

ATTACHMENT A

**BEI PRECISION SYSTEMS AND SPACE COMPANY, INC. - TERMS AND
CONDITIONS OF PURCHASE, April 2007**

The most current version of the Terms and Conditions are posted at <http://www.beiprecision.com>. Please visit this website prior to accepting this offer.

1. ACCEPTANCE OF CONTRACT: In the absence of written acceptance or acknowledgment of these terms and conditions of purchase ("Contract") between BEIPSSC Precision Systems and Space Company, Inc. ("Buyer") and the supplier identified on the face of Buyer's applicable Purchase Order ("Supplier"), Supplier's commencement of performance on any portion of this Contract or its shipment of any products under this Contract ("Products") shall constitute acceptance of the Contract. This Contract expressly limits Supplier's acceptance to the terms and conditions stated in the Entire Agreement, as specified in Section 13. Additional or different terms or conditions proposed by Supplier are rejected unless expressly agreed to in writing by Buyer.

2. BILLING; PRICES: Seller shall bill only after Buyer accepts Products. Invoice(s) shall be in duplicate accompanied by a bill of lading or express receipt. Invoice(s) incorrectly presented shall be returned to Supplier unpaid. Buyer may set off any amount owed Buyer by Supplier against invoices presented by Supplier for payment. Payment will be due thirty (30) days after Buyer's receipt of Supplier's proper invoice. The prices for Products in this Contract may not be increased without the prior written consent of Buyer. Prices include all charges for packing, storage, insurance and transportation to the location specified on the face of Buyer's applicable Purchase Order. Supplier shall pay excess delivery charges, including expedited delivery fees incurred as a result of fault of Supplier. Unless otherwise expressly stated herein, the prices set forth in this Agreement include all applicable taxes, including without limitation foreign, federal, state, local and value-added taxes and duties, imposts or levies.

3. WARRANTY: Supplier warrants that all Products provided herein shall be new, merchantable, of satisfactory quality, free from defects in workmanship, materials and design (including software defects and errors), fit for the purposes to which Supplier reasonably knows or should know such Products shall be put, shall conform to this Contract, their published specifications, documentation and samples, and shall be free from claims or liens of third parties. Buyer may return nonconforming Products under warranty to Supplier, at Supplier's expense, for correction, replacement or credit, at Buyer's sole discretion. Products corrected or replaced shall also be warranted under this Section 3. Buyer shall have no liability for any returned Products, and Supplier shall bear all liability, responsibility and expenses therefor. Supplier's warranties shall survive acceptance and payment for Products and shall continue for one (1) year after Buyer's acceptance of Products or, if applicable, one year from subsequent distribution of Products to Buyer's customers.

4. PACKAGING; SHIPMENTS: All Products shall be prepared for shipment in a manner that follows best commercial practice and include two (2) copies of the packing slip.

Supplier shall not make, and Buyer shall have no obligation to accept, any partial shipments or shipments received before the delivery date specified herein. All shipments shall be FOB destination (UCC §2-319(b)) and risk of loss shall remain with Supplier as to any Products that are not accepted by Buyer, that are rejected by Buyer, or as to which Buyer's acceptance has been revoked.

5. **DELIVERY:** Time is of the essence. Delivery of Products shall be strictly in accordance with the schedule set forth in this Contract, and Supplier shall promptly report any delivery delays to Buyer. If Supplier fails to notify Buyer of a possible delivery delay at least ten working days in advance of the delivery date set forth on the front of this Contract, Buyer may set off costs related to such delivery delay against Supplier's invoice(s) in the amount of a ten percent (10%) reduction in total price or such equitable reduction in Buyer's sole discretion.

6. **REJECTION:** Payment for Products ordered herein shall not constitute acceptance. All Products are subject to Buyer's reasonable inspection and testing before acceptance at Buyer's premises. Products shall be deemed unacceptable if supporting documentation is missing. Buyer shall have the right to reject or require the correction of any Product found to be defective or non-conforming and such Products may be returned to Supplier at Supplier's expense. Supplier shall promptly replace or correct such Products or Buyer can accept such Products with a reasonable reduction in price, at Buyer's discretion. If Buyer and Seller agree to correct Products at Buyer's location, Buyer may set off correction costs against Seller's invoice.

7. **CHANGES; CANCELLATION:** Buyer may, at any time upon written notice, make changes to this Product order, including, without limitation, to increase or decrease product quantities, change any delivery dates, specifications, or the methods of shipment, packing, or delivery. Supplier shall timely notify Buyer of any change in price that results from such change. Work on the ordered Products shall not be interrupted for change resolution without Buyer's written consent. At its sole discretion, Buyer may elect to exercise the option on the face of Buyer's applicable Purchase Order to acquire additional units of Products under the terms and conditions of this Contract. Buyer may cancel, without penalty, all or any part of this Product order upon written notice at any time prior to delivery of Products.

8. **SOFTWARE LICENSE:** Supplier hereby grants to Buyer a nonexclusive irrevocable, perpetual worldwide, fully paid, royalty-free license, to use, reproduce, create derivative works of, publicly perform, publicly display, sublicense and distribute any software components of the Products (whether installed on the Products or provided separately) ("Software"). Buyer may make a reasonable number of copies of the Software for backup purposes only, which copies shall be deemed part of the Software.

9. **NONDISCLOSURE/PROPRIETARY INFORMATION:** All information disclosed by Buyer to Supplier, including but not limited to software, designs, descriptions, specifications, trade secrets, technical information, documentation, and any other information that Supplier knew or should have known under the circumstances was considered confidential or proprietary, shall be considered the confidential information of

Buyer ("Confidential Information") and Supplier shall use and disclose such Confidential Information only to the extent necessary for the performance of this Contract. Supplier shall not disclose Confidential Information, or release any publicity or information concerning the contract without the written permission of the Buyer. Supplier agrees that the same care extended to Supplier's own proprietary information, but no less than reasonable care, shall be extended to Buyer's Confidential Information. Supplier shall, upon Buyer's request or upon completion of this Contract, whichever comes first, promptly return all such Confidential Information (including all copies) to Buyer. Buyer shall, at all times, retain title to any drawings, designs, or specifications furnished for use in connection with this Contract.

10. **PROPERTY:** Tools and/or equipment of any kind, materials, drawings, software or data of every description that Supplier receives from Buyer, or from a third party on behalf of Buyer, or that is paid for in whole or in part by Buyer or is fabricated by Supplier for this Contract, is the property of Buyer ("Property of BEI"). Property of BEI held in Supplier's possession shall be clearly marked, "Property of BEI." Supplier shall exercise all reasonable care in the use and maintenance of Property of BEI and shall timely return Property of BEI to Buyer upon written request, or upon the termination or expiration of this Contract, whichever is earlier. Property of BEI may only be used in Supplier's performance of this Contract, unless authorized in writing.

11. **INSURANCE; INDEMNIFICATION:** Supplier shall maintain, and require its subcontractors, if applicable, to maintain, all risk insurance, in substance and amount and with insurers consistent with industry standard, covering all Products and any other equipment delivered to Buyer the risk of loss to which has not passed to Buyer. Supplier shall indemnify and hold harmless Buyer and Buyer's customers from and against any costs, expenses, losses, damages or liabilities (including attorneys' fees) arising from or related to any claim, demand, threat, or proceeding regarding any: (i) actual or alleged infringement of any worldwide patent, copyright, trade secret, trademark, maskwork, or other third party right arising from or related to the use or sale by Buyer or use by Buyer's customers of any Products furnished herein; (ii) alleged defect in the Products; or (iii) any breach of this Contract (collectively, a "Claim"). Buyer shall notify Supplier of any such Claim and Supplier shall defend or settle, at its own expense, each and every such Claim. If an injunction restricting Buyer's or its customer's rights with respect to any Product is issued or appears reasonably likely to be issued as a result of any such Claim, Supplier agrees at its expense, and at Buyer's sole option, to promptly either: (i) procure for Buyer and Buyer's customers the right to continue using such Products; (ii) replace such Products with non-infringing Products; (iii) modify the Products so that they are non-infringing; or (iv) refund to Buyer the amount paid for such Products.

12. **TERMINATION:** Buyer reserves the right to terminate this Contract if Supplier breaches or fails to perform in accordance with this Contract, fails to make progress sufficient to preclude endangering delivery of Products, fails to make specified deliveries at the time directed, and/or becomes insolvent or files a bankruptcy petition. Termination, in whole or in part, does not limit any other right the buyer may have under this Contract.

Termination shall be effected in accordance with termination provisions set forth in the Federal Acquisition Regulation, if applicable, including those provisions related to procurement costs. The provisions of Sections 3, 8, 9, 10, 11, 12, and 13 of this Contract shall survive its termination or expiration.

13. **GENERAL:** This Contract shall be governed by the laws of the State of Arkansas. Any action or proceeding arising from or relating to this contract must be brought in a federal court in the Eastern District of Arkansas or in State court in Pulaski County, Arkansas, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract. Supplier agrees that the remedies for a breach of this Contract shall include, without limitation, damages, injunctive relief, specific performance, and restitution. In performing under this Contract, Seller agrees to comply with any and all applicable international, federal, state and local laws and regulations. Supplier may not assign the contract or any interest therein except as expressly authorized in writing by Buyer. Any such attempted assignment shall be null and void from the beginning. Buyer agrees that Supplier may subcontract with respect to Supplier's performance herein except as otherwise provided on the face of Buyer's applicable Purchase Order; provided, however, that such subcontracting shall in no way modify Supplier's obligations herein. Buyer may assign this Agreement, in whole or in part, in its sole discretion. Supplier agrees to notify Buyer immediately of any actual or suspected work stoppage, act of God, or other event beyond the reasonable control of Supplier that delays, or threatens to delay, delivery of Products. Immediately upon such notice, Buyer may cancel any Product order. and set off applicable costs of such cancellation against Supplier's invoice. Buyer shall be excused from accepting all or any part of the Products tendered for delivery by Supplier under this contract due to any act of God, or other event beyond the reasonable control of Buyer that makes acceptance impossible or impractical. Failure of Buyer to enforce any terms and conditions of this Contract shall not be deemed a waiver of any rights or remedies that Buyer shall have and shall not be deemed a waiver of any subsequent default under this Contract. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way and the invalid provision shall be replaced with a valid provision that most closely approximates the intent and economic effect of the invalid provision. Supplier agrees that the terms and conditions stated in this Contract, Buyer's applicable Purchase Order, any documents incorporated by reference or attached hereto, available on the web site specified above, or in any purchase agreements existing between Buyer and Supplier with respect to the Products covered by this Contract ("Purchase Agreement"), constitute the entire agreement ("Entire Agreement") between Buyer and Supplier and supersedes, in their entirety, any and all oral or other written agreements previously existing between Buyer and Supplier with respect to the subject matter herein. In the event of a conflict among the terms and conditions constituting the Entire Agreement, such conflict shall be resolved by the following descending order of

precedence: 1. Provisions set forth in the Purchase Agreement; 2. Terms and conditions available on the web site; 3. Terms and conditions included in Buyer's applicable Purchase Order; 4. Terms and conditions stated in documents incorporated by reference or attached hereto; and 5. Terms and conditions of this Contract. Except as expressly set forth in the introduction to this agreement, the terms and conditions stated herein shall not be varied, supplemented, qualified, or interpreted by any prior course of dealings between the parties or by custom or usage of trade. No modifications or additions to said contract should be binding upon Buyer unless in writing and signed by an authorized representative of Buyer.

14. Export Control:

- 14.1** The Purchase Order may be stamped with either an International Traffic In Arms Regulations (22 CFR Parts 120 – 130) (ITAR) or Export Administration Regulations (15 CFR Parts 700 – 799) (EAR).
- 14.2** If stamped with an ITAR control statement the information on that purchase order and all related technical documents attached to it contain information that is controlled under the International Traffic In Arms Regulations (ITAR) and cannot be disclosed within the USA to foreign nationals or sent outside the USA without US Government approval.
- 14.3** If stamped with an EAR control statement the purchase order contents are controlled by the Export Administration Regulations (EAR) and US Government approval may be required prior to allowing access to the technical documents by a foreign national within the US or prior to sending the technical data off-shore. In addition, BEI requires written approval of the Buyer prior to off-shore procurement.
- 14.4** SELLER agrees to comply with all applicable U.S. export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. Parts 120-130 and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 700-799. SELLER agrees that it will not transfer any export controlled article, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. SELLER agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations. SELLER shall immediately notify the Buyer's Procurement Representative if SELLER is, or becomes, listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

- 15. SPECIALTY METALS CLAUSE/FLOW DOWN OF PENALTIES:** Buyer may impose the clause at DFARS 252.225-7014 Alt I, Preference for Domestic Specialty Metals (Jun 2005). The requirement will be stated on the face of applicable purchase order(s). Supplier will adhere to this requirement by insuring specialty metals used meet the requirements of DFARS 252.225-7014 Alt I by providing objective evidence that the specialty metal(s) used was(were) melted in the United States or in a “qualifying country” as defined in DFARS 225.872, Contracting with qualifying country sources. Objective evidence is herein defined as a raw material certification document which contains the manufacturer and the country of melt. Failure to adhere to this requirement, or any other requirements of the Purchase Order, may result in the flow down of administrative actions and/or penalties to the Supplier or Subcontractor responsible for non-compliance to the extent applicable and practicable.
- 16. MSDS COMPLIANCE:** Buyer requires supplier or subcontractor to provide current MSDS with all shipments of Chemicals or other Hazardous Materials shipped to BEI PSSC. Supplier or subcontractor shall clearly label any such materials and said shipments must be accompanied by a current MSDS.