



# Purchase Order Terms and Conditions - North America

D137843AC

**1. ACCEPTANCE, PAYMENT.** These terms and conditions ("Terms"), along with any purchase order ("Purchase Order") submitted by Coherent, Inc. ("Coherent") to the seller ("Supplier") identified on such Purchase Order constitute a binding agreement between Coherent and Supplier, effective upon the earlier of Supplier's written acceptance or commencement of performance of such Purchase Order with respect to the goods or services set forth on the face of such Purchase Order ("Articles"). No change in, modification of or revision to any of these Terms shall be valid unless in a writing signed by Coherent's authorized representative. Any term or condition proposed by Supplier, which is inconsistent with or in addition to these Terms shall be considered objected to by Coherent without further notice and shall not be binding on the Coherent. Supplier may invoice Coherent with respect to any accepted Purchase Order upon Coherent's acceptance of the Articles covered thereby. Coherent shall pay all invoices properly rendered hereunder within sixty (60) days of Coherent's receipt thereof, provided that Coherent shall have the option to delay payment until Coherent has received from Supplier an executed copy of Coherent's "Certificate of Compliance with Coherent's Environmental Policy".

**2. DELIVERY SCHEDULE.** Unless otherwise agreed in writing, Supplier shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Coherent's delivery schedule as set forth on the applicable Purchase Order. It is Supplier's responsibility to comply with this schedule but not to anticipate Coherent's requirements. Articles shipped to Coherent in advance of schedule may be returned to Supplier at Supplier's expense. In the event a blanket Purchase Order is initiated, Coherent reserves the right to schedule deliveries over a twelve-month period. The total blanket Purchase Order quantity represents Coherent's best estimated usage and is not a commitment to purchase. Unless otherwise agreed in writing, Supplier is not authorized to manufacture the total blanket Purchase Order quantity at once. Supplier is authorized to manufacture, and Coherent is obligated to purchase, only quantities released by Coherent via written releases contained in a blanket Purchase Order. Blanket Purchase Order scheduled delivery dates and quantities are based on forecast and may be subject to a change or cancellation by Coherent at any time. In the event of schedule changes, Coherent reserves the right to reschedule or cancel blanket Purchase Order releases by providing written notice thirty (30) days prior to delivery date. If the quantities released in a blanket Purchase Order are not consumed by Coherent (due to no fault of Supplier) by the expiration date of a blanket Purchase Order, Coherent reserves the right to extend the duration of such blanket Purchase Order for an additional ninety (90) days. In the event released quantities are not consumed upon expiration of the additional ninety (90) days, Supplier has the option to renegotiate the price for future Coherent purchases based on the actual quantities delivered during an effective period of a blanket Purchase Order. All shipments shall be made in accordance with Coherent's routing guide (the "Routing Guide"), available at Coherent's supplier portal at <http://www.coherent.com/supplierportal> (the "Supplier Portal"). In the event Supplier does not ship according to the Routing Guide, Supplier shall reimburse Coherent any cost difference or expenses incurred by Coherent in connection with such shipment.

**3. INSPECTION, ACCEPTANCE OR REJECTION; TITLE.** The right of final inspection and acceptance or rejection of the Articles at Coherent's facility or at such other place of receipt as may be specified in a Purchase Order is reserved to Coherent. In connection with such

right, Coherent may, but shall be under no duty to, inspect or test Articles before their processing, use, or resale, and the processing, use, or resale shall not constitute a waiver of any claim. Complaints or notices of defects or nonconformities in the Articles shall be deemed timely if made within a reasonable period of time after discovery by Coherent of such defects or nonconformities. Payment for any Articles shall not be deemed an acceptance of such Articles. Articles will be deemed accepted if Coherent fails to give notice to the Supplier of any alleged defect or nonconformity within twenty (20) days of receipt. In case any of the Articles fail to conform to any of the warranties in Section 11, are found to be defective in material or workmanship, or otherwise not in conformity with the specifications and requirements of any applicable Purchase Order, Coherent shall have the right to reject such Articles or require that such Articles be corrected or replaced promptly with satisfactory materials or workmanship at Supplier's expense (including transportation charges to and from Coherent's facility or such other place of receipt as may be specified in an applicable Purchase Order), or pursue such other remedies as may be provided by law. Notwithstanding the foregoing, even if Articles have been accepted, Coherent may revoke such acceptance where a particular defect or nonconformity substantially impairs such Article's usefulness or value to Coherent and such acceptance was deemed to be induced either (a) on the reasonable assumption that such defect or nonconformity would be cured and it has not been reasonably cured or (b) if Coherent did not discover such defect or nonconformity prior to acceptance, based upon the difficulty of discovery before acceptance or by Supplier's assurances. Title and risk of loss or damage to Articles will pass to Coherent upon acceptance of the Articles by Coherent as set forth above.

**4. PRICES.** Supplier represents that prices quoted to or paid by Coherent shall not exceed current prices charged to any other customer of Supplier for items which are the same or substantially similar to the Articles ordered by Coherent taking into account the quantity ordered, and Supplier shall forthwith refund any amounts paid by Coherent in excess of such price. Coherent shall be entitled at all times to set-off any amount owing at any time from Supplier to Coherent and any of its divisions or affiliated companies against any amount payable at any time to Supplier by Coherent and any of its divisions or affiliated companies.

**5. NOTICE OF DELAYS.** Whenever an actual or potential cause of delay occurs or threatens to delay the performance of the work, Supplier shall immediately notify Coherent in writing. Supplier shall keep Coherent advised of all relevant information concerning such cause of delay, its effects on the schedule and of measures being taken to remove or avoid it. In the event the delay is within Supplier's control, Supplier shall ship parts overnight unless otherwise authorized in writing by Coherent. Overnight shipment costs shall be paid by Supplier.

**6. CHANGES.** Coherent shall have the right to make changes in any Purchase Order at any time. If such changes affect the cost of or the time required for performance of a Purchase Order, Supplier shall notify Coherent immediately and negotiate an equitable adjustment. Coherent will not pay any additional charges for such changes unless such additional charges have been approved in advance and in writing by Coherent. Supplier shall proceed with the work as changed without interruption and without delay.

**7. OWNERSHIP OF INTELLECTUAL PROPERTY.** The design, development, production or provision of Articles by Supplier under

these Terms will be deemed to be a "work made for hire" or "commissioned work" and Coherent shall own, and Supplier hereby irrevocably assigns to Coherent and Supplier agrees to have all necessary documents executed to document such assignment, all intellectual property and proprietary rights (collectively, "Intellectual Property") in and to all designs, engineering details, drawings and other data and materials pertaining to any Articles supplied by Supplier to Coherent and to all creative ideas, developments, discoveries, inventions, patents, copyrights, trade secrets and other proprietary rights arising out of the work done by Supplier (including, without limitation, all Supplier's employees and contractors), in connection with the Articles. All mask sets, design tapes, documentation, and other data generated by Supplier in the performance hereunder is and will remain the sole and exclusive property of Coherent. Any designs, cells, circuits, devices, processes or methods that are developed by Supplier concurrently with the work performed under these Terms is and will be the sole and exclusive property of Coherent, and Coherent has the right to use such designs, cells, circuits, devices, processes or methods for other customers, or license their use to others. Notwithstanding the foregoing, to the extent any Intellectual Property is not considered a work made for hire or commissioned work, Supplier hereby assigns to Coherent royalty-free, worldwide, perpetually, and irrevocably, all rights in such Intellectual Property to the fullest extent permitted by law. To the extent such an assignment is (a) not legally permissible, or (b) if any of the Intellectual Property was developed by Supplier prior to the receipt of a Purchase Order from Coherent, Supplier hereby grants Coherent an exclusive, royalty-free, worldwide, perpetual, irrevocable, assignable, sub-licensable and unrestricted license to such Intellectual Property to the fullest extent permitted by law. Supplier will execute any documents that Coherent reasonably determines are necessary to document Coherent's rights in such Intellectual Property or to secure or perfect any rights relating to such Intellectual Property.

**8. INDEMNITY.** Supplier shall indemnify, defend and hold harmless Coherent and its successors, assigns, customers and agents from all claims, suits, demands, damages, liabilities, expenses (including attorneys' fees and costs), judgments, settlements and penalties of every kind ("Claims") based on or related to (a) personal injury, death, or property damage to the extent any of the foregoing is proximately caused by either any Article provided by Supplier, any product or process used by Supplier in the performance of a Purchase Order, or by the negligent or willful acts or omissions of Supplier, its officers, agents, employees or contractors, (b) strict liability in tort or products liability of any other kind in connection with any Articles provided by Supplier, or (c) a breach of any of the provisions of these Terms. The foregoing indemnity shall not apply in the case of Claims which arise solely from the gross negligence or intentional misconduct of Coherent, or to claims covered in whole by Section 9. It shall apply, however, if a Claim is the result of joint negligence, joint misconduct, or joint fault of Coherent and Supplier, but in such case the amount of the Claim for which Coherent is entitled to indemnification will be limited to that portion of such Claim attributable to the negligence, misconduct or other fault of Supplier. Notwithstanding anything to the contrary, the provisions of this Section 8 shall survive the expiration or termination of these Terms.

**9. INTELLECTUAL PROPERTY INDEMNITY.** Supplier shall indemnify, defend and hold harmless Coherent and its officers, employees, shareholders, customers, agents, successors and assigns from and against Claims alleging that the manufacturing or supply of Articles hereunder infringes upon, misappropriates or violates any Intellectual Property rights throughout the world of any third party, due to materials, processes or Articles provided by Supplier (including all materials, processes and information incorporated into, used in or for the manufacture of the Articles), to the extent that such Claims arise from use or provision of the Supplier's materials, processes or

Articles. Supplier shall not enter into any settlement that affects Coherent's rights or interests without Coherent's prior written approval. Notwithstanding anything to the contrary, the provisions of this Section 9 shall survive the expiration or termination of these Terms.

**10. INFORMATION.** Any knowledge, information or drawings which Supplier may have disclosed, or may hereafter disclose to Coherent incident to the placing and filling of a Purchase Order, shall not, unless otherwise specifically agreed upon in writing by Coherent, be deemed to be confidential or proprietary information and accordingly shall be provided free from any restrictions on use or disclosure.

**11. WARRANTY.** Supplier warrants that all Articles will be new, merchantable, free from defects in materials or workmanship, free from any encumbrance or lien, and conform to and perform in accordance with all applicable specifications, drawings, descriptions and samples for a period of three years after delivery to Coherent unless otherwise agreed in a writing executed by both parties. Unless manufactured pursuant to detailed design furnished by Coherent, Supplier assumes design responsibility and warrants the Articles to be free from design defect and suitable for the purposes intended by Coherent. Supplier's warranties, together with its service guarantees, shall run to Coherent and Coherent's customers or users of the Articles and shall not be deemed to be exclusive remedies. Coherent's inspection approval, acceptance, use of or payment for all or any part of the Articles shall in no way affect its warranty rights, whether or not a breach of warranty had become evident at the time.

**12. SUPPLY COMMITMENT.** In return for Coherent agreeing to enter into each Purchase Order, Supplier grants Coherent an option during the term of such Purchase Order and for seven (7) years thereafter (the "Commitment Term") to purchase component parts or spare parts of any Articles, including those which become obsolete during the Commitment Term, at the lesser of (a) the lowest price at which Supplier currently sells such parts or (b) at the last pre-termination price, following the termination of such Purchase Order or obsolescence of such Article, as applicable. If for any reason Supplier is unable or unwilling, or otherwise fails, to supply any Articles (or, if applicable, any component parts or spare parts related to any such Articles) on the terms set forth in any Purchase Order, or on terms based on any Purchase Order that is substantially similar in quantity and pricing to a prior Purchase Order that was accepted by Supplier, Coherent shall have the right to produce such Articles (or, if applicable, any spare parts related to any such Articles) using any of the Intellectual Property hereunder and shall be entitled to reimbursement from Supplier for any difference in price associated with such production from the last pre-termination price. In the event Coherent exercises its rights under this Section 12, Supplier shall promptly provide Coherent with all applicable documentation to enable Coherent to manufacture such Articles.

**13. AUDIT/INSPECTION.** For a period of up to two (2) years after the later of expiration or termination of any Purchase Order, and upon no less than twenty-four (24) hours prior notice, Coherent shall have the right to inspect Supplier's facilities, personnel, computer systems and books and records relating to Supplier's performance under each Purchase Order to perform an audit in order to determine Supplier's compliance with these Terms applicable to each Purchase Order.

**14. FAIR LABOR STANDARDS ACT.** In accepting a Purchase Order, Supplier shall be deemed to represent that the Articles to be furnished hereunder were or will be produced in compliance with the Fair Labor Standards Act of 1938 as amended, and, unless otherwise agreed in writing, Supplier shall certify on all invoices submitted in connection

with a Purchase Order that the goods were produced in compliance with said Act as amended.

**15. NON-ASSIGNMENT.** Assignment of a Purchase Order or any interest therein or any payment due or to become due thereunder, without the written consent of Coherent, shall be void.

**16. DEFAULT AND EXCUSABLE DELAYS.** Coherent may cancel any Purchase Order in the event of a default by Supplier of any of these Terms. Supplier shall reimburse Coherent for any additional cost incurred by Coherent if Coherent purchases from third parties articles substantially similar and in the same quantity as the Articles in the event of cancellation of a Purchase Order. Supplier however shall not be in default to the extent that performance of its obligations is prevented by reason of a Force Majeure event, which is a cause beyond the control and without the fault or negligence of Supplier, such as fire, flood, earthquake, riots, acts of God, war, terrorism and public disorder.

**17. INSPECTION, TESTING AND EXPEDITING.** All materials and workmanship entering into the performance of any Purchase Order may be inspected, tested and expedited at all times and places either before, during or after manufacture by representatives designated by Coherent. The exercise of this right to inspect, test and expedite, however, shall in no way relieve Supplier of its obligation to furnish all articles or materials in strict accordance with the specifications and all terms and conditions set forth herein and in any applicable Purchase Order. If inspection, testing and expediting are made on the premises of Supplier or its supplier, Supplier shall furnish without additional charges all reasonable facilities and assistance for the safety and convenience of the Coherent representatives in the performance of their duties.

**18. TOOLS AND MATERIALS.** Title to and the right of immediate possession of all tooling, equipment or materials furnished or paid for by Coherent directly or indirectly for use hereunder (collectively, "Supplies") shall be and remain in Coherent. Coherent does not guarantee or warrant the accuracy of any tooling furnished by it. Supplier shall: (a) be responsible for all loss or damage to the Supplies while in its possession and insure its risk in this respect with adequate fire and extended coverage insurance, (b) clearly mark the Supplies as belonging to Coherent keep the Supplies separate from other tooling, equipment and materials in Supplier's plant, (c) maintain the confidentiality of the Supplies as set forth in Section 19, (d) keep the Supplies in good operating condition, and (e) use the Supplies exclusively for the performance of work for Coherent and not for production of larger quantities than specified or in advance of normal production schedules except with Coherent's prior written consent. All taxes assessments and similar charges levied with respect to or upon any such items owned by Coherent while in Supplier's possession or control and for which no exemption is available shall be borne by Supplier. Upon completion of work to be performed under any applicable Purchase Order, all Supplies shall be disposed of as Coherent directs.

**19. CONFIDENTIAL INFORMATION.** "Confidential Information" means any information disclosed by Coherent to Supplier, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation drawings, documents, specifications, samples, prototypes and designs. Confidential Information shall include all information relating to Articles and may include third-party information. Confidential Information shall not include information that (a) was publicly known and made generally available in the public domain prior to the time of disclosure by Coherent to Supplier, (b) becomes publicly known and made generally available in the public domain after disclosure to Supplier by Coherent through no action or inaction of Supplier, or (c) is in the possession of

Supplier, without confidentiality restrictions, at the time of disclosure by Coherent to Supplier, as evidenced in Supplier's files and records in existence immediately prior to the time of Coherent's disclosure. Supplier shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Supplier shall take at least those measures that it takes to protect its own most highly confidential information. Supplier shall make no copies of the Confidential Information unless the same are previously approved in writing by Coherent. Supplier shall reproduce Coherent's proprietary rights notices on any such approved copies in the same manner in which such notices were set forth on the original. Supplier shall not use any Confidential Information for any purpose other than to perform its obligations under the applicable Purchase Order. Supplier shall not disclose Confidential Information to any third party unless authorized in advance in writing. Supplier shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody Coherent's Confidential Information. Supplier shall immediately notify Coherent in the event of any unauthorized use or disclosure of the Confidential Information.

**20. GRATUITIES.** Supplier warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to any of Coherent's employees, agents or representatives and complies with Coherent's Supplier Code of Conduct available on the Supplier Portal. If Coherent, in its sole determination, believes in good faith that Supplier or any of its employees, agents or representatives has offered or given any gratuities to Coherent's employees, agents or representatives for purposes relating to securing purchase orders or contracts from Coherent or securing favorable treatment with respect thereto, Coherent may cancel any applicable Purchase Order upon written notice to Supplier, as set forth in Section 21.

## **21. TERMINATION FOR CAUSE**

(a) Either party may terminate any applicable Purchase Order in the event that the other party materially defaults in the performance of any material term or condition, thirty days after the defaulting party's receipt of written notice of material default, provided that the defaulting party has not cured such default within such thirty day period.

(b) Either party may terminate any or all outstanding Purchase Orders immediately upon written notice to the other in the event that the other party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, makes an assignment for the benefit of creditors, has a receiver appointed to it, or if it undergoes a sale of all or substantially all of its assets relating to any Purchase Order.

## **22. TERMINATION AT WILL**

(a) Coherent may terminate work under a Purchase Order in whole or in part at any time by written notice to Supplier specifying the effective date and the extent of such termination. For the avoidance of doubt, Supplier shall not be liable under default and delays due to a Force Majeure event, as set forth in Section 16.

(b) Upon receipt of such notice of termination and except as otherwise directed by Coherent, Supplier shall promptly

(1) stop work under such Purchase Order on the date and to the extent specified in such notice of termination;

(2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of

such portions of the work under a terminated Purchase Order which, by its nature, cannot be terminated without incurring substantial costs, losses or other liability;

(3) terminate all orders and subcontracts relating to the performance of any work to be performed under such terminated Purchase Order;

(4) settle all claims arising out of any terminated orders and subcontracts relating to such terminated Purchase Order, subject to the approval or ratification of Coherent;

(5) transfer title and deliver on Coherent's instruction all fabricated and unfabricated parts, work in process, completed work, supplies and other materials produced as a part of, or acquired in respect of the performance of the work to be performed under such terminated Purchase Order; and

(6) take any necessary action to protect property in Supplier's possession in which Coherent has or may acquire an interest.

(c) If the parties cannot agree on the amount of fair compensation to Supplier for such termination within a reasonable time, Coherent will pay to Supplier without duplication the following amounts:

(1) The contract price for Articles, which have been completed;

(2) The actual costs incurred by Supplier, which are properly allocable, or apportionable under recognized commercial accounting practices to the terminated portion of a Purchase Order; and

(3) such allowance for profit on the work performed as may be reasonable under the circumstances.

The total sum to be paid Supplier under items (1), (2) and (3) of the paragraph (c) shall not exceed the total contract price specified in the Purchase Order, reduced by (i) the amount of payments already made and (ii) the contract price of work not terminated.

(d) Supplier will promptly transfer title and deliver on Coherent's instructions any property the cost of which is reimbursed under item (2) in this paragraph (c) or with Coherent's approval may retain same at an agreed price or sell at any price approved by Coherent and credit the amount so agreed or received as Coherent directs. Nothing contained in this Section 22 shall impair the right of Coherent to change or cancel any Purchase Order pursuant to Section 6 or 21 above. Coherent may audit all elements of any termination claim.

**23. COMPLIANCE WITH LAWS.** Any Purchase Order issued hereunder are subject to the provisions of, and Supplier shall comply with, each of the following, and each of the following are deemed incorporated by reference into each Purchase Order: (i) Executive Order 11246, (41 CFR 60-1.4); (ii) Section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)); and (iii) Section 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, (41 CFR 60-300.5(a)). **Coherent and Supplier shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified**

**individuals with disabilities, and qualified protected veterans.** Supplier represents and warrants that it has developed and has on file affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), also as required under Section 503 of the Rehabilitation Act of 1973 for the handicapped and Section 4212 of the Vietnam Era Veterans Rehabilitation Act of 1974. Supplier shall further comply with any other applicable federal, state or local governmental laws, regulations and orders, as well as any governmental flow-down provisions, applicable to any Purchase Order. Supplier agrees, if applicable, to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts, 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58 Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118 Fly American; and 41 U.S.C. 432 relating to procurement integrity. Supplier shall comply with 48 CFR Parts 202, 231, 244, et. al. (Defense Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Electronic Parts (DFARS Case 2012-D055) (Final Rule)). Additionally, Supplier agrees that these Terms will include (i) such Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulations Supplement (DFARS), and all other governmental requirements provided in the FAR Subcontracting Flow Down Matrix and DFARS Subcontract Flowdown Provisions, as referenced in the "FAR/DFARS Flowdown Provision" tab of the Supplier Portal; and (ii) the "Supplier Quality Requirements", "Supplier Environmental Requirements" and "Supplier Code of Conduct" as referenced in the "Compliance Requirements" tab of the Supplier Portal. Supplier shall remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder, including without limitation all environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions (e.g., REACH and RoHS), product end-of-life management/product take-back, and/or product safety related to the transport, import, export, distribution, sale and/or use of Supplier's products.

**24. CONFLICT MINERALS.** Supplier shall adopt policies and establish systems to ensure that Conflict Minerals are not present in any Products provided to Coherent or Authorized Purchasers, including all components included in those Products. Such systems established by Supplier shall include supporting data on its supply chain evidencing that the Conflict Minerals are DRC conflict-free, which may be requested from Coherent from time to time. Supplier shall diligently pursue effecting its operations and performance hereunder in accordance with Coherent's Supplier Code of Conduct and Coherent's Conflict Minerals policy as published and updated from time to time. Supplier shall use its best efforts to obtain written certifications from its lower tier suppliers stating that all products, components, and materials provided by lower tier suppliers and included in any Products provided to Coherent or Authorized Purchasers do not contain Conflict Minerals. Supplier further agrees to provide all the certifications from lower tier suppliers upon request by Coherent, and to put forth a good faith effort to comply with all requirements and requests from Coherent related to Conflict Minerals.

**25. PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS.** This certification is required by FAR Sections 52.203-12, and OMB Circular A 110, Appendix A.7.

(a) The Supplier hereby acknowledges, certifies and agrees :

(i) To the best of Supplier's knowledge and belief, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or

employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(ii) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting the influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with this solicitation, the Supplier shall complete and submit OMB standard form LLL, Disclosure of Lobbying Activities, to Coherent;

(iii) Supplier shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly; and

(iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(b) The Supplier certifies, to the best of its knowledge and belief, that the Supplier and/or any of its Principals (as defined below):

(i) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(ii) Have not within a three-year period preceding Supplier's acceptance of these Terms, 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 state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(iii) Are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in paragraph 20(b)(ii) of this certification; and

(iv) Have not within a three-year period preceding Supplier's acceptance of these Terms, had one or more contracts terminated for default by any Federal agency.

(c) "Principals," for the purposes of this certification, means officers; directors; owners; partners' and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager, head of a subsidiary, division or business segment, and similar positions).

(d) This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, U.S. C.

(e) The certification of this provision is a material representation of fact upon which reliance was placed when issuing a Purchase Order hereunder. If it is later determined that the Supplier knowingly rendered an erroneous certification, in addition to other remedies available to it, the Coherent may terminate any Purchase Order for default.

**26. CLEAN AIR AND WASTE.** This certification is required by FAR Sections 42.232 2, and OMB Circular A 110, Appendix A.6. If any Purchase Order hereunder exceeds \$100,000, or orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by the Environmental Protection Agency as a violating facility, or the Purchase Order is not otherwise exempt, the Supplier agrees as follows:

(a) To comply with the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(b) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency list of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(c) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(d) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (d).

**27. GENERAL:** The relationship of the parties hereunder is that of independent contractors, and these Terms will not be construed to imply that either party is the agent, employee, or joint venturer of the other. In the event that any provision of these Terms is held to be unenforceable, these terms and conditions will continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties. These Terms are governed by and shall be construed under the laws of the State of California without regard to its conflicts of law principles. The parties consent to the personal and exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. Waiver by either party of a breach of any provision of these Terms or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that provision or as a waiver of any other right.