express condition that Seller assent to such additional and different terms herein.

2. Entire Agreement

- 2.1. Vanguard's Purchase Orders consist of all terms contained therein, the specifications, documents and attachments referred to or attached thereto by Vanguard together with the terms and conditions of purchase stated herein. The Purchase Order and its attachments sets forth the entire agreement between the parties and is limited to the provisions contained therein. No amendments or modifications to its provisions will be binding upon Vanguard unless in writing and signed by an authorized representative of Vanguard.

3. Price

- 3.1. The price(s) set forth on the face of each Order are firm. If no price or delivery date appears thereon, Vanguard will not be bound to any price or delivery date to which it has not specifically agreed in writing. Unless otherwise provided herein, such prices include all costs for packing, insuring and transporting the goods ordered to Vanguard's facility. Vanguard shall not be liable for any taxes or governmental charges or fees with respect to any Vanguard Purchase Order other than those which Seller is



Purchasing Terms and Conditions

Type: Reference

ISO Section: 7.4.2-2

Document # 12767-000

Page 2 of 7

required by law to collect from Vanguard. All such taxes and fees shall be stated separately on Seller's invoice.

- 3.2. Seller agrees to extend to Vanguard any price reductions necessary to give Vanguard the benefit of the lowest and most favorable price(s) and terms offered or given by Seller to other purchasers of the same goods and services in similar quantities described in the Order.

4. Delivery

- 4.1. TIME IS OF THE ESSENCE OF THIS ORDER. If delivery is not made at the date specified, Vanguard reserves the right to cancel the entire Order or that part of the Order not timely delivered, and to purchase elsewhere and hold Seller liable for all costs and damages incurred by Buyer. Without limitation of the foregoing, Seller shall notify Vanguard promptly of any delays or threatened delays in the performance of any order. Seller shall not make any material commitment or production arrangement in excess of the amounts, nor in advance of the time necessary to meet Vanguard's delivery schedule for goods or services covered by any Vanguard Purchase Order. Any excess commitments or arrangements shall be made at Seller's own risk. Vanguard shall not be liable for goods shipped in advance of or in excess of scheduled deliveries.
- 4.2. Seller assumes all risk of loss and damage to the goods until delivery to Vanguard at its facility specified on the face of the Order. The term FOB in each Order refers to transportation charges only unless INCOTERMS are applied.

5. Packing and Shipment

- 5.1. Unless otherwise specified, price is to cover new equipment and material ordered and no charges will be allowed for boxing, crating, carting or storage. Equipment and material shall be suitably packed to secure lowest transportation cost and in accordance with the requirements of common carriers. The Company's order numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment, showing the Company's order number, description of equipment and material and item number. Without the Company's prior written consent, deliveries shall not be made in whole or in part prior to the date or dates shown on an order, nor shall they exceed the quantities specified in delivery schedules. The Company will pay only for maximum quantities ordered. Over-Shipment will be held at Seller's risk and expense for a reasonable time waiting shipping instructions. Return shipping charges for excess quantities will be at Seller's expense.

6. Inspection and Acceptance

- 6.1. All equipment, parts, materials and workmanship to be furnished under any order shall be subject to inspection and test by representatives of the Company, and if the order is issued under a United States Government ("Government") prime contract or sub-contract, representatives of the Government, at all reasonable times and places during the manufacture or testing thereof, and, in any event prior to final acceptance. If such inspection is made on Seller's premises, Seller shall provide to such representatives, without charge, reasonable facilities and assistance. Such inspection and test shall not relieve Seller from responsibility regarding defect or other failures to meet requirements and shall not be deemed an acceptance by the Company.
- 6.2. All goods and services shall be subject to inspection and acceptance by Vanguard after delivery notwithstanding any payment. After receipt of the goods or services, Vanguard shall have a reasonable time (which time shall not be less than ninety days)



Purchasing Terms and Conditions

Type: Reference

ISO Section: 7.4.2-2

Document # 12767-000

Page 3 of 7

within which to inspect prior to Vanguard's acceptance thereof. Nonconforming goods may be returned freight collect, and Seller shall bear return transportation cost.

- 6.3. The review or approval by the Company of any work under an order or of any design, drawings, specifications or other documents prepared thereunder shall not relieve Seller of any of its obligations under an order nor excuse or constitute a waiver of any defects or nonconformities in any equipment, material or services furnished under an order of change, modify or otherwise affect any provisions of an order, including, but not limited to, prices and delivery schedules contained herein.

7. Warranty

- 7.1. Seller warrants title to the goods described on the face of each Vanguard P.O. and warrants further that all goods and services furnished:
- i. will be in full conformance with the specifications, drawings, samples or other descriptions set forth or referred to on the face thereof;
 - ii. will perform as represented by Seller (even if such representations do not appear on the face thereof, notwithstanding the provisions of paragraph 2 hereof);
 - iii. will be new, merchantable and fit for the use intended by Vanguard;
 - iv. will be free from defects in material, workmanship, manufacture and design (where design is Seller's responsibility).

Seller's warranty shall be effective for a minimum period of one year from the date of acceptance by Vanguard. This warranty will run to Vanguard EMS, its customers and users of its products.

- 7.2. In addition to other remedies available at law or in equity, Vanguard may, at its option, return to Seller for full credit any goods which do not meet the warranties specified or require correction or replacement of such goods or services, all at Seller's risk and expense. Packing and shipping shall be at Seller's cost.
- 7.3. If the order is issued under a Government prime contract or subcontract and if Seller is to furnish technical data under such order, the provisions of the Warranty of Technical Data clause contained in such prime contract or subcontract shall apply to such data and to the Seller in such manner as will enable the Company to meet its obligation to its customer without additional expense to the Company.

8. Changes

- 8.1. Vanguard may direct changes to each Order in writing. Equitable adjustments will be made in price or schedule where required. Any claims for adjustment shall be made by Seller in writing not later than thirty days from the date of Seller's receipt of any such direction from Vanguard. Seller shall not be excused from proceeding with a change prior to negotiation of any adjustment.

9. Intellectual Property Indemnity

- 9.1. Seller warrants that all goods purchased and the manufacture, sale and use thereof do not and will not infringe any third party patent, copyright, trademark, trade secret or other proprietary right ("Intellectual Property"). Seller agrees to defend, indemnify and hold harmless Vanguard, its employees, agents, distributors, dealers, affiliates, customers and users from all liabilities, obligations, costs and expenses (including reasonable attorneys' fees and costs), claims or demands for actual or alleged infringement of any Intellectual
- 9.2. Property arising from the purchase, use or sale of goods required by a Vanguard Purchase Order, except to the extent that infringement or alleged infringement arises by reason of design for such goods furnished to Seller by Vanguard.



Purchasing Terms and Conditions

Type: Reference

ISO Section: 7.4.2-2

Document # 12767-000

Page 4 of 7

10. Indemnification

10.1. Seller agrees to defend, indemnify and hold harmless Vanguard and its employees, directors, agents, distributors, dealers, affiliates, customers and users from all liabilities, obligations, costs and expenses (including attorneys' fees and costs) incurred by Vanguard as a result of any claims, demands, actions or judgments on account of personal injury or death, or damages to property arising out of or in connection with Seller's performance of a Vanguard Order. Seller shall carry and maintain insurance coverage satisfactory to Vanguard to cover the above, and upon Vanguard's request, shall furnish Vanguard with evidence of such insurance in a form satisfactory to Vanguard. Such indemnity shall apply whether an indemnitee is claimed to be passively, concurrently or actively negligent and regardless whether liability without fault is imposed on one of the indemnitees.

11. Termination For Convenience

11.1. Vanguard may terminate an Order, in whole or in part, at any time with or without cause, upon written notice to Seller. Upon receipt of such notice, Seller shall stop work immediately and terminate all orders and sub-contracts to the extent that they relate to the terminated work.

11.2. There shall be no charges for terminating the Order with respect to standard goods. Any claim for termination charges for non-standard goods must be submitted to Vanguard in writing within ten days after receipt of the termination notice.

11.3. Vanguard's sole responsibility to Seller shall be to pay the contract price for such goods as have been delivered as of the time such termination is effective and to reimburse to Seller its actual costs of materials and direct labor expended by Seller as of the termination date in reasonable anticipation of its fulfillment of an Order which are not recoverable by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit for undelivered goods. Vanguard shall not be responsible for any commitments made by Seller in advance of those necessary to comply with the schedules set forth in each Order. Upon payment of Seller's claim, Vanguard shall be entitled to all goods, materials and work in process paid for.

12. Cancellation For Default

12.1. Vanguard may cancel an Order immediately, in whole or in part, in the event Seller:

- i. fails to make timely delivery, or
- ii. breaches any other term or condition of the Order. Seller shall continue to supply any portion of the Order not canceled.

12.2. In the event of such cancellation, at Vanguard's request, Seller will transfer title to, and deliver to Vanguard:

- i. any completed goods;
- ii. any partially completed items and
- iii. all unique materials and tooling. Prices for partially completed goods and unique materials and tooling accepted shall be negotiated; however, in no event shall such prices exceed the Order price for said goods.

12.3. Upon the happening of any event or condition which may, in Vanguard's good faith judgment, impair Seller's ability to perform an Order, Vanguard may demand, in writing, adequate assurance of Seller's ability to continue performance of the Order. If Seller does not provide adequate written assurance within fifteen days of receipt of Vanguard's demand, Seller shall be deemed to have rejected continued performance thereunder and to have materially breached the Order. In such event, Vanguard shall have no further liability.



Purchasing Terms and Conditions

Type: Reference

ISO Section: 7.4.2-2

Document # 12767-000

Page 5 of 7

13. Insolvency

13.1. Vanguard may without liability terminate any order in the event Seller becomes insolvent, ceases to do business as a going concern, or makes an assignment for the benefit of creditors, or if a voluntary or involuntary petition for bankruptcy is filed by or against Seller, or if a receiver or trustee is appointed for Seller.

14. Confidential Information

14.1. All information furnished or disclosed to Seller by Vanguard in connection with any Order which is identified as "Confidential" or "Proprietary" is received in confidence, shall remain the property of Vanguard and shall not be disclosed to any third party without Vanguard's written consent. Seller shall not use any such information for any purpose other than to perform the Vanguard Order associated therewith. If requested, Seller shall execute Vanguard's Non-Disclosure Agreement before receipt of any such confidential information. Seller will return, upon demand, all such confidential information to Vanguard upon completion by Seller of its obligations under each Order. The obligations of this paragraph shall survive expiration or termination of any Vanguard Order.

15. Inventions and Proprietary Rights

15.1. Seller agrees to promptly disclose to Vanguard all ideas, inventions, discoveries and improvements that are made, conceived, compiled or reduced to practice by Seller, solely or jointly with others, that are related to the performance of, or arising out of, or are paid for by Vanguard in connection with any Vanguard Order ("New Developments"). Seller further agrees to assign to Vanguard all right, title and interest to all such New Developments. In the event that, notwithstanding the foregoing, title to and ownership of any New Development initially vests in Seller, Seller agrees to execute, at Vanguard's request, all documents as may be necessary to grant, transfer and assign all such title and ownership thereof to Vanguard.

16. Assignment and Subcontracting

16.1. Seller shall not delegate or subcontract any duties, nor assign any rights or claims under any Vanguard Purchase Order without Vanguard's prior written consent.

17. Release of News Information and Advertising

17.1. Seller shall not, without the prior written consent of the Company make any news release, public announcement, denial or confirmation of all or any part of the subject matter of an order, or any phase of any program thereunder, or in any manner advertise or publish the fact that the Company has placed an order.

18. Compliance With Laws

18.1. Seller guarantees that all goods delivered to Vanguard are produced, packed, labeled and shipped in compliance with all applicable laws. Seller agrees to comply with all Federal, State, County and local laws, rules, codes, executive orders and regulations including but not restricted to the Buy American Act, the Occupational Safety and Health Act, the Espionage Act, the Walsh Healy Act, the Eight Hour Law, the Davis-Bacon Act, the Neutrality Act of 1939, the Economic Stabilization Act, the Equal Opportunity Act, the Fair Labor Standards Act of 1938 and the Copeland ("Anti-Kick-Back") Act (the "Laws") applicable to its provision of the ordered materials and services. Seller agrees to hold harmless Vanguard and its employees, agents, affiliates, customers and users from any liability arising from Seller's failure to comply with such Laws.

19. Conflict Minerals



Purchasing Terms and Conditions

Type: Reference

ISO Section: 7.4.2-2

Document # 12767-000

Page 6 of 7

- 19.1. As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act which passed in July 2010, the United States Securities and Exchange Commission passed legislation which requires U.S. companies to report on the origin of the conflict minerals of tin, tantalum, tungsten, and gold. Vanguard EMS supports the legislation and its position to avoid the use of conflict minerals from the Democratic Republic of Congo and adjoining countries. Vanguard EMS requires chain of custody declarations from our suppliers to verify the origin of the conflict minerals contained in their products.
- 19.2. Vanguard EMS expects the following from our suppliers:
- i. To source materials from socially responsible sub-tier suppliers and manufacturers
 - ii. To comply with Securities and Exchange Commission regulations and provide all necessary declarations
 - iii. To undertake reasonable due diligence through the supply chain to determine the origin of conflict minerals
- 19.3. Suppliers who are non-compliant with our policy will be reviewed to determine supplier status for our organization.

20. Export Laws and Regulations

- 20.1. In performing its obligations under this order, Seller will comply with United States export control and asset control laws, regulations, and orders, as they may be amended from time to time, applicable to the export or re-export of goods or services, including software, processes, or technical data ("**Items**"). Such regulations include without limitation the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control (collectively, "Export Control Laws").
- 20.2. Seller shall be responsible for obtaining the required authorizations prior to conducting an export or re-export of any Items, as defined in such laws and regulations. Buyer shall reasonably cooperate with, and exercise reasonable efforts to support, Seller making the export or re-export in obtaining any necessary licenses or authorizations required to perform Seller's obligations under this Agreement.
- 20.3. Seller shall, upon written request of Buyer, provide the Export Control Classification Numbers ("ECCNs") for each Item being delivered to Buyer as well as the ECCNs for any components or parts of each Item, if such component ECCN's are different from the ECCN of the item at issue.
- 20.4. Seller represents that
- i. any Items, and the parts and components thereof, it is providing in conjunction with this order are not currently "defense articles" as that term is defined in 22 C.F.R. § 120.6 of the ITAR and
 - ii. the services that Seller is providing in conjunction with this order are not currently "defense services" as that term is defined in 22 C.F.R. § 120.9 of the ITAR. Seller acknowledges that this representation means that an official capable of binding Seller knows or has otherwise determined that such items, and the parts and components thereof, are not currently on the United States Munitions List at 22 C.F.R. § 121.1. Each party agrees to reasonably cooperate with the other in providing, upon written request of the other party, documentation or other information that supports or confirms this representation, including, for example, Commodity Jurisdiction Determinations.
- 20.5. To the extent that such items, or any parts or components thereof, were specifically designed or modified for a military end use or end user, Seller shall notify Buyer of this



Purchasing Terms and Conditions

Type: Reference

ISO Section: 7.4.2-2

Document # 12767-000

Page 7 of 7

fact and shall also provide Buyer with written confirmation from the United States Department of State that such Items, and all such parts or components thereof, are dual-use Items subject to the jurisdiction of the Department of Commerce.

21. Governing Law

21.1. All Vanguard Purchase Orders shall be interpreted in accordance with, and governed by the laws of the State of Oregon, excluding its conflict of law rules. Any litigation arising out of a Vanguard Order shall be brought in the state or federal courts located in Washington County, Oregon and the parties consent to the jurisdiction over them by such courts.

22. Disputes

22.1. Any dispute, controversy, or claim relating to this contract ("Dispute") will be resolved first through good faith negotiations between the two parties. If the parties are unable to resolve the Dispute, either party may submit the Dispute for resolution by mediation. The mediation shall be conducted in Portland, Oregon or such other place as the parties may agree. Mediation will continue for at least 30 days, if necessary, unless the mediator chooses to withdraw sooner. Each party shall bear its own costs of the mediation effort, and the parties shall share equally the costs of the mediator. If the Dispute cannot be resolved through mediation, either party may commence an action to resolve the Dispute in, but only in, a court of competent jurisdiction in the Washington County, Oregon or in the United States District Court, District of Oregon, it being agreed that the parties submit to the jurisdiction of such court. The parties expressly waive and forgo any right to trial by jury. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law. Any failure to enforce any provision of this purchase order may not be construed as a waiver of such provision or any other provision of the right to enforce such provision.

23. Rights and Remedies

23.1. All rights and remedies specifically set forth in any Vanguard Order shall be in addition to any other or further rights and remedies provided at law or in equity. Failure of Vanguard to insist upon strict performance of any term or condition of any Vanguard Order shall not be deemed to be a waiver of Vanguard's rights and remedies.

24. Setoffs

24.1. All claims for money due or to become due from Vanguard shall be subject to setoff by Vanguard by reason of any counterclaim arising out of any Vanguard Purchase Order or any other transaction with Seller.

25. Vanguard's Property

25.1. All property and material furnished to Seller by Vanguard or specifically paid for by Vanguard shall be used only in the performance of Vanguard's Orders and shall remain the property of Vanguard. Such property shall be held at Seller's sole risk and shall be maintained by Seller at Seller's expense. Such property shall be delivered in good condition, normal wear and tear excepted, to Vanguard, FOB Vanguard's plant, immediately upon request by Vanguard.

26. U.S. Government FAR, DFARs And Other Contract Flow-Downs

26.1. All required flow-down regulatory and quality clauses applicable to each Vanguard Order are incorporated therein either by attachment or by other means of reference and availability to Seller as though fully set forth in the Purchase Order.