

Davidson Terms and Conditions

Policy #412

Rev: 17FEB2023

DAVIDSON TECHNOLOGIES, INC. (PURCHASE ORDER)

The following terms and conditions (the “Order Terms and Conditions”) are subject to and incorporated by reference into the terms and conditions of the Agreement (as defined below).

1. **DEFINITIONS.** As used in this Order, including provisions incorporated by reference, the following terms shall have the meanings set forth below:
 - a. “Agreement” means that certain (Purchase Order) between Buyer and Seller, as it may be amended from time to time, in which these Order Terms and Conditions are incorporated. Hereinafter, the term “Agreement” shall refer both to the Agreement and/or this Order, as the context may require.
 - b. “Buyer” means Davidson Technologies, Inc., the legal entity issuing this Order.
 - c. “Buyer’s Contract Representative” means the authorized Purchasing Agent or Contract Manager representing Buyer.
 - d. “Order” means this Purchase Order containing the Order Terms and Conditions.
 - e. “Seller” means the person, firm or corporation which will furnish the goods, services and other deliverables required under this Order.
 - f. “Seller’s Contract Representative” means the authorized Purchasing Agent or Contract Manager representing Seller.

2. **ACCEPTANCE OF PURCHASE ORDER.** Agreement by Seller to furnish the materials and products (collectively, “goods”) or services, including the products resulting from services hereby ordered, or its commencement of such performance, or acceptance of any payment, whether under the terms of the Agreement or otherwise, shall constitute Seller’s unqualified acceptance of this Order subject to the terms and conditions contained herein. If this Order does not state price or delivery, Buyer will not be bound to comply with any price or delivery terms to which it has not otherwise specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. No amendment to or modification of this Order is effective unless it is in writing and be signed by Buyer’s Contract Representative. These Order Terms and Conditions, together with the Agreement and any referenced exhibits, attachments or other documents hereto and thereto, constitute the entire agreement between the parties with respect

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to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

3. **ORDER OF PRECEDENCE.** In the event of inconsistency between these Order Terms and Conditions and the terms of any of the following documents, as applicable, the following shall be the order of precedence: (a) the Agreement, (b) these Order Terms and Conditions, (c) Contract Security Classification Specifications, (d) FAR/Defense FAR Supplement (DFARS), (e) Statement of Work, (f) Contract Data Requirements List (CDRL) / Data Item Description (DID), and (g) other referenced documents.
4. **TERMINATION.** Buyer may terminate all or any part of the Agreement for convenience at any time by written notice to Seller. Upon such termination, Buyer's liability will be limited to reasonable termination charges mutually agreed by Seller and Buyer, provided that Seller must specify any proposed charges in writing within fifteen (15) days after termination. The Agreement shall terminate automatically, without notice, if Seller becomes insolvent or the subject of any proceeding under the laws relating to bankruptcy or the relief of debtors.
5. **LIMITATION OF LIABILITY.** In no event shall Buyer be liable for any claim of any kind, for any loss, or for any damage arising out of, in connection with, or resulting from the Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, in excess of the price allocable to the products or services giving rise to such claims. Any action resulting from Buyer's default as to the Agreement must commence within one year after the cause has accrued. In no event shall Buyer be liable under or in connection with the Agreement for any consequential, special, punitive, incidental or indirect damages, lost profits or revenues, arising out of, or relating to, and/or in connection with any breach of the Agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not Buyer was advised of the possibility of such damages, (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and (d) the failure of any agreed or other remedy of its essential purpose.
6. **PLACE OF PERFORMANCE.** If Seller, in the performance of the Agreement intends to change the location of the work to be performed which differs from the proposal Buyer shall be notified by written notice set forth in FAR 52.215-6.

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7. **PRIORITY RATING.** If this Order identifies a DPAS Rating, it means that it is a rated order certified for national defense, emergency preparedness, and energy program use, and Seller is required to follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR Part 700). By acknowledging this Order, Seller accepted the DPAS rating.
8. **IDENTIFICATION OF TECHNICAL DATA – NONCOMMERCIAL ITEMS AND RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE, AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION.** If any data rights are asserted by Seller, as required in the solicitation, it would be an “Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software” table in Attachment J of the Agreement. The technical data and/or computer software shall be marked in accordance with DFARS 252.227-7013, entitled “Rights in Technical Data - Noncommercial Items”; DFARS 252.227-7014, entitled “Rights in Noncommercial Computer Software and Noncommercial Software Documentation”; or DFARS 252.227-7015, entitled “Technical Data - Commercial Items”.
9. **ALLOWABLE COST, INVOICES, AND PAYMENT.** Buyer shall pay Seller upon submission of invoices or vouchers upon approval by Buyer’s Contract Representative as allowed in accordance with FAR 52.216-7. Invoices shall be rendered on completion of services or delivery of goods and shall contain the Order Number, item number, description of goods or services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice must refer to one, and only one, purchase order. Payment shall be paid when paid from Customer.
10. **FORCE MAJEURE.** Seller shall not be responsible for cancellation or delay in delivery or performance resulting from causes beyond its reasonable control, including, but not limited to; acts of God; strikes or other labor disturbances; equipment failure; delays in transportation; inability to obtain fuel, material, or parts; war; acts of terrorism; riot; epidemics or pandemics; floods; fires; unusually severe weather conditions; accidents; or other contingencies the non-occurrence of which was a basic assumption on which the purchase order was made.
11. **INDEMNIFICATION.** Each party (as “Indemnifying Party”) agrees to indemnify, defend, and hold harmless the other party and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, “Indemnified Party”) from and against any losses, liabilities,

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claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, expenses, or damages of any kind (including reasonable outside attorneys' fees) that are incurred by the Indemnified Party (collectively, "Losses") to the extent arising out of any third-party claim alleging: (a) breach of the Agreement by Indemnifying Party; (b) negligence or willful misconduct of Indemnifying Party in connection with the performance of its obligations under the Agreement; (c) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party; or (d) any failure by Indemnifying Party to comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under the Agreement. Notwithstanding the foregoing, Indemnifying Party is not obligated to indemnify, defend, and hold harmless Indemnified Party against any claim (whether direct or indirect) to the extent such claim or corresponding Losses arise out of or result from Indemnified Party's negligence or willful misconduct.

12. DISPUTES.

- a. Any controversy, dispute, or claim of any nature arising out of, in connection with, or in relation to the interpretation, performance, enforcement or breach of the Agreement and this Order (and any documents executed in connection therewith and herewith), including any claim based on contract, tort or statute (each, a "Dispute"), shall be resolved under the terms of this Section at the written request of either Buyer or Seller (each, a "Dispute Notice").
- b. Upon the receipt of a Dispute Notice, a senior representative, officer or other executive of Buyer and Seller, each with the authority to act on behalf of the respective party to resolve the Dispute (each, a "Representative"), shall negotiate, in good faith, to resolve the Dispute. The location, format, frequency, duration and conclusion of these negotiations shall be left to the discretion of the Representatives. If the Representatives are unable to resolve the Dispute within thirty (30) days of receipt of the Dispute Notice, then either party may request in writing that the Dispute be resolved by binding arbitration in accordance with Section 12.c, below.
- c. If any Dispute cannot be resolved by the Representatives in accordance with Section 12.b, above, the Dispute shall be resolved by binding arbitration in accordance with the

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commercial rules of the American Arbitration Association (AAA) that are then in effect. The parties shall attempt to agree upon the selection of a single arbitrator who is unrelated to either party and has demonstrable experience in the area of federal procurement law. In the event the parties are unable to select a mutually acceptable arbitrator, the arbitrator shall be appointed by the AAA. All arbitration proceedings shall be held in Madison County, Alabama. The arbitrator's costs shall be borne equally by Buyer and Seller and each party shall be responsible for its own preparation, discovery, and internal and external costs incurred to prosecute or defend such Dispute. The prevailing party in any arbitration proceeding will be entitled to, in addition to any other relief granted, recover its reasonable costs and attorney's fees, as determined by the arbitrator. The arbitrator shall be bound by the express provisions of this Agreement in deciding any claims raised in a Dispute Notice. The determination of the arbitrator shall be final, and except as provided by law, shall not be subject to appeal or judicial review. Any court of competent jurisdiction may enforce any award or determination rendered by the arbitrator. The parties agree that any remedy or relief granted shall be limited and, therefore, under no circumstances may the arbitrator make any award that includes any amount representing loss of profits, loss of business or any other incidental, special, consequential, punitive or exemplary damages.

- d. Until final resolution of any Dispute under the Agreement, Seller shall diligently proceed with the performance of the Agreement as directed by Buyer.

13. **GOVERNING LAW.** The Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to applicable principles of conflicts of law. Each of the parties hereto irrevocably consents to the exclusive jurisdiction of any federal or state court located within the State of Alabama, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of Alabama for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction and such process.

14. **ASSIGNMENT.** Seller may not assign or transfer any of its rights or delegate any of its obligations under the Agreement, in each case whether voluntarily, involuntarily, by operation of law or

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otherwise, without the prior written consent of Buyer. Any purported assignment, transfer or delegation in violation of this clause is null and void.

15. **REMEDIES.** The rights and remedies provided in this Agreement are cumulative and are not exclusive of and are in addition to and not in substitution for any other rights remedies available at law, in equity or otherwise.
16. **WARRANTY.** Seller warrants that all goods delivered to Buyer under the Agreement shall in normal use conform in all material respects to the final specifications agreed upon by the parties as set forth in this Agreement for a period of one (1) year plus thirty (30) days following the date the goods are delivered to Buyer (the "Warranty Period"). Seller shall not make changes to any specifications without Buyer's prior written consent, which shall not be unreasonably withheld. This warranty shall not be waived by reason of the acceptance of the goods or payment thereof by Buyer. The foregoing warranty does not cover any nonconformity of, damage to, or defect that is caused in whole or in part by Buyer. Buyer shall cooperate in good faith, and provide all reasonable assistance necessary, to enable Seller to verify Buyer's claim that the goods do not conform in all material respects to the final specifications and to confirm the existence or cause of any alleged defect.
17. **CHANGES.** Buyer shall have the right, at any time, by written notice to suspend or stop work or to make changes during the performance of the Agreement. Buyer's Contracting Representative may, at any time, without notice to the sureties, make changes in the work within the general scope of the Agreement, including changes: (1) in the specifications (including drawings and designs); (2) in the method or manner of performance of the work; (3) in the Government-furnished property or services; or (4) in directing acceleration in the performance of the work. If any change under the Agreement causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Agreement, Buyer shall make an equitable adjustment and modify the Agreement in writing. Seller must assert its right to an adjustment under this clause within twenty (20) days after receipt of a written change order from Buyer. Failure to assert such right within the stated time period shall be deemed consent by Seller to any such written change order.
18. **INSURANCE.** Seller shall maintain the minimum insurance coverages during the performance of the Agreement as follows: (a) Workmen's Compensation for all employees engaged in the

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performance of the Agreement written to provide coverage limits as required by statute; (b) Employer's Liability limit in the amount of \$2,000,000 per accident; and (c) General Liability (Comprehensive) in the amount of \$2,000,000 for bodily injury and property damage (per accident). On or prior to the Effective Date of the Agreement and, thereafter, upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the required insurance coverage. The certificate of insurance shall name Buyer as an additional insured and as loss payee. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer.

19. **INTELLECTUAL PROPERTY RIGHTS.** Notwithstanding anything in this Agreement to the contrary, each party retains all right, title, and interest in and to all of its technical know-how, technology, inventions, works of authorship (including source code and software), trade secrets, developments, trademarks, and all other similar intellectual property, including without limitation, those inventions, developments, processes, technologies, and other items claimed or otherwise embodied in the patent applications.
20. **SEVERABILITY.** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other terms or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify the Agreement so as to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
21. **WAIVER.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by an authorized representative of each party. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement shall operate or be construed as a waiver thereof, and no single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.



Commercial Flowdowns

The following FAR clauses are hereby incorporated as required by the Prime Contract for all solicitations or FAR Part 12 commercial procurements.

Applicable to ALL purchase orders:

- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
- 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- 52.204-27 Prohibition on a Byte Dance Covered Application
- 52-209-10 Prohibition on Contracting with Inverted Domestic Corporations
- 52.212-4 Contract Terms and Conditions – Commercial Products
- 52-212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Products
- 52.223-13 Acquisition of EPEAT Registered Imaging Equipment
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving
- 52.233-3 Protest After Award
- 52.233-4 Applicable Law for Breach of Contract Claim
- 252.203-7000 Requirements Relating to Compensation of Former DOD Officials
- 252.203-7002 Requirements to Inform Employees of Whistleblower Rights
- 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
- 252.204-7015 Notice of Authorized Disclosure of Information for Litigation Support
- 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
- 252.223-7008 Prohibition on Hexavalent Chromium
- 252.225-7048 Export-Controlled Items
- 252.225-7051 Prohibition on Acquisition of Certain Foreign Commercial Satellite Services
- 252.227-7016 Rights in Bid or Proposal Information
- 252.232-7010 Levies on Contract Payments
- 252.244-7000 Subcontracts for Commercial Items
- 252.247-7023 Transportation of Supplies by Sea

Applicable to purchase orders greater than \$10,000:

- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act

Applicable to purchase orders greater than \$30,000:

- 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards

Applicable to purchase orders greater than \$35,000:

- 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

Applicable to purchase orders greater than \$150,000:

- 52.203-12 Limitation on Payments
- 52.203-13 Contractor Code of Business Ethics and Conduct
- 52.222-35 Equal Opportunity for Veterans
- 52.222-36 Equal Opportunity for Workers with Disabilities
- 52.222-37 Employment Reports on Veterans

Applicable to purchase orders greater than \$250,000:

- 52.202-1 Definitions
- 52.202-3 Gratuities
- 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

Applicable to purchase orders greater than \$1,500,000:

- 252.205-7000 Provision of Information to Cooperative Agreement Holders

Applicable to purchase orders greater than \$2,000,000:

- 52.215-12 Subcontractor Certified Cost or Pricing Data
- 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications
- 52.215-15 Pension Adjustments and Asset Reversions
- 52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other than Pensions
- 52.215-19 Notification of Ownership Changes

Applicable if Services are being procured:

- 52.222-54 Employment Eligibility Verification
- 52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026
- 52.222-62 Paid Sick Leave Under Executive Order 13706

Applicable if purchase order has associated CFE/GFE:

- 52.245-1 Government Property

Applicable if purchase order contains software:

- 252.227-7019 Validation of Asserted Rights

Applicable if Technical Data is to be transmitted:

- 252.227-7037 Validation of Restrictive Markings on Technical Data