COMMUNICATIONS & POWER INDUSTRIES
(“CPI”)
TERMS AND CONDITIONS OF PURCHASE

Supplement 1—U.S. Government Contract Provisions from the Federal Acquisition Regulation (FAR)

1. When the materials or products furnished are for use in connection with a U.S. Government prime contract or subcontract, in addition to CPI’s Terms and Conditions of Purchase, General Provisions, the following provisions shall apply. The effective version of each Federal Acquisition Regulation (“FAR”) provision shall be the same version as that which appears in Buyer’s prime contract or higher tier subcontract under which this Purchase Order is a subcontract, where “Buyer” means “CPI.” In the event of a conflict between these FAR provisions and CPI’s Terms and Condition of Purchase, General Provisions, the applicable FAR provisions shall control. For the acquisition of commercial items under purchase orders placed in support of and charged to a U.S. Government prime contract or subcontract, only the FAR clauses annotated with “*” shall apply. For the definition of a commercial item, see FAR 2.101.

2. The following clauses set forth in the FAR in effect as of the date of the prime or higher-tier subcontract are incorporated herein by reference. In all clauses listed herein, the term “Government,” “Contracting Officer,” and “Contractor” shall be revised to suitably identify the contracting parties herein and effect the proper intent of the clause or provision except where further clarified or modified below. However, the words “Government” and “Contracting Officer” do not change:

(1) when a right, act, authorization, or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FARs 52.227-1 and 52.227-2, and (2) when title to property is to be transferred directly to the Government. “Subcontractor” shall mean “Seller’s Subcontractor” under this Purchase Order.

The listed FAR clauses are incorporated herein as if set forth in full text unless made inapplicable by its corresponding note, if any. If any of the following FAR clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

A. APPLICABLE TO ALL ORDERS

1. 52.203-3 Gratuities
2. 52.203-5 Covenant Against Contingent Fees
3. 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity
4. 52.204-2 Security
5. 52.204-9 Personal Identity Verification of Contractor Personnel
6. 52.211-5 Material Requirements
7. 52.211-15 Defense Priority and Allocation Requirements
8. 52.219-8* Utilization of Small Business Concerns
9. 52.222-1 Notice to Government of Labor Dispute
10. 52.222-41* Service Contract Act of 1965, as amended
11. 52.222-50 & Alt* 1 Combating Trafficking in Persons and Alternate 1 (Include Alt 1 if it is included in prime contract.)
12. 52.222-51” Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements
13. 52.222-53* Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements
14. 52.222-54 Employment Eligibility Verification. This clause is applicable to each subcontract that—
   (1) Is for—
      (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
      (ii) Construction;
   (2) Has a value of more than $3,000; and
   (3) Includes work performed in the United States.
15. 52.223-3 Hazardous Material Identification and Material Safety Data—“Government” means “Government and Buyer.”
Notice of Radioactive Materials (Applicable in contracts supplies which are, or which contain, radioactive materials.)

Ozone-Depleting Substances

Privacy Act

Buy American Act—Supplies

Buy American Act—Free Trade Agreement—Israeli Trade Act

Trade Agreements

Duty Free Entry

Restrictions on Certain Foreign Purchases

Authorization and Consent and Alternate 1 (Include Alt 1 if it is included in the prime contract.)

Refund of Royalties

Filing of Patent Applications—Classified Subject Matter

Patent Rights—Ownership by the Contractor

Rights in Data—General

Insurance—Work on a Government Installation

Protest After Award

Industrial Resources Developed Under Defense Production Act Title III

Accident Prevention

Protection of Government Buildings, Equipment, and Vegetation

Bankruptcy

Change Order Accounting

Subcontracts

Subcontracts for Commercial Items

Government Property

Government Property (Alt 1—Applicable to Purchase Orders other than cost reimbursement, time and material, labor hour Purchase Orders, and FP Purchase Orders awarded on the basis of submission of cost or pricing data.)

Inspection of Supplies—Fixed Price

Preference for U.S.-Flag Air Carriers

Preference for Privately Owned U.S.-Flag Commercial Carriers

Termination for Convenience of the Government (Fixed Price)—“Government” shall mean “Buyer.” In paragraph (d), the term “45 days” is changed to “90 days.” The term “one year” in paragraph (e) is changed to “six months.” The term “90 days” in paragraph (l) is changed to “forty-five days.”

B. ORDERS OVER $10,000 SHALL ALSO INCLUDE THE FOLLOWING:

1. Walsh-Healy Public Contracts Act
2. Prohibition of Segregated Facilities
3. Equal Opportunity
4. Affirmative Action for Workers with Disabilities
5. Notification of Employee Rights Under the National Labor Relations Act

C. ORDERS OVER $30,000 SHALL ALSO INCLUDE THE FOLLOWING:

1. Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or proposed for Debarment (Applies if this Purchase Order exceeds $30,000. Copies of notices provided by Seller are to be provided to both Contracting Officer and Buyer.)

D. ORDERS $100,000 SHALL ALSO INCLUDE THE FOLLOWING:

1. Restrictions on Subcontractor Sales to the Government
2. Anti-Kickback Procedures (less paragraph (c)(1))
3. Limitation on Payments to Influence Certain Federal Transactions
4. Audit and Records Negotiation
5. Integrity of Unit Prices (less paragraph b)
6. Contract Work Hours and Safety Standards Act—Overtime Compensation
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other eligible Veterans

Employment Reports on Veterans

Notice and Assistance Regarding Patent and Copyright Infringement

Value Engineering

52.219-9 Small Business Subcontracting Plan (Note to Seller: This clause requires adoption of small-business subcontracting plan and reporting.)

Display of Hotline Poster(s) (Applicable to Orders over $5,000,000.)

Contractor Code of Business Ethics and Conduct (Applicable to Orders over $5,000,000 and that have a period of performance of more than 120 Days. In paragraph (b)(3)(i), the meaning of “agency office of the Inspector General” and “Contracting Officer” does not change; in paragraph (b)(3)(ii), the meaning of “Government” does not change; and in paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of “OIG of the ordering agency,” “IG of the agency,” “agency OIG,” and “Contracting Officer” do not change.)

Price Reduction for Defective Cost or Pricing Data—Modifications

Subcontract Cost or Pricing Data—Modifications

Pension Adjustments and Asset Reversions

Reversion of Adjustment or Plans for Post-Retirement Benefits (PRB) Other than Pensions

Notification of Ownership Changes

Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data

Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data—Modifications

Facilities Capital Cost of Money

Allowable Cost and Payment (cost reimbursement). Seller agrees to execute assignment documents in order to comply with subsection (h).

Fixed Fee (Applicable to cost plus fixed-fee order.)

Incentive Fee (Applicable to cost plus incentive-fee order.)

Cost Contract—No Fee (Applicable if this is a cost no-fee order.)

Cost Sharing Contract—No Fee (Applicable if this is a cost-sharing, no-fee order.)

Payments for Overtime Premiums—insert “0%” in paragraph (a) unless indicated otherwise on the face of this order.

Payments under Time and Material and Labor Hour Contracts – “schedule” means “this Order,” “voucher” means “invoices(s),” “Government” means “Buyer,” and “Contracting Officer” means “Buyer’s Purchasing Representative.”

Limitation of Cost (If fully funded)

Limitation of Funds (If incrementally funded)

Notice of Intent to Disallow Costs

Penalties for Unallowable Costs

Changes—Cost Reimbursement (Applicable to such orders)

Changes—Time and Material or Labor Hours (Applicable to such orders)

Subcontracts (Paragraphs (h) and (i) only apply)
Government Property (Cost Reimbursement, Time and Material, or Labor Hour Contracts) — “Government” means “Government and Buyer.” Substitute the following for Paragraph (g) in cost reimbursement orders only: “Seller shall return all Government-Furnished Property in as good condition as when received, except for reasonable wear and tear for use of property in accordance with the provisions hereof.”

Inspection of Supplies (Cost Reimbursement)—“Contracting Officer” means “Buyer Purchasing Representative” and “Government” means “Buyer and Government” (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer) and where “Government” first appears in paragraph (k), it shall mean “Government and/or Buyer.” The provisions in this clause of access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.

Inspection of Services (Cost Reimbursement)—“Contracting Officer” means “Buyer Purchasing Representative” and “Government” means “Buyer and Government” (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer). The provisions in this clause of access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.

Inspection of Time and Materials and Labor Hour—“Contracting Officer” means “Buyer Purchasing Representative” and “Government” means “Buyer and Government” (provided that an inspection system accepted by the Government will be deemed accepted by the Buyer) and where “Government” first appears in paragraph (k), it shall mean “Government and/or Buyer.” The provisions in this clause of access, right to inspect, safety protection, and relief from liability apply equally to Buyer and the Government.

Termination (Cost Reimbursement)—“Government” means “Buyer” and “Contracting Officer” means “Buyer’s Purchasing Representative.” Alternative IV is applicable to time and material or labor hour orders only.

3. CERTIFICATIONS

CPI as Buyer, by signing this Purchase Order, hereby certifies compliance with the following clauses and, therefore, is eligible for award:

A.  52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over $100,000)
B.  52.209-5 Certification Regarding Responsibility Matters (over $30,000)
C.  52.222-22 Previous Contracts and Compliance Reports (over $10,000)
D.  52.223-13 Certificate of Toxic Chemical Release Reporting (over $100,000)

4. ADDITIONAL CLAUSES

A. COST ACCOUNTING STANDARDS (Applicable unless otherwise exempt)

1.  52.230-2 Cost Accounting Standards
2.  52.230-3 Disclosure and Consistency of Cost Accounting Practices
3.  52.230-5 Cost Accounting Standards—Educational Institution
4.  52.230-6 Administration of Cost Accounting Standards

Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer in respect to Cost Accounting Standards. FAR 52.230-2 and FAR 52.230-6, Administration of Cost Accounting Standards, provide that Seller shall not be required to disclose to Buyer such communications containing information which is privileged and confidential to the Seller. In addition to any other remedies provided by law or under this Purchase Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3, 52.230-5 or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses, except in the FAR 52.230-6.

B. TRUTH IN NEGOTIATIONS (Cost or Pricing Data)
Unless exempt, Seller shall submit a FAR Part 15-compliant cost proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current in accordance with the required Certificate of Current Cost or Pricing Data in the format specified in FAR 15.406-2.

1. Indemnification

If any price payable to Buyer (including profit or fee) as defined in FAR Subpart 15.4—Contract Pricing, or any reimbursable cost of Buyer, is reduced because of Seller’s noncompliance with FAR 52.215-10, 52.215-11, 52.215-12, 52.215-13 or related contract clauses that require cost or pricing data, because the cost or pricing data furnished by Seller in connection with any proposal submitted by Buyer relating to Buyer’s contract with the Seller or in connection with this Purchase Order, was not accurate, complete, or current as required by any such provisions or by the Certificate of Current Cost or Pricing Data (“defective cost or pricing data”), Seller shall indemnify and defend Buyer against any claim of damages or liability, and hold Buyer harmless from any loss or damages Buyer may suffer, arising or resulting from any action taken by Seller, the U.S. Government (“Government”) or a Government prime contractor or subcontractor, to reduce Buyer’s contract price, or any costs reimbursable to Buyer, because Seller or any of its subcontractors furnished defective cost or pricing data in connection with this Purchase Order.

“Cost or pricing data” as used herein includes any data that relates to a lower-tier prospective or actual subcontract, at any level, submitted by the Seller or which it procured by submission of such cost or pricing data, in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate.

If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification that reflects the price reduction, the Seller shall be liable and shall pay the Buyer at the time such overpayment is repaid:

a. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Buyer is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

b. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data that was incomplete, inaccurate, or noncurrent.

2. Cost or Pricing Data for Changes

Prior to the pricing of any change or other modification to this Purchase Order, which involves increases and/or decreases in costs plus applicable profit expected to exceed the threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in FAR 15.406-2, submitted either actually or buy specific identification in writing, is accurate, complete, and current as of the date of the completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.

C. DISPUTES

In the event of a Dispute between the U.S. Government and CPI, as the Prime Contractor, that may affect the liability of Seller, upon request by Seller, CPI may elect to proceed under the Government Disputes article, to either: (a) proceed to appeal on behalf of the Seller under the applicable prime contract, in which case Seller shall participate to protect its interests and each party shall pay its own costs without prejudice to any right each may otherwise have to recovery or allowance, or (b) permit Seller to appeal, in the name of the prime contractor, under the Disputes article of the prime contract with the Government, in which case CPI shall provide reasonable assistance to Seller, and all costs of Seller’s appeal and such assistance shall be paid by Seller without prejudice to any right Seller may otherwise have to recovery or allowance. Between CPI and Seller, disposition of any dispute under such appeal procedure (or a final judgment of a court of competent jurisdiction on any appeal) shall be final and conclusive. Pending final disposition of any Dispute, Seller shall proceed diligently with the performance of this Purchase Order in accordance with these CPI Purchase Terms.