



# Form

**SUBJECT: Purchase Order Terms and Conditions**

**EDITOR: Lyndie Wingenroth**

**APPROVAL: Sandi Keller**

**NUMBER: MTF 0008**

**Revision Date: 07/12/2017**

**REVISION: 1.0**

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1.0	Initial Release – made into a formal form and updated names	07/12/2017

## Independent Rough Terrain LLC PURCHASE ORDER TERMS AND CONDITIONS

This document contains the terms and conditions relating to the purchase order (“Purchase Order”) issued by Independent Rough Terrain Center LLC (“IRTC”) to the supplier/subcontractor seller (“Seller”) to obtain the requested goods or services. IRTC and Seller are referred to individually as “Party” or jointly as “Parties.” IRTC is a Prime Contractor to the U.S. Government (“Government”). Therefore, the Government requires certain terms and conditions of the prime contract to also flow-down to the Prime Contractor’s suppliers and subcontractors. These additional obligations are set forth in federal statutes and regulations and incorporated herein.

All performance requirements stated herein apply to all goods and services purchased by IRTC from Seller, regardless if the goods or services under this agreement relate to a final sale to the Government or other end users.

This Purchase Order incorporates the stated Federal Acquisition Regulation (“FAR”) and Defense Federal Acquisition Regulation Supplement (DFARS) and other federal agency regulations and requirements upon the Seller. Failure to comply with these provisions not only exposes the Seller to typical damages for breach, but it may also expose the entity to civil and criminal penalties imposed by statute. The terms and condition stated herein are fully incorporated into the Purchase Order. If the Purchase Order contains terms that vary from the terms and conditions stated herein, the terms of the Purchase Order shall control.

### 1. DELIVERY / DELAYS

A. Time is of the essence for deliveries to IRTC and shall be made in accordance with the delivery schedule. Delivery dates and quantities shown on the Purchase Order are dates the goods or services are required at IRTC’s facility, unless otherwise stated. Seller shall promptly notify IRTC of any actual or anticipated delay in shipment or delivery.



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**B.** Acceptance of delayed deliveries or shipment or inadequate quantities from Seller does not constitute a waiver of IRTC's right to demand strict compliance with the ordered quantity or delivery schedule set forth on the Purchase Order with respect to all other deliveries, and IRTC shall specifically have the right to recover from Seller any damages caused IRTC by Seller's delay. IRTC shall be entitled to: (1) an equitable price reduction for late or partial deliveries, or (2) termination of the Purchase Order for default. Failure of the Parties to reach an agreement on an equitable price reduction shall be a dispute under the "Disputes" clause under this Purchase Order. Seller has a duty to continue performance under the Purchase Order pending resolution of the dispute.

## 2. PAYMENT

**A.** Payments for goods or services under the Purchase Order shall be made by IRTC within net sixty (60) days after the goods or services have been received, inspected and preliminarily approved by IRTC and receipt by IRTC of Seller's proper invoice with appropriate "Bill of Lading" and inspection and conformance certificates attached thereto. Bill of Lading shall be as defined by § 1.201 of the Tex. Business and Commerce Code. IRTC shall pay only for goods inspected and accepted and in the quantity requested. No payment shall be due for non-conforming items. IRTC shall have no liability for payment for materials or items delivered in excess of the quantity specified in the Purchase Order, unless IRTC agrees in writing to pay for such excess amount.

**B.** Seller shall certify on all invoices rendered to IRTC that it has complied with all applicable state, federal, county and municipal laws, regulations, and ordinances. In addition, Seller shall certify that the amounts requested for payment are only for the goods or services supplied to IRTC in accordance with the terms and conditions of this Purchase Order.

## 3. CHANGES

**A.** IRTC may at any time by a written Purchase Order issued by an authorized IRTC Representative and without notice to sureties, if any, make changes within the general scope of this Purchase Order, in anyone or more of the following: (1) drawings, designs, or specifications; (2) method of shipment or packing; (3) time or place of performance, inspection, delivery, or acceptance; (4) reasonable increases or decreases in quantities; (5) reasonable changes in delivery schedules; and (6) issue additional instructions or require modification in the work or services. Seller shall proceed immediately to perform this Purchase Order as changed. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, or otherwise affects any other provisions of this Contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the purchase price, delivery schedule, or in such other provision of the Contract as may be so affected, and the Contract modified in writing accordingly. Any claim by the



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Seller for adjustment under this clause must be asserted in writing within twenty (20) days from the date of receipt by the Seller of the notification of change; provided, however, that IRTC, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under the Purchase Order.

**B.** Contractor shall provide advanced notification in writing to IRTC of any changes to tooling, facilities, materials or processes at the contracting supplier or their sub-tier suppliers that could affect IRTC's product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify IRTC of any pending or contemplated future action to discontinue articles purchased pursuant to a Purchase Order and shall allow IRTC to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the articles. Seller shall provide IRTC with a "Last Time Buy Notice" at least twelve months prior to the actual discontinuance. Seller shall extend opportunities to IRTC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

Nothing in this Section shall excuse Seller from proceeding immediately with the performance of the Purchase Order as changed.

#### 4. SUPERSEDING SPECIFICATIONS

All references in any IRTC or Government specification incorporated herein shall be deemed to include all specifications supplementary to or superseding the specifications so referenced, to the extent that such supplementary or superseding specifications are in effect at the date of Seller's latest quotation, if the Seller was furnished or otherwise notified of the existence of such supplementary or superseding specifications at the time of said quotation.

Nothing in this Paragraph shall excuse Seller from proceeding immediately with the performance of the Purchase Order as changed.

#### 5. WARRANTIES

**A.** Seller represents and warrants that the goods and services furnished in response to this Purchase Order shall:

- i. Be merchantable and free from defects in design, workmanship and materials, and fit for the particular purpose intended and shall be of the kind and quality described; and
- ii. Conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by IRTC.

**B.** Seller further represents and warrants that packing and method of shipment of such supplies shall conform to the requirements of this Purchase Order.



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**6. TITLE AND RISK OF LOSS**

A. Seller warrants that the goods furnished are free and clear of any security interests or other lien or encumbrance and that Seller has good title hereto. SELLER AGREES TO INDEMNIFY IRTC, AND/OR THE GOVERNMENT FOR ANY DEFECTS OR ENCUMBRANCES UPON TITLE TO THE GOODS PROVIDED UNDER THIS PURCHASE ORDER. Title and risk of loss or damage to goods covered by this Purchase Order shall pass to IRTC upon receipt and acceptance by IRTC at IRTC’s designated destination. Notwithstanding the above, the risk of loss or damage to goods which failed to conform to the Purchase Order, are rejected by IRTC and title shall remain with Seller until cure and formal acceptance by IRTC.

B. The provisions of Section 6 shall survive the termination of this Purchase Order.

**7. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS**

A. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS IRTC AND ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, CONSULTANTS, AGENTS, AND EMPLOYEES (COLLECTIVELY ALSO CALLED “THE INDEMNITEES”) FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DEMANDS, LOSSES, AND LIABILITIES OF ANY NATURE WHATSOEVER WHICH ARISE FROM BODILY INJURY OR DEATH TO ANY PERSON OR FROM LOSSES OF OR DAMAGES TO ANY TANGIBLE OR INTANGIBLE PROPERTY OF ANY NATURE WHATSOEVER WHICH ALLEGEDLY RESULT FROM THE SEPARATE OR CONCURRENT CONDUCT OF ANY AND ALL PERSONS (WHETHER THE CONDUCT IS TORTIOUS OR NOT TORTIOUS) AND/OR FROM THE SEPARATE OR CONCURRENT USE OF ANY GOODS, SERVICES, OR ANY PROPERTIES RELATED IN ANY MANNER TO SELLER’S PERFORMANCE INCLUDING BUT NOT LIMITED TO PRODUCT DEFECTS, CORROSION OR PRODUCT FAILURE OR IRTC’S PRODUCTION OF GOODS INCORPORATING GOODS PROVIDED BY SELLER, AND SELLER SHALL REIMBURSE TO THE INDEMNITIES ALL EXPENSES OR COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION, HANDLING, SETTLEMENT, OFFSET, DEFENSE AND/OR ENFORCEMENT OF ANY RIGHTS RELATED IN ANY MANNER TO THIS AGREEMENT AND/OR TO ANY AND ALL SUCH CLAIMS, ACTIONS AND DEMANDS AND SHALL PAY ANY AND ALL JUDGMENTS, AWARDS, OFFSETS, AND/OR SETTLEMENTS, RESULTING FROM SUCH CLAIMS, ACTIONS AND DEMANDS, EXCEPT FOR ONLY SUCH CLAIMS, ACTIONS OR



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DEMANDS CAUSED SOLELY BY THE TORTIOUS CONDUCT OF THE INDEMNITEES. SELLER EXPRESSLY WARRANTS THAT THE GOODS AND SERVICES SUBJECT OF THIS PURCHASE ORDER ARE FREE FROM ANY DEFECTS OR CONDITIONS THAT MIGHT GIVE RISE TO CLAIMS, ACTIONS OR DEMANDS AGAINST WHICH SELLER HEREBY AGREES TO INDEMNIFY. UNDER NO CIRCUMSTANCES SHALL SELLER OR ITS INSURERS PARTICIPATE OR ENTER INTO ANY SUBROGATION AGAINST THE INDEMNITIES. FURTHERMORE, SELLER SHALL INDEMNIFY, DEFEND, AND SERVICES SUBJECT OF THIS PURCHASE ORDER ARE FREE FROM ANY DEFECTS OR CONDITIONS THAT MIGHT GIVE RISE TO CLAIMS, ACTIONS OR DEMANDS AGAINST WHICH SELLER HEREBY AGREES TO INDEMNIFY. UNDER NO CIRCUMSTANCES SHALL SELLER OR ITS INSURERS PARTICIPATE OR ENTER INTO ANY SUBROGATION AGAINST THE INDEMNITIES. FURTHERMORE, SELLER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM ANY AND ALL SUCH DEMANDS, CLAIMS, SUITS, LIABILITIES, EXPENSES, OFFSETS, FINES, OR DAMAGES WHATSOEVER ARISING OUT OF OR RELATED TO ANY FAILURE OF SELLER OR ITS SUBCONTRACTORS TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, RULES, AND ORDINANCES.

**B.** The provisions Section 7 shall survive the termination of the Purchase Order.

## **8. FINANCIAL RESPONSIBILITY**

**A.** Seller shall, prior to commencing work under the Purchase Order, furnish such financial data and related information as may be required by IRTC to permit a determination of financial capability, financial responsibility to enable performance of the Purchase Order. Seller shall, at no increase in price or other cost to IRTC, promptly submit interim financial data as may be requested by IRTC to determine continuing, financial capability and responsibility during the progress of work under the Purchase Order. If Seller's financial capability and responsibility are determined by IRTC to be such as may jeopardize performance hereunder, IRTC shall have the right to request, and Seller shall promptly deliver at no increase in price or other cost to IRTC, a complete and current manufacturing data package sufficient to enable IRTC to complete or source such product to another supplier to complete the Purchase Order and terminate the Purchase Order for Default. Upon such request by IRTC, Seller thereby grants to IRTC a non-exclusive royalty-free license and rights under such data and patents, if furnished hereunder. IRTC agrees that, so long as Seller is not in default, IRTC will not use the drawings for such manufacture. Upon completion and acceptance by IRTC of the work required to be performed hereunder, IRTC shall redeliver to Seller such manufacturing data package.

**B.** In the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Seller's property, or for any act or petition in bankruptcy: whether voluntary or involuntary, as defined in the Bankruptcy Reform Act of 1978, Title 11, United States Code, as amended, IRTC may terminate this



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Purchase Order for Default, Seller shall not proceed with performance of the Purchase Order; in which case IRTC is released from all further obligations, except that IRTC shall be obliged to pay for any article accepted prior to any of the foregoing occurrences at the prices specified in the Purchase Order.

C. Seller agrees that no liens or property rights of any kind shall lie or attach upon or against the products or any part thereof, for or on account of any work performed, provided, or services furnished by Seller pursuant to the Purchase Order. If any lien or encumbrance is asserted against these products/services, or any part thereof, IRTC shall have the rights to discharge the same by filing a bond or security, or in its discretion, by paying the amount of the claim, and in such event, IRTC shall have the right to deduct from the Purchase Order price the amount thus paid. IRTC has paid the Purchase Order price, Seller shall reimburse IRTC for all costs to discharge such claim, including all administrative and legal expenses incurred by IRTC related to such action.

D. IRTC may terminate the Purchase Order, whenever Seller's financial condition may jeopardize performance and IRTC shall be entitled to all remedies under the law and in accordance with Termination for Default provisions herein.

## 9. INSURANCE AND LIABILITY

A. Seller shall keep and shall require its subcontractors to keep all material, tools and equipment in which IRTC or the Government has any interest insured against risk or loss or damage for their value at Seller's own expense during such time as the remain in Seller's possession.

B. Seller shall maintain in full force and effect, at its expense, for as long as it shall provide goods or services to IRTC, insurance policies of:

- (1) Commercial General Liability insurance (including products, completed operations and contractual liability coverage) covering the Seller with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate in favor of IRTC and minimum umbrella coverage of \$5,000,000;
- (2) If Seller's employees enter IRTC's premises, Seller shall obtain and maintain, at its expense and for so long as such employees shall conduct such operations, a policy or policies of Worker's Compensation and Employer's Liability (including Stop Gap coverage in those states where applicable) insurance with minimum limits of \$2,000,000;
- (3) If Seller uses automobiles on IRTC's premises or on behalf of IRTC, Seller shall obtain and maintain, at its own expense and for long as such exposure exists, Automobile Liability insurance with minimum limits of \$2,000,000 for each accident, including owned, non-owned and hired vehicles.



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C. Seller shall provide to IRTC, or IRTC’s designated representative, Certificates of Insurance naming IRTC as Additional Insured for the above-indicated insurance policies. All policies will be provided by insurers rated “A-“or better by A.M. Best. Seller shall provide IRTC with such Certificates of Insurance upon execution hereof, and shall provide updated Certificates of Insurance to IRTC when coverage is renewed or materially changed and as may be requested from time to time by IRTC. In the event Seller is unable to comply with one or more of the requirements herein, Seller must inform IRTC in writing in which case IRTC will refer Seller to appropriate resources to assist Seller in complying with these requirements.

D. Policy limits will not be reduced, terms changed, or policy canceled with less than thirty (30) days prior written notice to IRTC. Seller’s insurance will be primary with respect to all obligations assumed by the Seller pursuant to this Agreement. It shall be the responsibility of the Seller to ensure that all of its agents, representatives, and suppliers comply with the above-indicated insurance requirements. Insurance coverage and limits referred to above will not in any way limit the liability of the Seller.

E. Seller shall provide IRTC within five (5) days of the Purchase Order, certificates of insurance and copies of required insurance policies to IRTC for approval.

F. When Seller’s employees, agents or contractors are on IRTC’s premises for any reason, the presence of Seller shall be as an independent contractor.

## 10. INSPECTION, TESTING, ACCEPTANCE, RELIABILITY CONDITIONS, QUALITY ASSURANCE

A. Items covered by this Purchase Order shall be subject to inspection and tests by IRTC and/or Government, as required by the FAR or such other agency regulations. IRTC may require Seller’s products meet the requirements of Level IV Production Part Approval Process (“PPAP”). If required, the Purchase Order will state such PPAP requirement and such requirements are further described in QWI 0015 PPAP Submission Requirement and the QP0003 Supplier Quality Manual. These documents may be obtained from IRTC’s Supplier sourcing information system. To the extent practicable such inspections and test will occur at any time or place prior to final acceptance and as specifically provided herein. IRTC and/or Government may either reject or require correction of all defective items and at the expense of the Seller. If Seller fails to replace or correct promptly, IRTC may otherwise replace or correct such goods or lot of goods at the Seller’s risk and expense or terminate this Purchase Order for default as hereinafter provided.



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B. Seller shall provide at its expense all reasonable facilities for inspection and tests. Seller shall provide and maintain an inspection system acceptable to IRTC and the Government. Records of all inspection work and test data performed by Seller shall be kept complete and available to IRTC and the Government upon request.

C. Final acceptance or rejection shall be made as promptly and as practicable after delivery, but failure to inspect and accept shall not relieve Seller from responsibility for defective items, nor impose liability on IRTC, therefore. Inspection and test by IRTC and or the Government shall not relieve Seller from responsibility for defects or other failures to meet Purchase Order requirements. Payments for, acceptance of, or failure to make any inspection of the goods or services shall in no way impair IRTC's right to reject or revoke its acceptance of non-conforming goods or services or avail itself of any other remedies to conformity, its suitability or the ease of the discovery.

## 11. PPAP PROCESS

A. IRTC may not accept Seller's products until Seller's products meets all requirements of the (1) PPAP process level as stated in the Purchase Order, (2) the QWI 0015 PPAP Submission Requirement, and (3) the requirements of the QP0003 Supplier Quality Manual.

B. If IRTC requires Seller's product pass the requirements stated above, Seller shall bear all costs related to meeting those requirements. IRTC is not responsible for payment to Seller for any product prior to passage of all requirements stated above.

## 12. PACKING, MARKING, SHIPPING AND ROUTING

A. All products shall be packed, marked, and shipped in accordance with the requirements specified in the Purchase Order. If no specific instructions are provided, Seller shall utilize good commercial practices to ensure protection in shipment and storage and compliance with applicable federal, state, and local laws and regulations. Any expense incurred by IRTC as a result of improper preservation, packaging, packing, marking, or method of shipment shall be reimbursed by Seller. Further if products, are not packed as required by IRTC, and the products are damaged, IRTC is not obligated to pay for such damaged products. Seller is obligated to pay all costs to replace damaged products, including but not limited to costs to obtain product from another source and expedited shipping. IRTC shall not be responsible for any separate or additional charge for containers, crating, boxing, bundling, dunnage, drayage, or storage unless specifically stated in the Purchase Order. Seller shall forward to IRTC, with invoice, the express receipt of bill of lading signed by the carrier evidencing the fact that shipment was made.





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B. Seller shall strictly comply with the delivery requirements of this Contract. In the event of Seller's failure to so comply with the delivery requirements, IRTC may, in addition to all other remedies, require Seller, at Seller's expense, to ship articles via air freight or expedited routing to avoid or minimize delay.

C. Seller is to adhere strictly to IRTC routing instructions. Any losses or additional expense incurred by IRTC due to Seller's from deviations from IRTC routing instructions contained in the Purchase Order shall be charged to the Seller. Seller shall contact the IRTC if routing instructions are questionable. Unless otherwise specified, all shipments shall be FOB – Origin.

### 13. FORCE MAJEURE

In the event all other specifications, terms and conditions of this Purchase Order are complied with, neither Party shall be liable for delays due to causes not reasonably foreseeable which are beyond reasonable control such as acts of God, acts of civil or military authorities, strikes, floods, epidemics, war or riots. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice to IRTC. Nothing in this paragraph shall prevent IRTC from canceling this Purchase Order, without cost to IRTC, for any reason stated above.

**14. INTELLECTUAL PROPERTY INFRINGEMENT** Seller shall, at its own expense, hold harmless and defend IRTC against any claim, suit or proceeding brought against IRTC which is based upon a claim, whether rightful or otherwise, that the goods or services or any part thereof furnished hereunder constitute an infringement of intellectual property, including but not limited to: any patent, copyright, or trademark. Seller shall pay all damages, costs, and expenses arising from such claims. In the case goods or services furnished hereunder, or any part thereof are held to constitute infringement of intellectual property rights and the use of said goods or services or part is enjoined; Seller shall, at its own expense, either procure for IRTC the right to continue using said goods or services or replace them with non-infringing goods or services. This paragraph shall not apply to any goods or services or part thereof manufactured or furnished to IRTC's design.

**15. COMPLIANCE WITH LAWS AND REGULATIONS** Seller shall observe at all times all federal, state, county and municipal laws, rules, regulations and ordinances that in any manner affects the goods or services specified in the Purchase Order, including but not limited to environmental, occupational, health and safety protection laws. Seller shall also require all of its agents, subcontractors and employees to observe and comply with said laws, rules, regulations and ordinances.

**16. FAR and DFAR CLAUSES** To the extent the Purchase Order is in support of a U.S. Government Contract, the following FAR and DFAR clauses are incorporated into this Agreement with the same force



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and effect as if they were given in full text, and are applicable. When a FAR clause uses a word or term that is defined in the FAR, the word or term shall have the same meaning as in the definition in FAR 2.101 in effect on the date of the Purchase Order unless (1) a different definition is expressly set forth herein; or (2) the part, subpart, or section of the FAR where the clause is prescribed provides a different meaning; or (3) the word or term is defined in FAR Part 31, for use in the cost principles and procedures. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract (as defined below), the date or substance of the clause incorporated by said Prime Contract shall apply.

Under the terms of the listed FAR and DFAR clauses references to the term “Contractor” shall mean Seller and references to the term “Government” shall mean IRTC and or the Government, as applicable. As used in the clauses below the following definitions apply:

1. “Commercial Item” means as defined in FAR 2.101
2. “Prime Contract” means the contract between IRTC and the U.S. Government in support of the requirements of the U.S. Government.

Seller shall, at the request of IRTC, accept amendments to the terms and conditions of the Purchase Order, as IRTC may reasonable deem necessary in order to comply with the provisions of the applicable Prime Contractor or with the provisions of amendments to such Prime Contract. If any such amendment to the terms and conditions of the Purchase Order increase or decrease the price of the cost of the products, or time required for delivery of the requested products, Seller may request an equitable adjustment from IRTC as provided by the FAR, but approval and payment of such equitable adjustment is subject to and contingent upon approval by the U.S. Government.

**a. FAR Clauses Incorporated By Reference**

52.203-3	Gratuities	APR 1984
52.203-7	Anti-Kickback Procedures	OCT 2010
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	OCT 2010
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	JUN 2010
52.204-2	Security Requirements	AUG 1996
52.204-10	Reporting Executive Compensation and First Tier Subcontracting Awards	JUL 2013
52.211-16	Variation in Quality	APR 1984
52.211-17	Delivery in Excess	SEP 1989
52.215-21	Requirements for Cost or Pricing Data or Information other than Cost or Pricing Data - Modifications	OCT 2010
52.219-8	Utilization of Small Business Concerns	DEC 2010



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52.227-19	Commercial Computer Software Restricted Rights	DEC 2007
52.229-3	Federal, State and Local Taxes	APR 2003
52.229-4	Federal, State and Local Taxes (State and Local Adjustments)	APR 2003
52.230-2	Cost Accounting Standards	OCT 2010
52.230-6	Administration of Cost Accounting Standards	JUN 2010
52.244-6	Subcontracts for Commercial Items	DEC 2013
52.245-1	Government Property	APR 2012
52.246-2	Inspection of Supplies	AUG 1996
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	FEB 2006
52.222-19	Child Labor	JUL 2010
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	MAR 2007
52.222-35	Equal Opportunity for Veterans	SEP 2010
52.222-36	Affirmative Action for Workers with Disabilities	OCT 2010
52.222-37	Employment Reports on Veterans	SEP 2010
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-50	Combating Trafficking in Persons	FEB 2009
52.222-54	Employment Eligibility Verification	JAN 2009
52.223-6	Drug Free Work Place	MAY 2001
52.223-11	Ozone Depleting Substances	MAY 2001
52.225-1	Buy American Act- Supplies	FEB 2009
52.225-5	Trade Agreements	NOV 2013
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008

**b. DFAR Clauses Incorporated By Reference**

252.203-7002	Requirement to Inform Employees of Whistleblower Rights	JAN 2009
252.203-7003	Agency Office of the Inspector General	APR 2012
252.204-7000	Disclosure of Information	DEC 1991



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## 16. TERMINATION AND DEFAULT

A. IRTC shall have the right at any time and for any reason to terminate this Purchase Order for convenience in whole or in part upon written notice to Seller. Seller shall be entitled to a termination settlement in accordance with the provision of FAR 52.249-2 as its sole and exclusive remedy for such termination. For purposes of the Purchase Order, in FAR 52.249-2 “Contractor” shall mean Seller and “Government” shall mean IRTC.

B. IRTC shall have the right at any time to terminate this Purchase Order for default by written notice if Seller fails to make any delivery in accordance with the schedule set forth herein, fails to comply with any of the other requirements or terms and conditions of this Purchase Order including, but not limited to: lacks financial capability to perform, declares bankruptcy or fails to make progress under this Purchase Order so as to endanger performance of this Purchase Order and does not cure such failure within a period of ten (10) days after written notice from IRTC (“Default”). In the event of termination for Seller’s Default, IRTC may procure commodities or services similar to those terminated and Seller shall be liable for new procurement costs, including but not limited to the difference in price of the new procured products, transportation or other related expenses including but not limited to costs to locate and procure the items, consultant and attorney’s fees and related costs.

C. Should Seller default in performance, Seller shall be liable to and shall indemnify IRTC against all claims by the Government or others related to said default, and all losses, expenses, and incidental and consequential damages incurred by IRTC in connection with such default. Additionally, Seller agrees to pay IRTC all costs and expenses including reasonable attorneys’ fees which IRTC may incur in seeking enforcement of this Purchase Order or in pursuing any remedy allowed by the law for breach, whether such are incurred by the filing of a suit or otherwise. Further, Seller shall be liable to IRTC for any other remedies prescribed by law or equity.

## 17. DISPUTES AND GOVERNING LAW

**A. Governing Law.** The Parties expressly agree the provisions of this Section 17 shall be valid and enforceable to the greatest extent possible under the laws of the United States of America or the State of Texas, regardless of any choice of law provisions. Venue of any dispute under this Agreement shall be in Guadalupe County, Texas with Texas district courts or federal district courts having jurisdiction of any dispute related to or arising out this Purchase Order.



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B. Dispute Resolution

1. Mediation

(a) The Parties agree to exchange the names of three neutral parties who may hear the dispute ("Neutral").

(b) Hearing by Neutral. The Parties agree to conduct the dispute resolution hearing with the Neutral within 10 days of written request by either Party. Such hearing will be conducted in Cibolo, Texas, and shall last no more than six hours. Each Party shall present its side of the case in no more than two hours. The Parties must present its evidence by submission of documents; no live witnesses shall be permitted during the hearing. The Neutral shall render the decision within 72 hours from the close of the hearing. The decision of the Neutral is non-binding. Use of the Neutral for dispute resolution is a condition precedent to Trial by Special Judge, as described below.

a. Costs of the Hearing by Neutral. Each party shall pay one-half of the costs of the Neutral.

b. If the parties do not resolve their dispute through mediation as stated above, the method of binding dispute resolution shall be Trial by Special Judge, as described in Section 2, below.

2. Trial by Special Judge. All matters between the Parties which are not resolved by mediation shall be resolved in accordance with the procedures of Texas Civil Practice and Remedies Chapter 151 – Trial by Special Judge in Guadalupe County, Texas.

C. Sponsored Claim. The Seller has no right to direct communication to or decision from the Government, or a direct right of appeal to the Board of Contract Appeals unless IRTC, in its discretion, agrees to sponsor Seller's claim to the Government. In consideration of IRTC's agreement, if any, to sponsor and assist in prosecuting Seller's claim, Seller agrees to release, discharge and hold IRTC harmless from all liability in connection with the subject matter of such claim except IRTC's obligation to pay Seller its proportionate share of all monies received by IRTC from the Government. Seller is responsible for the costs of its attorney fees and other costs of the litigation to prosecute the sponsored claim.

D. Continue Performance. Notwithstanding any dispute arising hereunder, Seller shall proceed diligently with performance according to IRTC's decision and instructions.

E. No Waiver. No provisions hereof may be waived or modified, and no counteroffer hereto shall be deemed accepted, unless made in writing and signed by a duly authorized representative of IRTC. A



# Form

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**APPROVAL: Sandi Keller**

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waiver of one or more defaults or failure to insist on strict performance of any terms of conditions of the Purchase Order shall not be a waiver of any other or subsequent defaults or performance.

F. The provisions of this Section 17 shall survive the termination of the Purchase Order.

## 18. SUBCONTRACTS/ASSIGNMENT/ CHANGES IN OWNERSHIP

A. Seller shall not subcontract with any other party without IRTC's prior written authorization for the whole or any major component of any item or service ordered hereunder, and Seller shall require a like agreement from its subcontractors. Any assignment of this Purchase Order or any rights hereunder by operation of law or otherwise, without the prior written consent of IRTC, shall be deemed void.

B. Seller shall notify IRTC when Seller becomes aware that a change in its ownership has occurred or is certain to occur. At such time, IRTC may request additional assurances regarding the financial responsibility of the new owners and if not satisfied, IRTC may terminate the Purchase Order for its convenience, as described in Section 16 A, above.

## 19. NOTICE

Any notice required or permitted by the Purchase Order shall be in writing and shall be deemed given at the time it is received after it is deposited in the United States Mail, postage prepaid certified or registered mail, return receipt requested, addressed to the party to whom it is to be given to IRTC as follows:

**To IRTC RT Center, LLC:** Lyndie Wingenroth  
103 Guadalupe Drive, Cibolo, TX 78108-1028

**Copy to:** Independent Rough Terrain Center Counsel  
Elizabeth Haws Connally  
Attorney at Law  
Earl & Connally  
601 N.W. Loop 410, Suite 390  
San Antonio, Texas 78216

The names and addresses of individuals entitled to receive notice may be changed only by written notice from one party to the other signed by the representative previously entitled to give or receive notice.



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## 20. CONFLICTS

**A.** To the extent there are conflicts among the provisions of this Purchase Order or any attachments hereto, such conflicting provisions shall prevail in the following order of precedence: (1) typed provisions and specifications on the face of the Purchase Order; (2) terms and conditions of a Master Agreement, if executed between the Parties; (3) Purchase Order attachments, including these terms and conditions.

**B.** IRTC is not bound by any provisions whether printed nor otherwise, at variance with this Purchase Order that may appear on the Seller's acknowledgement, invoice or other document issued by Seller. No change, modification or revision of this Purchase Order shall be valid unless in writing and signed by the authorized representative of IRTC.

**21. PRICE** Seller warrants that the price of goods ordered hereunder do not exceed those charged by Seller to any other customer purchasing the same items in like or similar quantities.

**22. USE OF SPECIFICATIONS** Any specification, drawings, technical information or data furnished to Seller for performance of the Purchase Order shall remain IRTC's property, shall be held in confidence and shall be returned immediately at IRTC's request. Such documents shall be used to complete this Purchase Order and may be used for other purposes with prior written agreement from IRTC.

## 23. TERMS AND CONDITIONS

**A.** Acknowledgement, shipment, or performance of any part of this Purchase Order will constitute acceptance by Seller of all terms and conditions hereof including all documents incorporated herein by reference without reservation and shall constitute the entire agreement between the Parties and supersedes all prior agreements relating to the subject matter thereof. Seller hereby agrees that the terms and provisions of this Purchase Order shall amend and control every other transaction between the Parties involving the sale of goods or services.

**B.** The terms and conditions set forth in the Purchase Order, including these terms and conditions and all specifications and attachments which are incorporated herein by this reference for all purposes, contains the entire agreement intended by the Parties to constitute the final, complete and exclusive statement of their agreement with respect to the subject matter of the Purchase Order, and all prior proposals, communications, negotiations, agreements, understandings and representations relating to such subject matter, whether verbal or written are hereby superseded. No modification or amendment of the Purchase Order shall be effective unless the same is in writing and signed by both Parties.



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**24. SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable, then, to the extent that such invalidity or unenforceability shall not deprive either Party of any material benefit intended to be provided by this Agreement, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

IRTC RT Center LLC

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ (“Seller”).

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_