



**FN Mfg. LLC, 797 Old Clemson Road, Columbia, SC 29229 (803-736-0522)**  
**FIXED PRICE TERMS FOR COMMERCIAL PROCUREMENT (July 2010)**

1. **ENTIRE AGREEMENT.** Purchaser or Buyer, as used throughout this agreement, shall mean the FN Manufacturing, LLC authorized Procurement Department Representative. This order is not binding upon Purchaser until accepted by Seller. Acceptance of all terms and conditions of this order shall take place, at the election of the Purchaser, either by execution and return of the signed acknowledgment copy accompanying Purchaser's purchase order form or by part performance of this order. None of the terms and conditions contained in this purchase order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of the Purchaser and delivered by the Purchaser to Seller, and each shipment received by the Purchaser from Seller, shall be deemed to be only upon the terms and conditions contained in this purchase order except as they may be added to, modified, canceled or otherwise altered, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form issued by Seller (Purchaser hereby objects to said terms and conditions and notifies Seller that they are rejected) and notwithstanding Purchaser's act of accepting or paying for any shipment or similar act by the Purchaser. All supplemental sheets, schedules, exhibits, specifications, drawings, data or riders which may be annexed hereto or referenced herein are made a part of this order. Seller acknowledges that it has available to it all specifications, drawings and data incorporated in this order and that they are adequate to enable Seller to perform the work called for herein in accordance with the delivery schedule.
2. **PURCHASER'S PROPERTY.** Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by purchaser or specifically paid for by Purchaser, and any replacement thereof or any material affixed or attached thereto, shall be and remains the personal property of Purchaser. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as "Property of FN Manufacturing, LLC" and be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Purchaser's property and shall not use such property except in filling Purchaser's orders, without the written consent of the Purchaser. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Purchaser and shall be subject to removal at Purchaser's written request, in which event Seller shall prepare such property for shipment and shall redeliver it to Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted
3. **DEFAULT.** Time is of the essence for this Purchase Order. With respect to default of Seller or Seller's subcontractors at any tier, except in instances of delays which are due to causes beyond Seller's reasonable control and without Seller's fault or negligence, Purchaser may, by written notice of default to Seller (a) terminate the whole or any part of this contract in any one of the following circumstances: (i) if Seller fails to make delivery of supplies or fails to perform the services within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as Purchaser may authorize in writing) after receipt of notice from Purchaser specifying such failure; and (b) upon such termination Purchaser may procure, upon such terms as it shall deem appropriate, supplies or services similar to those so terminated, in which case Seller shall continue performance of this order to the extent not terminated and shall be liable to Purchaser for any excess costs for such similar supplies or services. As an alternate remedy, and in lieu of termination for default, Purchaser, at its sole discretion, may elect (1) to extend the contract delivery schedule and/or (2) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the purchase order price shall be negotiated. If the failure to perform is caused by the default of a subcontractor at any tier and if such default arises out of causes beyond the control of both the Seller and subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable for any excess costs for the failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. The rights and remedies of the Purchaser provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.
4. **INFORMATION DISCLOSED TO SELLER.** Seller shall keep confidential all information, drawings, specifications, or data furnished by Purchaser, or prepared by Seller specifically in connection with the performance of this order and shall not divulge or use such information, drawings, specifications or data to or for the benefit of any other party. Except as required for the efficient performance of this order, Seller shall not make copies or permit copies to be made without the prior written consent of Purchaser. Seller shall thereafter make no further use, either directly or indirectly, of any such information, drawings, specifications, data, or of any derivation therefrom without obtaining Purchaser's written consent. This provision shall not apply to information in the public domain otherwise than as a result of a breach of this provision, nor shall it limit any rights the Government may have in such information. Upon completion or termination of this purchase order, Seller shall completely destroy all information and documents referred to herein, and shall certify in writing to the Purchaser that all documents were destroyed. In the alternative, Seller shall return all such documents to the Purchaser."
5. **DISPOSITION OF DRAWINGS AND SPECIFICATIONS.**
  - (a) Documents and all information thereon that are identified as proprietary shall not be reproduced, duplicated or copied in whole or in part, disclosed or made available to any other person, firm or corporation or otherwise used except to the extent necessary for and then only in connection with the preparation and/or submission of bids or proposals related to a procurement being affected by FN Mfg. LLC or in connection with the manufacture of items under contract with FN Mfg. LLC. **Export/Import regulations—ITAR compliant if applicable. International Traffic in Arms Regulations must be followed.**
  - (b) It is required that the Contractor must maintain the proprietary legend intact and will be required to certify to the use made and disposition of the documents. If distribution of these documents is made by the Contractor, the same requirements are imposed on any Subcontractors.
  - (c) Upon completion of the purposes for which these documents have been issued, the Contractor is required to destroy or have destroyed all documents bearing the proprietary legend, including all reproductions, duplications or copies thereof as may have been further distributed by the Contractor. Immediately after destruction thereof, a Certificate of Destruction will be furnished to the Buyer, which will include identification of the documents and quantity thereof, as well as the date of destruction.
  - (d) The Contractor's attention is specifically directed to the fact that, under an issued contract, any technical data which is restricted as to use by a proprietary legend shall not be furnished to others in connection with manufacture or procurement activities unless it is clearly and indelibly marked to restrict its use and/or reproduction and shall include the proprietary legend.



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**6. INSPECTION AND ACCEPTANCE.**

(a) All facilities which will or may be used in the performance of this order, and all supplies or deliverable items including without limitation all raw and in-process materials, components, intermediate assemblies and end items, shall be subject to inspection and test by the Purchaser and its customers (the term "customers" shall include the U.S. Government), to the extent practicable at any and all times and places including the period of manufacture and in any event prior to final acceptance by the Purchaser and its customer.

(b) If any inspection or test is made on the premises of Seller or its supplier, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspection and tests on the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay the work. Purchaser may charge Seller any additional costs to the Purchaser or its customers of inspection or test when supplies are not ready at the time such inspection is requested by Seller, or when reinspection or retest is necessitated by prior rejection.

(c) No such inspection or test including an inspection or test performed by Seller under Purchaser's Quality Assurance Supplier Program, however, shall in any way relieve Seller of its obligation to furnish all supplies, services or deliverable items in strict accordance with the terms and provisions of this order. Nor shall failure of Purchaser or its customer to inspect and accept or reject such supplies, services or items relieve Seller from such obligations or impose any liabilities on Purchaser or its customers thereof.

(d) If any of the supplies, services or other deliverable items are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, Purchaser, in addition to any other rights which it may have under warranties or otherwise, may at its option, correct or have corrected the non-conformity at Seller's expense, or reject and return such supplies or other deliverable items at Seller's expense, such supplies or other deliverable items shall not thereafter, be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Seller fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Purchaser either (i) may by contract or otherwise replace or correct such supplies and charge to the Seller the cost occasioned the Purchaser thereby, or (ii) may terminate this contract for default, and in either event may charge Seller the costs or damages occasioned by the Purchaser thereby. Unless the Seller corrects or replaces such supplies within the delivery schedule, the Purchaser may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. To defray the cost of shipping and handling, a service charge on rejected items will be billed to Seller.

(e) Seller shall provide and maintain an inspection and process control system acceptable to Purchaser and its customers covering the goods hereunder. Records of all inspection work by Seller shall be kept complete and available to Purchaser and its customers during the performance of this order and for such longer periods as may be specified to this order.

(f) **WARRANTY.** (a) Seller warrants to Purchaser, its successors, and assigns that all materials provided hereunder shall be (1) merchantable, (2) free from defects in material and workmanship, (3) with regard to goods designed by seller, free from defects in design, (4) suitable for the purposes intended whether expressed or reasonably implied, and (5) in compliance with all applicable specifications, drawings, and performance requirements; and that all services provided hereunder shall be (1) suitable for the purposes intended whether expressed or reasonably implied and (2) in compliance with all applicable specifications, drawings, and performance requirements. (b) If any nonconformity with this warranty appears within one (1) year after final acceptance of the materials or services, Seller shall properly correct such nonconformity at no cost to Purchaser.

- 1) Payment under This Order on account of Special Tooling shall be contingent upon Seller's furnishing Buyer satisfactory evidence that the tooling:
  - 2) has been fabricated according to Buyer's specifications, if any; or
  - 3) is capable of producing acceptable parts.

Seller bears risk of loss or damage to the tooling until delivered to Buyer; and at Buyer's request, Seller shall either;

- a. deliver the tooling to Buyer F.O.B. rail car or truck at Seller's plant, protected, packed, and marked in accordance with requirements of carrier selected by Buyer; or
- b. deliver same to Buyer at any location designated by Buyer, subject to Buyer paying Seller the transportation cost (as prevailing rates) of delivering the tooling to such location.

- 7. CERTIFICATES.** Seller shall furnish to Purchaser any certificate required to be furnished by any provision of this order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this article, the word "Certificate" shall include any plan or course of action or record keeping function.



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8. **INFORMATION DISCLOSED TO PURCHASER.** Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the Purchaser in connection with the purchase of the goods or services covered by this order shall not be deemed to be copyrighted, confidential or proprietary information, and shall be acquired free from any restrictions, or liability by Purchaser to Seller or third parties, as part of the consideration of this order. No employee of the Purchaser has authority to make any agreement, express or implied, limiting the use or publication of, or providing for confidential treatment of, information or suggestions of whatever kind received by him unless such agreement is made in writing and signed by the Purchaser's President or Vice President. The mere disclosure of information shall not be deemed to convey any right or license under any patent or **copyright** concerning Such information.
9. **INSOLVENCY.** If Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature), or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by the Seller, Purchaser may terminate this order without liability, except for deliveries previously made or for goods covered by this order then completed and subsequently delivered in accordance with the terms of the order.
10. **NON WAIVER.** Failure of Purchaser to insist upon strict performance of any terms and conditions herein shall not be deemed a waiver of any rights or remedies that Purchaser shall have and shall not be deemed a waiver of any subsequent default. No claim or right arising out of a breach of this contract can be waived, discharged or renounced in whole or in part unless such waiver, discharge or renunciation is in writing, supported by consideration and signed by the aggrieved party. The Purchaser's rights under this order are cumulative and are in addition to any other rights available at law.
11. **NON-ASSIGNMENT.** No right or interest in this contract shall be assigned by Seller without the written permission of the Purchaser and no delegation of any obligation owed, nor of the performance of any obligation, by Seller shall be made without the written permission of the Purchaser. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes. Purchaser may refuse to recognize notice of any assignment of payments due or to become due hereunder unless such notice is signed by Seller and specifically refers to this purchase order.
12. **COMPLIANCE WITH LAWS.** Seller agrees to comply with the applicable provisions of any Federal, State or local law or ordinance and all orders, rules and regulations issued thereunder. All supplies delivered under this order shall comply with applicable standards of the Occupational Safety and Health Act of 1970 ("OSHA") at the time of such delivery, and Seller shall, upon demand at any time, promptly furnish the Purchaser with data sufficient to demonstrate such compliance. If at any time it is determined that such supplies do not comply with applicable OSHA standards in effect at the time Such supplies were delivered, the Purchaser shall have all of the rights set forth in subparagraph (d) of the paragraph hereof titled "INSPECTION AND ACCEPTANCE," notwithstanding any prior inspection and acceptance of such supplies.
13. **FAIR LABOR STANDARDS ACT.** By acceptance of this order 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. Unless otherwise agreed in writing, Seller shall insert a certificate on all invoices submitted in connection with this order stating that the goods covered by the invoice were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Sections 12 (a) and 15 (a) thereof.
14. **INFORMATION DISCLOSED TO PURCHASER.** Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the Purchaser in connection with the purchase of the goods or services covered by this order shall not be deemed to be copyrighted, confidential or proprietary information, and shall be acquired free from any restrictions, or liability by Purchaser to Seller or third parties, as part of the consideration of this order. No employee of the Purchaser has authority to make any agreement, express or implied, limiting the use or publication of, or providing for confidential treatment of, information or suggestions of whatever kind received by him unless such agreement is made in writing and signed by the Purchaser's President or Vice President. The mere disclosure of information shall not be deemed to convey any right or license under any patent or **copyright** concerning Such information
15. **Export/Import regulations—ITAR compliant, if applicable. International Traffic in Arms Regulations must be followed.**
16. **INSOLVENCY.** If Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature), or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by the Seller, Purchaser may terminate this order without liability, except for deliveries previously made or for goods covered by this order then completed and subsequently delivered in accordance with the terms of the order.
17. **PUBLIC RELEASE OF INFORMATION.** No public release (including, without limitation, photographs, films, announcements and denials or confirmations of the placing of this order) with respect to this order, the subject matter hereof, or any phase of any program hereunder, shall be made without the prior written approval of Purchaser.
18. **NON WAIVER.** Failure of Purchaser to insist upon strict performance of any terms and conditions herein shall not be deemed a waiver of any rights or remedies that Purchaser shall have and shall not be deemed a waiver of any subsequent default. No claim or right arising out of a breach of this contract can be waived, discharged or renounced in whole or in part unless such waiver, discharge or renunciation is in writing, supported by consideration and signed by the aggrieved party. The Purchaser's rights under this order are cumulative and are in addition to any other rights available at law.
19. **TERMINATION. Notwithstanding any other article in this order,** Purchaser may terminate work under this order in whole or in part at any time **when it is in Purchaser's interest.**
20. **DISPUTES:** Any dispute arising between the Buyer and Seller in connection with This Order shall be resolved in accordance with the following:



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A) "**ARBITRATION.** The parties shall attempt amicably to resolve all disputes relating to this order. Disputes should be settled by arbitration when the parties are not able to resolve their dispute within a reasonable time. The arbitration shall occur in Columbia, South Carolina and will be governed by the Uniform Arbitration Act, South Carolina Code Sections 15-48-10 through 15-48-240. Arbitration award is binding upon the parties and the arbitration judgment should be entered in a court of competent jurisdiction."

B) "**DISPUTES.** Any actions for vacating an arbitration award, for modification or correction of arbitration awards, or appeals from arbitration awards shall be adjudicated in a court of competent jurisdiction in the State of South Carolina, applying the law of the State of South Carolina, as well as, when applicable, the law of federal contracts as announced in decisions of administrative board of contract appeals and the federal courts."

1. Notwithstanding any other provisions herein, any decisions of the Contracting Officer under the Prime Contract which binds the Buyer shall also bind Seller to the extent that it relates to This Order, provided Buyer shall have notified Seller promptly of such decision, and if requested by Seller, shall have appealed the decision in accordance with the Disputes clause of the Prime Contract and taken any further actions as may be required under this clause. Certification of Seller's claim by Buyer pursuant to the Prime Contract's Disputes clause shall occur only after the execution of a hold harmless agreement by Seller.
2. Any decision on appeal, or any other decision of the government under the Prime Contract which cannot be appealed under the Disputes clause of the Prime Contract, if binding on Buyer, shall also bind Seller to the extent that it relates to This Order, provided Buyer shall have promptly notified Seller of such decision and, if requested by Seller, shall have brought suit or filed a claim, as appropriate, against the Government. A final judgment in any such suit or final disposition of such claim shall be conclusive upon Buyer and Seller.
3. If any appeal, suit, or claim is prosecuted by Buyer under this clause, Seller shall be permitted at Seller's expense, to participate fully in such prosecution for the purpose of protecting Seller's interest. If requested by Buyer, Seller shall prosecute any appeal, suit, or claim initiated by Buyer at Seller's request. Each party shall cooperate fully in assisting the other party in such proceedings. Buyer agrees that after Seller has commented to participate in any claim or proceeding against the Government pursuant to this clause, Buyer will not enter into a settlement agreement with the Government or take any other action which would prejudice Seller's rights in such claim or proceeding without Seller's consent.
4. During pendency of any dispute, decision, appeal, suit, or claim covered by the clause, Seller shall proceed diligently with performance. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal, suit, or claim initiated by Buyer solely at Seller's request shall be paid by Seller; otherwise each party shall bear its allocable share of the expense. The rights and obligations of Buyer and Seller under this clause survive completion of, and final payment under, This Order.

21. **APPLICABLE LAW.** This order shall be governed in all aspects by South Carolina law, as well as, when applicable, the law of federal contracts as enunciated in decisions of administrative boards of contract appeals and the federal courts.

22. **TOXIC SUBSTANCES CONTROL ACT (PL 94-469).** Seller warrants that each and every chemical substance constituting or contained in the product(s) sold or otherwise transferred to purchaser under this order is on the list (in a document entitled "Candidate List of Chemical Substances." Volumes I, II, & III) of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (PL 94-469).

23.

**Employee Notification Requirements for Federal Contractors and Subcontractors.** On May 20, 2010, the Department of Labor issued a Final Rule requiring Federal government contractors and their subcontractors to post a notice informing employees of their rights under the National Labor Relations Act (NLRA) and to include the provisions of the notice in government contracts, subcontracts and purchase orders. (See <http://edocket.access.gpo.gov/2010/pdf/2010-11639.pdf>) The required notice/poster is to be in place as of June 21, 2010. Contractors and subcontractors who post notices to employees electronically must also post it electronically According to the OFCCP, "The notice to employees required by the regulations inform employees about their rights under the NLRA to form, join and assist a union and to bargain collectively with their employer; provides examples of unlawful employer and union conduct that interferes with those rights; and indicates how employees can contact the National Labor Relations Board, the Federal agency that enforces those rights, with questions or to file complaints. Contractors that violate the Labor Department's regulations requiring employee notification of these rights may be subject to sanctions, including suspension or cancellation of the contract." Contractors and subcontractors may also be declared ineligible for future contracts. These posting requirements do not apply to prime contracts under \$100,000 and subcontracts below \$10,000.