



# Xe Services Terms and Conditions of Procurement

PUF.017 (Rev.5)

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## 1. DEFINITIONS.

- A. "Buyer" means Xe Services, LLC, its parent company and its affiliates and subsidiaries.
- B. "Contract" means a mutually binding legal relationship obligating the Seller to furnish supplies or services (including construction) and the Buyer to pay for them. It includes all types of written commitments that obligate Xe Services, LLC, to an expenditure of funds.
- C. "DFAR" or "DFARS" means the current Department of Defense FAR Supplement in its entirety.
- D. "FAR" means the current Federal Acquisition Regulation in its entirety.
- E. "Order" includes but is not limited to any authorized legal Purchase Order, Change-order, Contract, Subcontract, Addenda and any related attachments thereto, issued by Xe Services, LLC, ("Xe"), to the Seller for the purchase of Product(s).
- F. "Prime Contract" means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- G. "Product" includes, but is not limited to, all articles, supplies, materials, equipment, labor, supervision, tools, demolition, facilities, services, packaging, containers, documentation, and literature necessary for and incidental to the complete provision of any item and/or the complete performance of any work, specified in an Order.
- H. "Seller" means the party identified on the face of this Order with whom Xe Services, LLC, is contracting for Product(s) and includes but is not limited to vendors and subcontractors and their subsidiaries, affiliates, subcontractors, agents, representatives, employees, officers and/or directors.
- I. "Subcontract" means any contract entered into by a subcontractor to furnish supplies and/or services for the performance of a prime contract, or a subcontract under a prime contract at any tier. It includes but is not limited to purchase orders and changes and modifications to purchase orders.
- J. "Subcontractor" means any supplier, distributor, vendor, individual or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.
- K. "Vendor" means any supplier, distributor, subcontractor, individual or firm that furnishes supplies or services.
- L. "Work" means all Product(s) necessary for and incidental to complete fulfillment of an Order as specified.
- M. "Xe" means Xe Services, LLC its parent company, affiliates and subsidiaries, including but not limited to: U.S. Training Center, Inc., XPG LLC and USTC ProShop, LLC.
- N. "Xe Procurement Representative" means an individual designated and authorized by Xe Services, LLC.'s recognized procurement organization to administer and/or execute this or any Order.

2. **PROVISIONS AND CLAUSES APPLICABLE UNDER GOVERNMENT CONTRACTS:** If a Federal Government contract is referenced on the face of this order, this order shall be deemed to be a Subcontract under such Government contract and shall be subject to the current provisions of the FAR and the contract clauses thereof. If the Federal Government contract referenced on the face of this order is administered by the U.S. Department of Defense, this order shall be additionally subject to the DFARS and the applicable provisions and contract clauses thereof. The parties understand and agree the term "contract" shall mean this order, the term "Contractor" shall mean the Seller, and the terms "Government", "Contracting Officer", and equivalent terms shall mean the Buyer, unless such terms clearly denote the U. S. Government or the Contracting Officer.

3. **APPLICABILITY OF CLAUSES:** It is understood and agreed that any clause listed herein, except as provided by explanatory note(s), that is inapplicable to the work called for under this order, shall be deemed to be self-deleting, requiring no express deletion of said inapplicable clause. In the event of any conflict among the clauses applicable to the order, including those not applicable solely to federal contracts, the most stringent clause shall apply. Subcontractors must flow-down all applicable provisions referenced herein to any lower-tier subcontractor. If the date or substance of any of the clauses listed herein is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

4. **52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998) (Deviation)** When accompanying a solicitation these provisions incorporate one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. If the date or substance of any of the clauses or provisions listed herein is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause or provision incorporated by said Prime Contract shall apply instead. The full text of provisions may be accessed electronically at this/these address(es):  
FAR: <https://www.acquisition.gov/far/> DFARS: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

5. **52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) (Deviation)** This order incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Buyer will make their full text available.

6. **ACCEPTANCE.** This Order integrates, merges and supersedes any prior offers, negotiations and agreements concerning the subject matter hereof and together with Xe-issued exhibits, attachments, and terms and conditions, constitutes the entire agreement between the parties. Any different, alternate and/or additional terms and conditions which may be contained in any document furnished by Seller in accepting this Order are hereby objected to and rejected by Xe and shall have no force and effect unless otherwise expressly agreed to in writing by Xe. Seller's acknowledgement, acceptance of payment or commencement of performance, shall constitute Seller's unqualified acceptance of this Order. Acceptance of Order signifies Seller acknowledgement and acceptance of all applicable FAR and DFARS requirements.

7. **COMMUNICATION.** Xe shall be solely responsible for all liaison and coordination with Xe customer(s), including the U. S. Government, as it affects any applicable prime contract, this Order, and/or any related contract. Only the Xe Procurement Representative has authority to make changes or amendments to this Order. Changes and amendments must be in writing. Xe engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Product(s) hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for equitable adjustment. Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Xe Procurement Representative.

8. **PERFORMANCE.** It is expressly understood that all applicable drawings, Statements of Work, and specifications constitute performance specifications. It shall be the sole responsibility of the Seller to complete the work described in the Order in full accord with all applicable codes and any requirements over the work, and in such a manner as to provide complete, adequate and operational finished product(s), free of defect and suitable for their intended purpose.

9. **RESPONSIVENESS.** Where Prime Contract clauses, terms, or conditions are flowed-down to lower tier subcontractors, in the event that a prime contract clause or other requirement stipulates a time period or deadline for submittal of documents or a response to the Government, Seller and any lower tier subcontractor(s) shall be allowed no more than sixty percent (60%) of the total time allowed Xe for submission of required documents or response, to submit all required documents or responses to Xe.

10. **PAYMENT. Standard Terms:** Unless otherwise stated in this Order, standard payment terms shall be sixty (60) days from the later of receipt of a correct invoice from Seller, or the date of delivery of acceptable Product(s). All payments shall be made in U.S. Dollars. Xe neither guarantees nor is responsible for any liabilities incurred by any Third Party Designees under this Order. Xe shall have a right of setoff against payments due or at issue under this Order or any other Order between the parties. Each payment shall be subject to reduction to the extent of amounts which are found by Xe or Seller not to have been properly payable, and shall also be subject to reduction for overpayments. Seller shall promptly notify Xe of any such overpayments found by Seller. Payment shall be deemed to have been made as of the date of mailing Xe's payment or electronic funds transfer. Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be



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listed separately on the invoice. Payment(s) Specific to Prime Contracts: All other terms and conditions notwithstanding, Orders referencing a Prime Contract and/or the terms and conditions thereof shall by said reference incorporate the applicable prime contract payment schedule(s) thereof, including all applicable payment terms and conditions, under which all invoices shall be due and payable within thirty (30) days of the receipt of payment under the Prime Contract for the invoiced product(s), unless otherwise specifically agreed to by Xe in writing. Payment Specific to Motor Vehicle and/or Equipment Manufacturers: Where applicable and specific to Motor Vehicle and Equipment Manufacturers, the payment obligations of Xe shall be incurred only upon acceptance by the U.S. Government or state, provincial, local or foreign government of the completed vehicle or equipment with the manufacturer-provided materials and/or services. Acceptance by the U.S. Government (or state, provincial, local or foreign government) will be demonstrated by the receipt by Xe of a Form DD250 from the U.S. Government (or equivalent form from such other government unit) to pay the manufacturers for materials and/or services provided with respect to such vehicles. Prompt Payment: Offers of prompt payment discounts shall be considered and computed in accord with FAR 52.232-8. Electronic Purchases: Procurements under U.S Government prime contracts shall conform to the requirements and policies of FAR 13.003 (Simplified Acquisition Procedures).

11. **PRECEDENCE.** Any inconsistencies or conflicts, if any, among the provisions of the Order shall be resolved in accord with the following descending order of precedence: (i) face of the Order and all applicable attachments; (ii) these Terms and Conditions; (iii) other specifications or documents incorporated by reference (iv) Statement(s) of Work referenced on the Order.
12. **CHANGES.** Xe reserves the right at any time without notice to sureties or assignees, if any, to make changes or modifications to the general scope of the Order, including but not limited to, drawings, specifications, and delivery schedule pertaining to any Product(s) covered by the Order. Xe will issue such change(s) in writing ("Change Order"). Any increase or decrease in price or performance period resulting from such changes shall be equitably adjusted, and the Order shall be modified in writing accordingly. Seller must assert its right to an adjustment under this provision in writing, delivered to Xe's Procurement Representative within fifteen (15) days from Seller's receipt of the written Change Order. If Seller's request includes the cost of property or materials made obsolete or excess by the change(s) Xe shall have the right to prescribe the manner of disposition of the property. Failure to agree on any adjustment shall be deemed a dispute under this Order, and shall be resolved in accordance with the Disputes provisions of the Order. Nothing in this provision shall excuse Seller from continuing performance as changed without delay.
13. **SHIPMENT.** Unless otherwise specified, all Products are to be packed in accordance with good commercial practice. A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading and shipping information, including the Xe Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include the Order number. Unless otherwise specified, delivery shall be FOB / Destination. Shipments of Product(s) must equal exact quantity ordered, unless otherwise agreed to in writing. Product(s) shall not be supplied in excess of quantities specified in the Order. Seller shall be liable for handling charges and return shipment costs for any excess quantities. The Product(s) to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5, not used or reconditioned or remanufactured or of such age as to impair its usefulness or safety. Shipping schedules may contain authorization to Seller to fabricate, within a time specified, quantities of Products under this Order, the delivery of which has not been specified. It may also contain authorization to Seller to acquire, within a specified period of time, materials necessary to fabricate a quantity of the Products under this Order.
14. **STOP WORK ORDER.** Xe may at any time and by written order to Seller require the Seller to stop all, or any part of, the work being performed hereunder for a period not to exceed ninety (90) days, or for such period as Xe and its customer may agree under a contract ("Stop Work Order"). Upon receipt of the Stop Work Order Seller will immediately comply with the terms of the Stop Work Order and will take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order. Within the ninety day period (or such other period as agreed to between Xe and its customer) Xe will either (i) cancel the Stop Work Order; or (ii) terminate the work covered as provided in the Termination provisions of the contract. If the Stop Work Order is canceled or the ninety day period expires, the Seller shall resume work and an equitable adjustment as to cost and/or schedule shall be made in accordance with the Changes provision.
15. **PRICING AND INVOICE DISPUTES.** All pricing and invoice disputes with Xe must be identified by Seller in writing to Xe within ninety (90) days of the date of Xe's receipt of Seller's shipment, or performance of the work. On disputes that have not been identified to Xe by Seller in writing within this time, Seller agrees to accept whatever payment deemed appropriate by Xe. All properly identified disputes under this Order which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of the Order as directed by Xe. Any controversy or claim arising out of or relating to the Order, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
16. **EQUIPMENT MAINTENANCE.** Unless otherwise agreed to in writing, Seller shall furnish at its own expense, keep in good condition, and replace when necessary, all dies, tools, gauges, fixtures and patterns necessary for the production of the Products ordered. Title to all property, including equipment furnished at no charge to Seller by Xe or the U. S. Government ("GFE") for Seller's performance of its obligations under this Order, shall at all times vest in Xe or the U.S. Government in the case of GFE, and Seller assumes all liability for any loss, damage, or shortage and/or for Seller's failure to return such property to Xe upon request. Seller shall promptly notify Xe of any such loss, damage, or shortage in writing.
17. **INSPECTION AND ACCEPTANCE.** Xe and its customer, including but not limited to the U.S. Government, may inspect all work at reasonable times and places, including during manufacture, at the source and before shipment pursuant to the provisions of FAR 52.246. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Order. Xe's final inspection and acceptance shall be at destination. If Seller delivers non-conforming Work, Xe may at its sole option: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Order requirements and charge the cost incurred to Seller. Seller shall not re-tender rejected Work without disclosing the corrective action taken.
18. **WAIVERS, APPROVALS, AND REMEDIES.** Failure by Xe to enforce any of the provisions of this Order shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of Xe thereafter to enforce each such provision. Xe's approval of documents shall not relieve Seller of its obligation to comply with the requirements of this Order. The rights and remedies of Xe in this Order are cumulative and in addition to any other rights and remedies provided by law or in equity.
19. **PRIORITY RATING.** If so identified, as a "rated order" certified for national defense use, the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700) per FAR 52.211-15
20. **SUPPLY FAILURE.** In the event of a partial failure of Seller's sources of supply for the Products purchased, Seller will first meet all of Xe's requirements hereunder prior to any allocation among customers under Section 2-615 of the Uniform Commercial Code.
21. **TIMELY PERFORMANCE.** Seller's timely performance is a critical element of this Order. Unless advance shipment has been authorized in writing by Xe, Xe may, at its sole option, store at Seller's expense, or return, shipping charges collect, all Products received more than five (5) days in advance of the scheduled delivery date. If Seller becomes aware of difficulty in fulfilling the Order, Seller shall timely notify Xe, in writing, providing all pertinent details. This notification shall not change any delivery schedule or due date. In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been









