

## **APPENDIX TO FEDERAL ACQUISITION REGULATION (FAR) 52.212-4 TERMS AND CONDITIONS**

Teradyne (Contractor) products and related services and software meet the definition of “commercial item” under FAR 2.101. FAR terms and conditions that apply to such Contractor commercial items are FAR 52.212-4, as tailored below.

### **Sub-clause (h), Patent Indemnity, is tailored to read as follows:**

#### **(h) Patent Indemnity:**

- (a) Contractor will defend or settle any claim against the Government that products infringe an intellectual property right in the country where the products are initially delivered, provided that the Government promptly notifies Contractor in writing, assists in the investigation or defense of the claim and allows Contractor to control the defense and settlement of such claim;
- (b) In the event of an infringement claim under section (a) Contractor will pay infringement claim defense costs, settlement amounts and court awarded damages. If such a claim appears likely or is made, Contractor may, at its option, modify the product, procure any necessary license, or replace it with a non-infringing, functionally equivalent product. If Contractor determines none of these alternatives is reasonably available, Contractor will refund the purchase price upon product return;
- (c) Contractor has no liability under this clause if the Government fails to comply with its obligations hereunder or for any claim of infringement arising from (1) Contractor’s compliance with, or use of Government designs, specifications, instructions or technical information or (2) product modifications by the Government or a third party or (3) product use prohibited by specifications or related application notes or (4) use of the product with products not supplied by Contractor;
- (d) The above terms are Contractor’s exclusive liability for claims of intellectual property infringement or misappropriation of trade secrets.

### **Sub-clause (n), Title, is tailored to read as follows:**

#### **(n) Title:**

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon THE EARLIER OF (1) acceptance, regardless of when or where the Government takes physical possession, OR (2) 10 DAYS FROM DELIVERY.

### **Sub-clause (o), Warranty, is tailored to read as follows:**

#### **(o) Warranty:**

Contractor’s standard commercial warranty applies, and is as follows:

**Product:** Contractor warrants for one (1) year that the Product manufactured by Contractor will be free of defects in workmanship and materials and will substantially conform to Contractor’s product specifications (the “Product Warranty”). Contractor does not warrant that the operation of Products will be uninterrupted or error free. The Product Warranty period begins on the date of delivery of the product. During the warranty period, Contractor, at no charge to the Government, will service, adjust, or replace any non-conforming part(s) returned under this Product Warranty. For integrated test systems installed by Contractor, on-site repair, limited to servicing, adjusting, or replacing part(s), will be performed for a period of ninety (90) days after commencement of the warranty at no additional cost to the Government. Contractor warrants, for ninety (90) days, that Contractor application interfaces will substantially conform to Contractor’s product specifications. Contractor’s options and sub-systems will be covered by the remaining original warranty as the system to which they are attached, or for ninety (90) days after delivery, whichever is longer. This Product Warranty applies only to normal use of the Product and shall be void if Contractor determines that defects or non-conformities of the Product were caused by the Government’s negligence, misuse, or accident; or by unauthorized repair, alteration or installation of the Product. This Product Warranty does not extend to consumable items such as filters or fuses, nor to mechanical parts of the Product failing from normal wear and tear. The Government’s sole remedy and Contractor’s exclusive liability for claims against Contractor shall be the repair or replacement of the defective or non-conforming Product and parts, or, if repair or replacement cannot be accomplished, Contractor will refund to the Government amounts paid for the Product, depreciated over a 3-year period. Some newly manufactured Contractor products may contain remanufactured parts that are equivalent-to-new in performance.

**Services.** Contractor warrants that the service will be performed in a good and workmanlike manner. Contractor does not warrant any amount of uptime and shall have no liability regarding any failure of any system or part to perform. Customer’s sole remedy for claims and Contractor’s sole liability under this Services warranty is for Contractor to re-perform the applicable service in conformity with this warranty. Contractor warrants that new parts ordered, if any, will be free from defects in workmanship and materials for a period of ninety (90) days after delivery of the same. This warranty applies only to normal use of the parts and shall be void if Contractor determines that defects or non-conformities of the parts were caused by the Customer’s negligence, misuse, or accident; or by unauthorized repair, alteration or installation of the parts or the system. Customer’s sole remedy and Contractor’s exclusive liability for claims of part defect against Contractor shall be the repair or replacement of the defective or non-conforming part.

**Warranty Applicability.** THE WARRANTIES SET FORTH IN THIS SUB-CLAUSE (O) CONSTITUTE THE ONLY REPRESENTATIONS OR WARRANTIES MADE BY CONTRACTOR WITH RESPECT TO ANY PRODUCT OR SERVICE SUPPLIED BY CONTRACTOR. CONTRACTOR MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

### **Sub-clause (p), Limitation of Liability, is tailored to read as follows:**

#### **(p) Limitation of Liability and Remedies:**

- (a) In no event will the Contractor be liable for special, incidental, indirect, consequential, exemplary or multiple damages or for downtime costs, loss of data, restoration costs, lost profits, regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages;
- (b) To the extent that limitation of liability is permitted by law, the Contractor’s liability to the Government is limited to the purchase price of the product giving rise to such claim of liability;
- (c) Limits set forth above do not apply to infringement claims (see Patent Indemnity above) or to damages for bodily injury or death caused by the gross negligence or willful misconduct of Contractor;
- (d) The remedies in these terms and conditions are the Government’s sole and exclusive remedies.

**Other:** If Contractor software is provided, Contractor’s standard commercial software license agreement shall apply. All Contractor invoices shall be paid within thirty (30) days of receipt. Yearly support and/or maintenance shall be invoiced in full at the commencement of such service.