

# LYME COMPUTER SYSTEMS

## GENERAL TERMS AND CONDITIONS OF SOLICITATION/ PURCHASE FOR COMMERCIAL ITEMS PURCHASED UNDER U.S. GOVERNMENT CONTRACTS (09/2018)

### 1. ACCEPTANCE AND TERMS AND CONDITIONS

- (a.1) If Seller receives these General Terms as a result of Seller's participation in a LYME solicitation (RFI/RFQ/RFP), then Seller agrees to be bound to these General Terms by submitting Seller's response or offer to LYME, except to the extent that Seller has objected in writing to specific provisions, excluding however any objection to the Federal Acquisition Regulations Clauses cited and incorporated herein which specify that Seller provides a certification by submission of its offer (objection to those shall result in the automatic rejection of Seller's response or offer). For all valid written objections from Seller, LYME's Buyer has complete and unilateral discretion to reject as nonresponsive, or accept and negotiate Special Terms in response to, Seller's written objections.
- (a.2) If Seller's Purchase Order from LYME (including all subcontract instruments deemed to constitute a Purchase Order, as set forth in Section 1.d below) makes reference to these General Terms, Seller shall accept this Purchase Order ("PO") and any Amendments thereto by commencement of performance.
- (b) By acceptance of this PO, Seller agrees to comply with all of its terms and conditions and specifications, including those contained in all documents incorporated into this PO by reference. These General Terms and Conditions of Purchase are hereby incorporated to this PO. LYME objects to any terms and conditions contained in any acknowledgment of this PO which are different from or in addition to those recited in this PO.
- (c) Failure by LYME either to enforce at any time any of the provisions hereof or to protest at any time any breach or default thereof shall not be construed as evidence to interpret the terms and conditions of this PO, nor as a waiver of the terms and conditions of such provisions, nor of the right of LYME thereafter to enforce each and every such provision. LYME's approval of documents shall not relieve Seller from compliance with the terms and conditions and specifications governing this PO.
- (d) Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Face of the PO (which term shall include PO continuation sheets, Master Agreements, other subcontract instruments, and the Amendments to any of these), (2) Special Terms and Conditions (meaning any applicable supplementary provisions and/or negotiated exceptions to these General Terms and Conditions documented as an incorporated attachment to this PO), (3) Statement of Work, (4) Federal Acquisition Regulation ("FAR") Clauses (5) General Terms and Conditions, (6) Specifications, (7) Drawings.
- (e) Until final resolution of any dispute hereunder, Seller shall proceed diligently with the performance of this PO in accordance with LYME's direction.
- (f) Seller shall make no change in any design, specification, configuration, material, part, manufacturing process, material supplier, or manufacturing location which affects form, fit, function, reliability, or maintainability of goods without the prior written approval of LYME's Buyer and notify, in writing, LYME's Buyer of any proposed change, whether considered to affect form, fit, function, reliability or maintainability or not, including changes related to Commercial Off-The-Shelf (COTS) items, to facilitate Buyer's assessment of impact to any higher level assembly or system. Seller shall insert this clause in each of its purchase orders issued pursuant to this PO, requiring that its suppliers seek its written approval for such changes (which approval shall not be granted until Seller receives written approval for the change from LYME's Buyer when required). Additional requirements associated with process change and configuration control are included in quality clauses invoked by this PO.
- (g) Seller acknowledges that it has available to it all specifications, drawings, data, and other documents referenced in this PO and that they are adequate to enable Seller to perform the work called for herein in accordance with the delivery schedule.
- (h) Unless otherwise specified in this PO, Seller shall deliver all goods and services in accordance with the applicable specification/drawing revisions in effect at the time of the P.O. issuance. The latest revision of the Military, Federal or Industry document specified on the specification/drawing is the document that shall be used unless otherwise defined. If a specified document has been cancelled, superseded or made obsolete it shall continue to be used (for procurement, certification, process control, etc.) unless an alternative is allowed in accordance with LYME. When a specified document cannot be used the Seller shall contact LYME's Buyer to ascertain how to proceed. Note that a revision to a Government document that involves the identification prefix (such as MIL-S changing to MIL-PRF or MIL-DTL, or DOD-STD changing to MIL-STD) shall not be considered a new document. In addition, if design authority for a Government document has been wholly taken over by a recognized

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industry organization and the document number is essentially the same; i.e., MIL-STD-2175 to AMS-STD-2175, it shall not be considered a new document.

- (i) The interpretation and enforcement of this PO shall be in accordance with the laws of the state where the goods are to be received by LYME or where the LYME facility for which the services are to be performed is located, excluding its choice-of-law rules, except that any provision in this PO that is (1) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (2) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; or (3) substantially based on any such agency regulation of a FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- (j) LYME's rights under this PO are cumulative and in addition to any other rights available at law and equity.
- (k) The line item price for each line in this PO is deemed a Firm Fixed Price, unless indicated to the contrary elsewhere in this PO.
- (l) The LYME PO number and line item number must appear on all correspondence, invoices, packages, and shipping documents.
- (m) LYME Accounts Payable Customer Service number is 603-676-3641.

## 2. SHIPPING

Unless specified differently elsewhere in this PO, shipment shall be —FOB LYME's Dock, Freight Prepaid whereby the Seller shall pay the cost of shipping and insurance to the LYME Dock specified elsewhere in this PO and shall retain title in the goods until the goods are delivered at the LYME Dock. Charges for shipment shall be amortized into the unit price of the goods.

## 3. RISK OF LOSS

Seller shall bear all risk of loss during shipment.

## 4. NEW MATERIALS

The goods to be delivered hereunder shall consist of new materials (not used or reconditioned).

## 5. INSPECTION

- (a) LYME, LYME's customer, and the Government (regardless of whether the Government is LYME's direct customer) may at any time inspect Seller's and Seller's suppliers' facilities which will or may be used in the performance of this PO and may inspect and test all material and workmanship involved in the performance of this PO at any time and place before, during, or after manufacture or completion. No such inspection or test shall in any way relieve Seller of its obligations to furnish all required goods, materials, and services in strict accordance with the terms and conditions of this PO. If inspection and test is made on the premises of Seller or any of its suppliers, Seller shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance for safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to delay the work unduly. All goods are subject to final inspection and acceptance at LYME's plant (or at any other location specified in writing by LYME) notwithstanding any payments or prior inspections. Such final inspection shall be made within a reasonable time after delivery.
- (b) Seller shall provide and maintain an inspection and process control system acceptable to LYME covering the goods hereunder. Records of all inspection work by Seller shall be kept complete and available to LYME and its customers during the performance of this PO and for such longer periods as may be specified in this PO.
- (c) Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the PO.

## 6. MINOR DISCREPANCIES

- (a) If the goods contain minor discrepancies which cannot be reworked to conform to 100% of this PO's terms and conditions and specifications, Seller shall report such discrepancies as soon as possible for potential LYME Material Review consideration. The following information shall be included in the report: PO number and amendment, part number, revision letter, part name, serial numbers, quantity of defective parts, nature and cause of defects, and corrective action taken. LYME Compliance Committee will determine the disposition of nonconforming materials/goods and will convey its findings to LYME's Buyer for communication to Seller. Major discrepancies (which are defined as discrepancies which adversely affect performance, durability, reliability, interchangeability, effective use or operation, weight or appearance [where a consideration], health or safety and maintainability and which cannot be eliminated by rework or reduced to a minor discrepancy by repair) will not be considered for LYME Compliance Committee and will not be accepted by LYME nor its material and other costs paid for by LYME.
- (b) LYME's requiring reports of discrepant material/goods shall not imply willingness to accept such material/goods nor does it relieve the Seller of its performance obligations hereunder.

## 7. DELIVERY

Delivery shall be at the location described elsewhere in this PO.

- (a) If, without written authorization from LYME, Seller ships goods so as to arrive more than thirty (30) days in advance of schedule, LYME may return the goods at Seller's expense. Seller shall not invoice LYME for payment prior to the scheduled delivery date.
- (b) If delivery is delayed or threatened to be delayed by any event, Seller shall immediately notify LYME's Buyer of the estimated delay involved and the reasons therefore. Seller shall include the substance of this clause in all purchase orders and subcontracts issued hereunder.

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## 8. TERMINATION FOR DEFAULT

- (a) LYME may, by written notice of default to Seller, terminate this PO in whole or in part if the Seller fails to: (1) deliver the goods or to perform the services within the time specified in this PO or any extension, or (2) make progress, so as to endanger performance of this PO; or (3) perform any of the other provisions of this contract; and in either of these latter two circumstances does not cure such failure within ten (10) days (or such longer period as LYME may authorize in writing) after receipt of the notice from LYME specifying the failure.
- (b) If this PO is terminated for default, LYME may require Seller to deliver to LYME any usable supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of the PO. LYME and Seller shall agree on the amount of payment for such deliverables; LYME will not require delivery of, accept, nor retain unusable materials/goods and documentation/drawings (for example, goods/materials with major discrepancies) and therefore does not agree to payment for these. LYME shall pay the PO price for completed goods that were delivered and accepted.
- (c) Seller shall not be liable to LYME for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier provided, however, that the delays of Seller's suppliers at any tier are beyond the control of both Seller and its suppliers and without fault, or negligence of either.
- (d) Seller shall promptly notify LYME's Buyer, if Seller is the subject of any petition in bankruptcy.
- (e) The rights and remedies of LYME in this provision are in addition to any other rights and remedies provided by law or under this PO.

## 9. TERMINATION FOR CONVENIENCE

LYME may, by written notice, terminate this PO, in whole or in part, when it is in LYME's interest. If this PO is so terminated, the rights, duties, and obligations of the parties, shall be determined in accordance with Part 49 of the Federal Acquisition Regulation in effect on the latter of the date of issuance this PO or the date of its most recent Amendment. (wherein "Government," and "Contracting Office" shall be deemed to apply to LYME). Seller must submit a termination claim within six (6) months of receipt of initial written notice that this PO has been terminated for convenience.

## 10. STOP WORK ORDER

LYME may, at any time, by written order to the Supplier, require the Supplier to stop all, or any part, of the work called for by this purchase order for a period of 100 days after the order is delivered to the Supplier, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order. Upon receipt of the order, the Supplier shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order, including costs incurred by subcontractors, during the period of work stoppage.

## 11. CHANGES

- (a) LYME may, at any time by a written notification, make changes within the general scope of this PO in any one or more of the following:
- (1) The method of shipment or packing;
  - (2) The place of delivery, inspection and acceptance;
- If any such change to the general scope causes a change in the cost of, or the time required for, performance of this PO, an equitable adjustment shall be made in the price and/or delivery schedule, and in other provisions of this PO that are affected. Any claim by Seller for such an adjustment must be made within twenty (20) days from the date of receipt of the change notification. Failure to agree to any adjustment shall constitute a claim that is subject to the Controversies Section hereunder; however, Seller is obligated to proceed with this PO as changed regardless of the status of disputes. Any agreed adjustment shall be documented in a written Amendment to this PO signed by both parties. LYME, at its unilateral discretion, may approve payment for the adjustment amount in the Amendment before final payment is otherwise due on this PO.
- (b) Only LYME's Buyer is authorized on behalf of LYME to issue a notification of change within the general scope or to communicate and negotiate a necessary change outside of the general scope. If any direction or instruction by LYME personnel is deemed by Seller to constitute such a change, Seller shall not rely upon such instruction or direction without the written confirmation of LYME's Buyer.

## 12. INFORMATION DISCLOSED TO LYME

Except for information of Seller's expressly marked as confidential/proprietary and which LYME had agreed (prior to the issuance of this PO), or agrees hereafter, in advance of its disclosure to receive pursuant to a mutually executed Proprietary Information Exchange Agreement (PIEA), any knowledge or information which Seller has disclosed or may hereafter disclose to LYME in connection with the purchase of the goods and services covered by this PO shall not be deemed to be confidential or proprietary information, and it shall be acquired by LYME free from any restrictions regarding its use or disclosure. LYME will reject or destroy any documents, files, or verbal exchanges indicated by Seller to be confidential/proprietary where a valid PIEA is not in place.

## 13. INFORMATION DISCLOSED TO SELLER

- Seller shall keep confidential all information, drawings, specifications, or data either:
- (a) Furnished by LYME and marked as confidential or proprietary; or
  - (b) Prepared by Seller specifically in connection with the performance of this PO.

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Seller shall not disclose such information, drawings, specifications or data except to those of its officers, employees (including independent contractors, contract labor employees and leased employees), third party vendors or subsidiaries who have a "need-to-know" the information, drawings, specifications or data for the purposes of performance under this PO, and Seller certifies that such officers, employees, third party vendors, or subsidiaries, as the case may be, have previously agreed, either as a condition to employment or in order to obtain the confidential/proprietary information, to be bound by terms and conditions at least as restrictive as the terms and conditions of this provision. Any electronic transmission of Confidential Information by Recipient shall be transmitted using encryption protection or other reasonable precautions, such as password protection. Seller will immediately give notice to LYME of any unauthorized use or disclosure of the confidential/proprietary information. Seller agrees to assist LYME in remedying any such unauthorized use or disclosure of the confidential/proprietary information. Except as required for the efficient performance of this PO, Seller shall not make copies or permit copies to be made without the prior written consent of LYME. Seller shall thereafter make no further use, either directly or indirectly, of any such information, drawings, specifications, data, or of any derivation there from without obtaining LYME's written consent. This provision shall not apply to information after its entry into the public domain by means other than as a result of a breach of this provision, nor shall it limit any rights the Government may have in such information. At the conclusion of this PO, seller shall, at the option of LYME, either return to LYME or destroy all confidential/proprietary information. This provision survives termination of this PO.

## **14. OCEAN TRANSPORT OF FURNISHED PROPERTY**

The Seller shall advise LYME of any proposed transportation by ocean vessels of Furnished Property in the possession of Seller or his subcontractors (including property, the title to which will pass to LYME, the Government, or LYME's customer prior to such transportation) in the performance of this PO. Such Furnished Property shall subsequently be transported only on United States-flag vessels as directed by LYME.

## **15. WORK ON LYME'S OR ITS CUSTOMER'S PREMISES**

(a) If this PO involves work by Seller on LYME's premises or its customer's premises, Seller shall comply with all safety and security regulations and shall take all precautions required by LYME or its customer or otherwise necessary to prevent the occurrence of any injury to person or property during the progress of such work. Seller shall promptly inform LYME of any injury or damage that occurs.

(b) Seller shall provide timely notice to LYME prior to the introduction to the premises of any hazardous material, as defined in any Federal, state, or local law or ordinance or in any lawful order, rule or regulation there under applicable to the premises. Seller shall equip its employees, agents and subcontractors for the use of such hazardous material, and for the use of such other hazardous materials, as identified by LYME to Seller, used by LYME or its customer on the premises.

(c) Seller, and any subcontractors used by Seller in connection with this PO, shall carry the appropriate amount of State required Worker's Compensation and Employee Liability insurance to cover Seller's and such subcontractor's legal liability on account of accidents to their respective employees. Seller and its subcontractors shall carry a minimum of \$1,000,000 of Comprehensive General Liability insurance and a minimum of \$1,000,000 of Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such subcontractors on account of accidents arising out to the operations of Seller or such subcontractors and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. Such Comprehensive General Liability and Comprehensive Automobile Liability Insurance policies shall include a clause or endorsement waiving the insurers' rights of subrogation against LYME and recognizing LYME as an additional insured. Seller shall furnish to LYME certificates from Seller's insurers showing such coverage in effect prior to commencing work on LYME's premises and Seller agrees to give LYME ten days prior written notice of any material change or cancellation of such coverage.

(d) Seller shall defend, indemnify and hold harmless LYME, its officers, employees and agents from any losses, costs, claims, causes of action, damages, liabilities and expenses, including reasonable attorneys fees, all expenses of litigation and/or settlement and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers or subcontractors in performance of the work under this PO.

(e) Whenever this PO involves work on LYME's or its customer's premises, Seller also shall implement and maintain a program for achieving the objective of a drug-free workforce. Seller's program shall be written and shall include as a minimum drug testing when: (i) employees are newly-hired or re-hired after a break in service, (ii) employees are involved in accidents or unsafe practices, and (iii) reasonable suspicion exists that an employee is using illegal drugs. Seller shall provide LYME with a copy of its written program with its bid or proposal. Seller shall make available for LYME's inspection at reasonable times and places all of Seller's records relating to its drug-free program. In addition to any other remedies that LYME or its customer may have if Seller fails to comply with the provisions of this paragraph, LYME may, without notice or an opportunity to cure: (1) terminate this PO for default, and (2) expel from LYME's property any employee, agent, or subcontractor of Seller who is suspected of using, possessing, or selling alcohol or illegal drugs on LYME's property.

(f) Prior to the commencement of any work to be performed under this PO, Seller must complete a Certificate of Citizenship with regard to all employees of Seller and Seller's subcontractors that will perform work at LYME Facilities or will have access to technical data so that LYME may determine what level of

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access to facilities and technical data is allowed in order to comply with United States law or certain government contract requirements. Seller must provide prompt notice in writing to LYME of any change in the information provided in the certification for any reason, including the substitution or addition of employees performing work under this PO.

## 16. INVOICES, PAYMENTS, AND DISCOUNTS

Unless otherwise expressly provided for in the PO, the standard payment terms will be on average the second day of the second month following the formal receipt of goods as defined by:

- (a) LYME's verification of the accuracy and completeness of Seller's invoice and any required supporting documents, or
- (b) Delivery and acceptance, through quality inspection and acceptance, to LYME's stock at the —ship to location specified on the Face of the PO. Payment shall be deemed to have been made as of the date of mailing of LYME's payment.

## 17. NON-ASSIGNMENT

Neither this PO nor any rights or obligations under it shall be assigned to third parties by Seller without the prior written consent of LYME. However, claims for any payment due or to become due under this PO may be assigned by Seller without such consent, if LYME is promptly furnished with written notice and a signed copy of any such assignment. Payment to an assignee of any such claim shall be subject to set off or recoupment of any present or future claim or claims which LYME may have against Seller.

## 18. COMPLIANCE WITH LAWS

- (a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances of the United States, equivalent applicable legislation in the Seller's country of manufacture (if other than the United States), and all applicable, lawful orders, rules, and regulations ratified under such laws, and such compliance shall be a material requirement of this PO.
- (b) Seller represents that the goods to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.
- (c) Seller warrants that each chemical substance constituting or contained in goods sold or otherwise transferred to LYME hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec 2601 et seq.) as amended.
- (d) Seller shall provide to LYME with each shipment of a chemical substance the Material Safety Data Sheet applicable to the substance and containing such information as required by the Occupational Safety and Health Act and regulations.

## 19. PREFERENCE FOR DOMESTIC SPECIALTY METALS

If the conditions of DFARS 252.225-7009 or DFARS 252.225-7014 Alt 1 apply and there are any of the following specialty metals - steel with a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium; metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent; titanium and titanium alloys; or zirconium and zirconium base alloys - incorporated in articles delivered under this purchase order, they shall be melted in the United States, its outlying areas, or a qualifying country unless specifically exempt by DFARS 252.225-7009 or DFARS 252.225.7014 Alt 1. DFARS 252.225.7014 Alt 1 applies to any Government contract awarded prior to July 29, 2009 and DFARS 252.225-7009 applies to any Government contract awarded on or after July 29, 2009. Questions on applicability should be discussed with the LYME buyer.

Qualifying countries are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Federal Republic of Germany, Finland, France, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland. The Supplier shall insert the substance of this clause in all subcontracts for items containing specialty metals and require his subcontractors to incorporate this clause in any of their subcontracts. This clause does not apply to specialty metals incorporated in an article manufactured in a qualifying country.

## 20. PUBLIC RELEASE OF INFORMATION

No public release of information, including, without limitation, photographs, films, announcements, denials or confirmations of any part of the subject matter of this PO (including that the PO is associated with requirements or a phase of a particular Government program), shall be made without the prior written approval of LYME.

## 21. EXTRA CHARGES

Unless this PO is issued as a Time and Materials or Cost Reimbursable subcontract, the prices indicated in this PO cover all work required by Seller to satisfy the requirements of this PO.

## 22. SECURITY INTERESTS

Seller shall cooperate with LYME in executing such documents as LYME deems appropriate to protect the security interest of LYME and LYME's customers in Seller's work-in-process and in Furnished Property

## 23. WARRANTIES

Unless expressly specified differently elsewhere in this PO, Seller warrants and implies that the goods delivered hereunder are merchantable and fit for use for the particular purpose described in this PO. In addition, unless

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the solicitation under which this PO was awarded, or the Face of the PO itself, specifies minimum warranty terms (such as minimum duration, and/or other cost-effective or preferred minimums that are appropriate for LYME's customer's or the Government's intended purposes) that would be less than those offered by Seller to the general public in customary commercial practice, then Seller hereby offers LYME at least the same warranty terms—including extended warranties—that it offers to the general public in customary commercial practice.

## 24. FOREIGN SALES

If the goods or services provided pursuant to this PO are intended for incorporation in, or use in connection with, military equipment to be used by the armed forces of a foreign government or international organization (and LYME's Buyer shall inform Seller if such incorporation or use is intended in advance of issuance of this PO), the following provision applies:

The articles or services to be supplied under this PO are intended for incorporation in, or use in connection with, military equipment to be used by the armed forces of a foreign government or an international organization. Part 130 of the International Traffic in Arms Regulations (ITAR), 22 CFR Part 130, requires LYME to report if Seller has made, makes or intends to make any payment, loan or donation of \$1,000 or more either as a political contribution or as a fee or commission in connection with the sale of the articles or services described in this PO, or an end item incorporating such articles. Accordingly, Seller agrees to promptly notify LYME in writing if it has made, intends to make, or upon the making of, any payment, loan or donation required to be reported under Part 130 of ITAR, and Seller agrees to furnish LYME with information with respect to any such payment to enable LYME to comply with the reporting requirements of Part 130 of ITAR. Seller agrees to include this provision in all subcontracts of \$500,000 or more made hereunder. LYME will furnish to Seller a copy of Part 130 of ITAR on request.

## 25. EXPORT OF TECHNICAL DATA

Some of the information disclosed under this PO may contain technical data that is categorized on either (i) the United States Munitions List and, as such, is subject to the International Traffic in Arms Regulations (ITAR, 22 CFR 120-130), and/or (ii) the Commerce Control List and, as such, is subject to the Export Administration Regulations (EAR, 15 CFR 730-799). Technical data that is controlled by the ITAR or the EAR may not be given to foreign persons (including foreign corporations) by a U.S. person unless and until the U.S. person has obtained the appropriate export license and/or approvals from the U.S. Government.

- (1) Accordingly, Seller certifies that: 1) Seller is a —U.S. Person" as defined in the ITAR to whom such technical data may be disclosed or that Seller possesses the appropriate licenses and/or approvals from the U.S. Government to receive the LYME-furnished technical data under this PO, and further, 2) Seller shall not transfer such technical data directly or indirectly to any third person or firm, country or countries unless in compliance with all applicable laws and regulations and having obtained specific written authorization from LYME in advance to effect such a transfer.
- (2) Seller agrees that it will not permit any employee access to furnished technical data nor permit any employee to perform services under this PO unless such employee qualifies as a —U.S. person," defined as: (i) a U.S. citizen or national; (ii) an alien lawfully admitted for permanent resident (those possessing a valid Form I-550 or —green card"); an alien admitted following a 1986 amnesty statute; (iv) an asylee or refugee as defined in 8 U.S.C. 1324b(a)(3); or (v) an alien lawfully admitted for temporary agricultural employment.
- (3) The acquisition of any rights in any technical data by Seller or by a foreign person is prohibited.
- (4) Upon completion of this PO all technical data exported pursuant to this PO, including that data provided to subcontractors at any tier, shall be returned to LYME or destroyed with an appropriate certification of destruction forwarded to LYME.
- (5) Seller shall deliver any defense articles manufactured outside of the United States pursuant to this paragraph only to LYME's United States business address or to an agency of the United States Government. All of Seller's subcontracts involving LYME-furnished technical data shall contain the substance of this Section, including this sentence.

## 26. UNDEFINITIZED POs

If this is an undefinitized PO, by acceptance of this PO per Section 1 hereto, Seller agrees:

- (a) to submit (if not already submitted) a fixed price quote/proposal or fixed price with economic price adjustment quote/proposal, as appropriate to the type of PO noted elsewhere in this PO, and
- (b) to enter promptly into negotiations in good faith to definitize undefinitized issues prior to the target dates set forth elsewhere in this PO. All terms, conditions, and specifications referenced in the PO shall apply. Federal Law, Executive Orders and Government Procurement Regulations applicable to a definitized PO of the type anticipated by this undefinitized PO shall apply.
- (c) to proceed immediately to procure materials and take such other actions as are proper and called for to ensure that the supplies may be delivered or services performed on time. Seller is not authorized to incur obligations which would result in a termination liability to LYME in excess of the Maximum Termination Liability amount set forth in this PO, which comprises the maximum funding authorized through to the anticipated definitization date established in this PO or through such extension of time as may be granted by LYME in a written Amendment to this PO.
- (d) in the event this PO is not definitized by the anticipated definitization date established in this PO or within such extension of time as may be granted by LYME, this undefinitized PO shall expire

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automatically. If this PO so expires, Seller will be paid an amount determinable in accordance with the Termination for Convenience Section of this PO.

## 27. PROCUREMENT FROM A RECOGNIZED SOURCE

This clause applies to all parts and material delivered under this purchase order that are the lowest level of separately identifiable items, including but not limited to fasteners and Electrical, Electric and Electromechanical (EEE) components. "Counterfeit" includes parts and material that is misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved parts and/or material that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.

With specific regard to counterfeit hardware, a registry of active fastener trademarks is maintained by the US Patent and Trademark Office and can be found at: <http://www.uspto.gov/trademarks/law/fastener/fqa.jsp>. All purchased material included in assemblies and subassemblies being delivered per this order must have been procured by the seller directly from either the manufacturer of the item(s) or an authorized distributor of the manufacturer of the item(s). A Certificate of Conformance (CoC) and a method of item traceability shall be retained for each component. These documents shall be retained per the records retention requirements directed elsewhere within this order and made available upon request.

Seller shall maintain the Manufacturer's CoC for each component included in the assemblies and subassemblies being delivered per this order. At a minimum, the CoC shall include:

Manufacturer's name and address  
Manufacturer's and/or buyer's part number  
Batch identification for the item such as date code, lot code, etc.

Seller shall maintain a method of item traceability that ensures tracking of the supply chain back to the manufacturer of all material included in assemblies and subassemblies being delivered per this order. This traceability method shall clearly identify the name and location of all of the supply chain intermediaries from the manufacturer to the direct source of the product for the seller. The manufacturer shall also include the manufacturer's batch identification for the item(s) such as date codes, lot codes, serializations, or other batch identifications.

In the event any item required to be delivered under this order cannot be procured by the Seller in accordance with this requirement, the Seller shall submit written justification and request a deviation from this requirement prior to making delivery. If the request for deviation is accepted by the Buyer, the Buyer shall modify this order accordingly. Additional verification of the items may be required prior to allowing the deviation from this requirement. This additional verification shall include inspections and/or tests activities (including, but not limited to include visual inspection, X-Ray inspection, destructive physical analysis, thermal cycle testing, and electrical testing) necessary to assure the authenticity of the purchased product. The Buyer may request copies of such acceptance criteria and records of this activity prior to granting the deviation.

This PO and activities hereunder are within the jurisdiction of the United States Government. Any knowing and 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 purchase order may be punishable in accordance with applicable Federal statutes. Seller employees engaged in the performance of work under this purchase order shall be informed in writing prior to performance of work that there is a risk of Federal criminal penalties associated with any falsification, concealment, or misrepresentation in connection with work performed under this purchase order.

If counterfeit parts/ assemblies are furnished under this purchase agreement, such items shall be impounded. The seller shall promptly replace such items with items acceptable to the Buyer and the seller may be liable for all costs relating to impoundment, removal, and replacement. The Buyer may turn such items over to US Governmental authorities (Office of Inspector General, Defense Criminal Investigative Service, Federal Bureau of investigation, etc.) for investigation and reserves the right to withhold payment for the items pending the results of the investigation.

The seller shall flow the substance of this clause, including this sentence, in all sub-tier subcontracts for work performed under this PO.

## 28. LABOR DISPUTES

If the seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the performance of this PO, the seller shall immediately notify LYME.

## 29. REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

If the conditions of FAR 52.204-10 apply, Supplier must submit the following if Supplier had gross income from all sources over \$300,000 (Note: Even if income is below \$300,000, Supplier must refer to and comply with item "(g) (i)" below):

- a) DUNS number
- b) NAICS code
- c) Complete company name
- d) Physical address

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- e) Primary performance location if different than “(d)”
- f) The names and total compensation of each of the five most highly compensated executives for Supplier’s preceding fiscal year if all of the following conditions are met:
  - 1. 80% or more of Supplier’s annual gross revenues is from Federal contracts and subcontracts
  - 2. Supplier has \$25,000,000 or more in annual gross revenues from Federal contracts and subcontracts
  - 3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986
- g) Supplier may omit the information required in item “(f)” above if instead Supplier provides: (i) a signed and dated certification that Supplier is not required to provide this information because gross income was less than \$300,000 or (ii) Supplier is not required to provide executive compensation information due to not meeting all of the conditions in subsection (f).

## 30. DISPUTES

The parties will attempt to settle in good faith all disputes arising under this PO. Disputes upon which the parties cannot reach an amicable settlement will be resolved in the applicable state or federal court in Charlotte, North Carolina, and in accordance with the choice of law provisions of this PO. Seller shall bring any dispute arising under or related to this PO within two (2) years after the cause of action for such dispute accrues. Notwithstanding any provisions herein to the contrary, if a decision under the prime contract is made by the contracting officer and such decision is also related to this PO, said decision, if binding upon LYME under the prime contract, shall in turn be binding upon LYME and Seller insofar as it relates to this PO. If LYME elects to appeal such a decision pursuant to the “Disputes” clause in LYME’s prime contract, any decision from such an appeal, if binding upon LYME under the prime contract, shall in turn be binding upon LYME and Seller insofar as it relates to this PO. If LYME elects not to dispute such a decision pursuant to the “Disputes” clause in the prime contract, LYME shall promptly notify Seller, and Seller shall, to the extent of its interest, have the right to assert in LYME’s name at Seller’s expense, LYME’s right to dispute such a decision under the “Disputes” clause in the prime contract and any decision upon an appeal with respect to a final decision, if binding upon LYME under the prime contract, shall in turn be binding upon LYME and Seller insofar as it relates to this PO. The decision of the contracting officer, or if an appeal is taken as above provided, the decision on appeal, shall be final and conclusive between LYME and Seller except that Seller shall have the rights reserved to LYME under the Contract Disputes Act of 1978 to prosecute an appeal to a board or court of competent jurisdiction within the times specified by the Contract Disputes Act of 1978, in LYME’s name and at Seller’s expense. Any final judgment by the boards or courts, is binding upon LYME and Seller insofar as it relates to this PO. Prior to Seller submitting a claim to be appealed hereunder, Seller shall certify its claim in the form found at FAR 33.207(c) or its successor provisions. Seller agrees to indemnify LYME for any and all losses LYME incurs as a result of Seller’s certification. Pending final resolution of any decision, appeal, or judgment in such proceedings, or the settlement of any dispute arising under this PO, Seller shall proceed diligently with the performance of this PO

## 31. SURVIVABILITY

This Section and the following Sections shall survive termination of this PO: Section 1.i (regarding venue and choice of law); Section 1.j (regarding LYME’s rights at law and in equity); Section 8 (Termination for Default); Section 9 (Termination for Convenience); Section 12 (Information Disclosed to LYME); Section 18.b-d (regarding Seller’s failure to comply with laws that results in damage to LYME); Section 20 (Public Release of Information); Section 23(Warranties); Section 25 (Export of Technical Data); Section 30 (Disputes)

## 32. CONFLICT MINERALS

To enable Lyme Computer Systems to comply with the **Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173)**, supplier is required to report with their proposal and upon contract delivery the existence of any conflict minerals (tantalum, tin, tungsten, and gold) in products to be provided under this Subcontract or Purchase Order. The report will identify the country of origin of any conflict minerals, whether the conflict minerals came from scrap or recycled sources, whether the conflict minerals came from a covered country (Democratic Republic of Congo, Burundi, Central African Republic, Tanzania, Zambia, Angola, Rwanda, South Sudan, and Uganda), whether the conflict minerals from the covered countries directly or indirectly finance armed groups, and your process for determining and verifying the information provided. If there are any changes to your supply base in regard to this part that affect your certification, you are required to send an amended certification to your LYME buyer. LYME reserves the right to request any additional information on Conflict Minerals associated with this Subcontract or Purchase Order necessary to comply with this legal requirement and supplier will make good faith efforts to provide the requested information.

## 33. INCORPORATION OF FEDERAL ACQUISITION REGULATION CLAUSES AND SUPPLEMENTS CLAUSES

- (a) The following clauses are incorporated by reference and constitute binding terms of this PO (and, as to certain clauses, binding conditions of response to this solicitation: See Section a.1 herein); provided however that any given clause is itself incorporated into the prime contract. These clauses shall be those in effect at issuance of this PO. The FAR and its Supplements are obtainable online at <http://www.acqnet.gov/far> or from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.



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- (b) All references to "Disputes" in any FAR clause, or DFARS clause (the FAR Supplement pertaining to purchases for the U.S. Department of Defense and its associated Agencies), incorporated by reference are hereby deleted except as expressly provided elsewhere in this PO or in this solicitation.
- (c) Wherever used in the text of these clauses, the terms "Contract" and "Contractor" shall mean this PO and Seller, respectively. Wherever used in the text of these clauses, the terms "Government," "Contracting Officer," and equivalent phrases shall mean LYME, except that clauses identified by \* shall retain the original meaning of those terms as written in FAR; and when identified by \*\* shall not only retain the original meaning of those terms as written in FAR, but shall also mean LYME.

**In addition to all of the other Sections in this document, the following clauses apply to all purchases or solicitations referencing these General Terms for Commercial Purchases:**

<b>FAR</b>	<b>FAR Clause Title and modifications thereof</b>
52.203-13	Contractor Code of Business Ethics and Conduct
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
52.204-21	Basic Safeguarding of Covered Contractor Information Systems.
52.209-5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. (a) By either submitting its proposal/quotation or accepting this order, Seller shall be deemed to have certified that, to the best of its knowledge and belief, that: (i) Seller and/or any of its Principals (as defined in FAR 52.209-5)-- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; (B) Have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and (C) Are not presently indicated for otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in subdivision (a) (i) (B) of this provision. (ii) That it has not within a three-year period preceding this offer had any contract terminated for default by any Federal agency. (b) Seller shall provide immediate written notice to LYME's Buyer if, any time prior to award of any order it learns that its certification was erroneous, when submitted, or has become erroneous by reason of changed circumstances. (c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed in making the award.
52.211-15	Defense Priority and Allocation Requirements. If this PO is a "rated PO" as indicated by a DPAS rating elsewhere in this PO, Seller will follow all the provisions of the Defense Priorities and Allocation System regulation (15CFR350). Seller shall accept or reject it in writing promptly, within five (5) working days after receipt thereof if DX-rated or ten (10) working days if DO-rated, per 15 CFR 350.13(d).
52.219-8	Utilization of Small Business Concerns (Applies only if this PO offers further subcontracting opportunities).
52.222-1	Notice to the Government of Labor Disputes.
52.222-26	Equal Opportunity
52.222-35	Affirmative Action for Disabled and Vietnam Era Veterans
52.222-36	Affirmative Action for Workers with Disabilities
52.222-40	Notification of Employee Rights under the National Labor Relations Act
52.222-50	Combating Trafficking of Persons
52.225-8	Duty-Free Entry
52.244-6	Subcontracts for Commercial Items
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels.
<b>DFARS</b>	<b>DFARS Clause Title and modifications thereof</b>
252.204-2008	Compliance with Safeguarding Covered Defense Information Controls.
252.204-7012	Safeguarding Unclassified Controlled Technical Information
252.223-7008	Prohibition of Hexavalent Chromium
252.225-7009	Restrictions on Acquisition of Certain Articles Containing Specialty Metals (Contracts after 11/29/2009)
252.225-7014	Preference for Domestic Specialty Metals, Alternate 1. (Contracts prior to 11/29/2009)
252.225-7039	Contractors Performing Private Security Functions
252.227-7015	Technical Data – Commercial Items
252.227-7037	Validation of Restrictive Markings on Technical Data

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- 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers
- 252.237-7010 Prohibition on Interrogation of Detainees by Contractor Personnel
- 252.237-7019 Training for Contractor Personnel Interacting with Detainees
- 252.246-7003 Notification of Potential Safety Issues
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DOD contracts)
- 252.247-7023 Transportation of Supplies by Sea.
- 252.247-7024 Notification of Transportation of Supplies by Sea