

## T-32

### GENERAL TERMS AND CONDITIONS (CONSTRUCTION AND SIMILAR WORK)

#### 1. DEFINITIONS AND EXPLANATION.

- A. The words or "Buyer" or "Owner" mean the entity name listed on the Purchase Order/Subcontract.
- B. The words "Contractor" or "Seller" mean the party with whom Buyer is contracting and whose name and address appears on the face of the Order (if a Purchase Order is being used as the instrument of contracting) or the Agreement.
- C. The word "Subcontractor" means any person, supplier, distributor, retailer, vendor or firm which furnished supplies or services to or for the Contractor or another subcontractor and, therefore, means subcontractor at any tier.
- D. The word "Order" means an instrument entitled "Purchase Order" which has been accepted by Contractor as provided in Clause 2 including all drawings, specifications, documents and all special and general conditions or provisions referenced therein or made subject thereto.
- E. The words "Agreement" or "Construction Agreement" mean the instrument of contracting used in lieu of a Purchase Order, which has been duly executed by both Buyer and Contractor, and includes all drawings, specifications, documents and all special and general conditions or provisions referenced therein or made subject thereto.
- F. "Contract" means the total legal obligation of the parties which results from the agreement of Buyer and Contractor as evidenced by an instrument called an Order (as herein defined) or a duly executed instrument entitled Agreement if a Purchase Order is not being used as the instrument of contracting.
- G. "Work" means all plant, labor, materials, supplies, appliances, equipment, transportation or other things required to be furnished or performed by the Contractor/Subcontractor in order to properly perform and fulfill the obligations and requirements of the Order/Agreement.
- H. "Project" means the subject of the Order/Agreement for which Contractor is performing the Work.
- I. Miscellaneous Word Explanation:
  - (1) Whenever the words "as shown," "as indicated" or "as detailed" or words of similar import are used it means that reference is being made to the drawings and/or specifications unless otherwise specifically provided.
  - (2) Whenever the words "as directed," "as required," "as permitted," "approved," "accepted," "acceptance" or words of similar import are used it means that specific direction, permission, approval or acceptance by Buyer is required prior to

Contractor's proceeding further unless otherwise specifically provided.

- (3) The words "to provide" or "provide" means "to furnish and install" or "to provide complete and in place" unless otherwise specifically provided.

- J. Unless the context otherwise requires, words importing the singular number include the plural and in the plural include the singular and words of the masculine gender include the feminine and the neuter.
- K. Titles and paragraph headings used herein and in the Order/Agreement are for convenient reference only and shall not affect the interpretation of any provision of the Order/Agreement.
- L. Refer to Clause 24 herein for a definition and explanation of "Buyer and Contractor Representative."

#### 2. ACCEPTANCE OF PURCHASE ORDER.

If a Buyer Purchase Order is being used as the instrument of contracting, acceptance of it by Contractor is expressly limited to its terms and any additional terms in Contractor's acceptance are hereby objected to. Contractor accepts the Purchase Order as written by acknowledging receipt or beginning performance. On such acceptance a binding contract between Contractor and Buyer is formed which contract is herein referred to as "Order."

#### 3. COMPLETE AGREEMENT.

An Order or an Agreement shall constitute the complete and exclusive agreement between Contractor and Buyer and shall supersede any prior correspondence or other communications, quotations or proposals or bids unless such or portions thereof are specifically incorporated by reference into such Order/Agreement.

#### 4. MODIFICATION.

Except for the provisions of the "Changes" clause herein, no modification of an Order/Agreement (including any additional or different terms in Seller's acceptance of a Purchase Order) shall be binding on Contractor or Buyer unless agreed to in a writing signed by the duly authorized representatives of the parties as hereinafter described and designated.

#### 5. INTENT OF CONTRACT DOCUMENTS.

The provisions and exhibits of the Order/Agreement shall be construed as a whole. They are complementary and what is required by anyone shall be as binding as if required by all. The intent of the Order/Agreement is to include all labor, materials, equipment, tools, plant and other items necessary for the proper execution and completion of the Work. The titling and division of the drawings and specifications by trades or other classifications is for convenience only and the fact that any part of the Work should or could properly have been shown or specified under

some other title or division shall not relieve Contractor of performing or furnishing the same nor entitle Contractor to extra compensation.

**6. DISCREPANCIES.**

If Contractor believes there are or may be any errors, omissions or inconsistencies in the provisions and exhibits of the Order/Agreement or if Contractor has any doubt as to the meaning thereof, Contractor shall immediately submit the matter to Buyer for written clarification. Any Work performed before receipt of such clarification shall be at Contractor's risk and expense. If any clarification is needed, Buyer shall clarify the same by issuing a written field order pursuant to the "Changes" clause. However, notwithstanding the provisions of said clause, there shall be no increase in the Order/Agreement price or extension of the time for completion on account of any misdescription or omissions of details of the Work which are clearly necessary to carry out the intent of the documents or which are customarily performed or furnished by Contractors. Such misdescribed or omitted details shall be performed or furnished by Contractor without extra compensation as if correctly and fully set forth in the documents.

**7. LOCATION OF WORK, SITE INVESTIGATION AND REPRESENTATIONS.**

- A. The Work under this Order/Agreement shall be performed at such place or places as shall be designated in this Order/Agreement and at such other place or places as may be necessary. Contractor acknowledges that it has satisfied itself as to the nature and location of the work and to the general and local conditions, particularly those bearing upon, (A) transportation, (B) disposal, (C) handling and storage of materials, (D), availability of labor, (E) security requirements, (F) water, (G) electric power and other utilities, (H) roads, (I) the conformation and condition of the ground, (J) equipment and facilities needed preliminary to and during the prosecution of the Work, and (K) all other matters which can, in any way, affect the Work or the cost thereof under this Order/Agreement. Any failure by Contractor to acquaint itself with all the available information concerning these conditions shall not relieve Contractor from responsibility for estimating properly the difficulty or cost of successfully performing the Work.
- B. Buyer assumes no responsibility for any understanding or representation made by any of its employees, agents or representatives during or prior to the execution of this Order/Agreement, unless such understanding or representation by Buyer is expressly stated in this Order/Agreement. Any such representation or understanding made but not so expressly stated in the Order/Agreement and for which liability is not expressly assumed by Buyer herein shall be deemed only for the information of Contractor and Buyer and shall not render Buyer responsible or liable therefore.

**8. DIFFERING SITE CONDITIONS.**

- A. Contractor shall promptly and before such conditions are disturbed, notify Buyer in writing of:
- (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Order/Agreement, or
  - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in this Order/Agreement.
- B. Buyer shall promptly investigate the conditions, and if such conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work under this Order/Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Order/Agreement modified in writing accordingly.
- C. No claim of Contractor under this clause shall be allowed unless Contractor has given the notice required in 8.A.; provided, however, the time prescribed therefore may be extended by Buyer in writing.
- D. No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Order/Agreement.

**9. BONDS.**

(If a bond or bonds is specifically required by the terms of the Order/Agreement, the provisions of this clause shall apply.) Prior to commencing Work hereunder, or within such further time as Buyer may allow in writing, Contractor shall deliver to Buyer a performance bond and a payment bond executed by a corporate surety acceptable to Buyer, in amounts not less than the Order/Agreement price, on the bond forms furnished by Buyer in accordance with the instructions on said forms. Failure to deliver acceptable bonds within the time allowed shall constitute a material breach of this Order/Agreement and entitle Buyer to (A) cancel Contractor's right to proceed with the Work, and (B) recover from Contractor any damages resulting from such breach. If any surety on such bonds becomes unacceptable to Buyer or if the Order/Agreement price is substantially increased after such bonds are delivered, Contractor shall promptly deliver such acceptable additional bond security as Buyer may require.

**10. SUBCONTRACTS.**

- A. Contractor shall perform on the site, and with its own organization, Work equivalent to at least 20% (or such other percentage as may be specified elsewhere in this Order/Agreement, or be approved in writing by Buyer upon request of Contractor) of the total amount of Work to be performed under this Order/Agreement. Subcontractors and other persons and organizations proposed and accepted by Buyer must be used on the Work for which they were proposed and accepted and shall not be changed except with the written approval from Buyer.

- B. The Contractor shall, within twenty-four (24) hours of notice of award of this Order/Agreement, furnish in writing to the Buyer Purchasing Representative a complete list of all subcontractors to be used in the performance of the Work showing their names, addresses, phone numbers, trade and license numbers. This Order/Agreement shall be clearly referenced on the submittal. No payment will be authorized until said list is submitted as required above.
- C. Contractor shall remain fully responsible for all the Work covered by this Order/Agreement, whether or not said Work is subcontracted.
- D. Neither consent by Buyer to any subcontract or any provisions thereof nor approval of Contractor's bidding processes or purchasing system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to in any way relieve Contractor of any responsibility for performing this Order/Agreement. Contractor shall be fully liable to Buyer for the acts and omissions of all subcontractors of every tier and their respective agents, representatives and employees.
- E. Contractor shall schedule, supervise and coordinate the operations of all its subcontractors.
- F. No subcontract placed by Contractor under this Order/Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis.

#### **11. CONTRACT PERFORMANCE.**

Contractor shall perform all Work required by and in strict accordance with the drawings, specifications and other provisions and requirements of the Order/Agreement and all within the period of time specified and at the price or prices set forth in the Order/Agreement.

#### **12. SUSPENSION OF WORK.**

- A. Buyer may, by a written field order signed by the Buyer Purchasing Representative which expressly refers to this clause, order Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as may be appropriate for the convenience of Buyer.
- B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Buyer Purchasing Representative in the administration of this Order/Agreement, or by the failure to act within the time specified in this Order/Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Order/Agreement (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Order/Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or its subcontractors, or (2) for which an equitable adjustment is

provided for or excluded under any other provision of this Order/Agreement.

- C. Except as may be otherwise provided herein, no claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before Contractor shall have notified Buyer in writing of the act of failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under this Order/Agreement.

#### **13. CHANGES.**

- A. Buyer may, at any time, without notice to the sureties, by a written field order signed by the Buyer Purchasing Representative which expressly refers to this clause, make any change in the Work within the general scope of the Order/Agreement, including but not limited to changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the Work;
  - (3) In the Buyer-furnished property, facilities, equipment, services, or site; or
  - (4) Directing acceleration in the performance of the Work.

Upon receipt of any field order issued pursuant to this paragraph 13.A., Contractor shall immediately proceed in accordance with such order.

- B. Any other written order or an oral order (which terms as used in this paragraph 13.B. shall include direction, instruction, interpretation or determination) from the Buyer Purchasing Representative, which causes any such change, shall be treated as a change order under this clause, provided that Contractor gives Buyer written notice stating the date, circumstances and source of the order and that Contractor regards the order as a change order.
- C. Except as provided in 13.A. and 13.B., no order, statement or conduct of the Buyer Purchasing Representative, or of any inspector, engineer, architect or other employee or representative of Buyer shall be treated as a change under this clause or entitle Contractor to an equitable adjustment hereunder.
- D. If any change under this clause causes an increase or decrease in Contractor's cost of, or the time required for the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Order/Agreement modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under 13.B. shall be allowed for any costs incurred more than twenty (20) days before Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which Buyer is responsible, the equitable adjustment shall include any increased cost reasonably incurred by Contractor in

attempting to comply with such defective specifications.

- E. Ordinarily a field order will not be issued under 13.A. until the parties have agreed upon the final and entire equitable adjustment, if any, to be made on account of the order, and the agreed adjustment will be set forth in the Order/Agreement. However, whenever Buyer deems it necessary, an order may be issued pursuant to 13.A. before agreement has been reached; notwithstanding any dispute or delay in reaching agreement, Contractor shall immediately proceed in accordance with any such order; no such order shall be construed as an admission by either party that the order changes the requirements of the Contract nor prejudice the rights of either party with respect to the adjustment, if any, either party may be entitled to on account of the order.
- F. If Contractor intends to assert a claim for an equitable adjustment under this clause, it must, within thirty (30) days after receipt of any written field order issued under 13.A. which does not set forth the agreed adjustment, or within thirty (30) days after the furnishing of any written notice under 13.B. submit to Buyer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by Buyer in writing. The statement of claim hereunder may be included in the notice under 13.B. Promptly after submission of each statement or claim hereunder (and preferably with each statement of claim) Contractor shall submit to Buyer a modification proposal in accordance with the "Price Breakdown and Invoices" clause.
- G. No claim by Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Order/Agreement.

#### **14. COOPERATION OF CONTRACTOR.**

Buyer may undertake or award other contracts for additional work to be performed in connection with or in or about the Work under this Order/Agreement. Contractor shall cooperate with Buyer and its other contractors and coordinate Contractor's Work with theirs so that all Work may be promptly and properly performed without undue interference or delay. Contractor shall afford Buyer and its other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, including storage space, access, use of hoisting equipment and Contractor's construction utilities.

#### **15. BUYER OPERATIONS.**

Contractor shall schedule all Work under this contract to avoid interruption of normal Buyer operations.

#### **16. SCHEDULE PROGRESS AND OVERTIME.**

- A. Prior to commencing Work, or within such further time as Buyer may allow, Contractor shall prepare and submit to Buyer for approval a practicable and feasible critical path construction schedule for the Work. Such schedule shall be in the form of a complete critical path scheduling network. Contractor shall update the scheduling

network as required and promptly submit each revision thereof to Buyer for its approval.

- B. At the end of each week or as requested by Buyer, Contractor shall submit to Buyer three copies of a progress report showing the actual progress of the Work in comparison with the network items on the approved construction schedule.
- C. Contractor shall prosecute the Work in accordance with the approved construction schedule. Failure to do so shall be evidence that Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified in this Order/Agreement and may result in cancellation in accordance with the provisions of the Cancellation For Default clause herein.
- D. If requested by Buyer, Contractor shall furnish evidence satisfactory to Buyer that all necessary mechanical equipment, electrical equipment and other materials have been ordered and scheduled for delivery so as to ensure their arrival at the site in time for construction schedule requirements.
- E. Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shift, overtime operations and Sunday and holiday work, as may be necessary to ensure the prosecution of the Work in accordance with the approved construction schedule. If Contractor falls behind such schedule, Contractor shall take such steps as may be necessary to improve its progress and Buyer may require Contractor to increase the number of shifts, overtime operations, days of work, including Saturdays, Sundays and holidays, and the amount of construction plant and equipment, all without additional cost to Buyer. This is in addition to Buyer's other remedies.
- F. *Time is of the essence in the performance of this Order/Agreement.* If at any time it appears to Contractor that it will not meet any of the critical path schedules or the scheduled completion date of the Work for any reasons including Labor Disputes as hereinafter provided, Contractor shall promptly notify Buyer in writing of the reasons for the delay and the estimated time or duration of such delay. The herein notification requirements shall not in any way be considered as relieving Contractor of any liability for breach of contract by reason of any delay in performance.

#### **17. NOTICE OF LABOR DISPUTES.**

Whenever Contractor has knowledge that any actual or potential labor dispute may delay this Order/Agreement, Contractor shall immediately notify and submit all relevant information to Buyer. Contractor shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay this Order/Agreement. However, any subcontractor need give notice and information only to its next higher tier subcontractor.

#### **18. SPECIFICATIONS AND DRAWINGS.**

- A. Contractor shall keep at the site of the Work a copy of the drawings and specifications required

by this Order/Agreement and shall at all times provide Buyer access thereto. Anything mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In any case of discrepancy in the figures, drawings or specifications, the matter shall be immediately submitted, in writing, to the designated Buyer Purchasing Representative or his appointed designee without whose decision said discrepancy shall not be resolved by Contractor, save only at its own risk and expense. Buyer's Purchasing Representative shall resolve such discrepancy in writing or by initiating and dating the approval on a clarifying revision on the figure, drawing or specification. Buyer may furnish from time to time such other detail drawings, specifications and information as it may consider necessary. All drawings, plans, specifications, data and other information furnished by Buyer to Contractor, or developed by Contractor in the performance of this Order/Agreement shall remain or become the property of Buyer, and Contractor shall deliver the original and all copies of all such documents to Buyer upon completion and acceptance or termination of the Work.

- B. Whenever in the specifications or drawings, any material or process is indicated or specified by patent or proprietary material name or by name of manufacturers, such listings shall be deemed to be "NO SUBSTITUTIONS." Any material or process which shall be substantially equal in every respect to that so indicated or specified may not be substituted without the express written approval of the Buyer Purchasing Representative. In the event Contractor or its subcontractors at any tier uses materials, supplies, goods or processes not so permitted by the Specifications or authorized by Buyer's Purchasing Representative, Contractor, at the request of Buyer, shall be obligated to remove and replace such materials at no cost to Buyer. This is in addition to Buyer's other remedies.
- C. All lists, rules, regulations and standards referred to in this Order/Agreement are recognized as requirements of this Order/Agreement. When ASTM Specifications are referred to, it is understood to mean that these specifications shall comply with the latest American Society of Testing Materials specifications of that serial designation.

#### **19. SHOP DRAWINGS.**

- A. Contractor shall submit shop drawings to Buyer for approval (1) where shop drawings are called for by the Order/Agreement, (2) where Contractor desires to perform the Work in a manner significantly different from the details shown in the Order/Agreement, (3) where substitutions require rearrangement of portions of the Work, or (4) where Shop drawings are requested by Buyer.
- B. All shop drawings shall be accurately dimensioned and show all details necessary to define the Work completely.

- C. Submittal shall be made with ample lead time to avoid delay. Two (2) copies of each drawing shall be submitted initially, and one (1) of these shall be returned with reasonable promptness showing the changes desired by Buyer. Contractor shall return six (6) corrected copies. When approved by Buyer, two (2) signed copies shall be returned to Contractor. Contractor shall furnish any additional copies needed by it or its subcontractors or suppliers.
- D. Approval of shop drawings by Buyer is limited to general configuration and shall not relieve Contractor of any responsibility for defects in design or other errors or omissions in such drawings nor from compliance with all the Order/Agreement requirements.

#### **20. LAYOUT OF THE WORK.**

- A. Unless otherwise specified elsewhere in this Order Agreement, Contractor shall set, cut and lay out the Work as necessary and shall furnish all stakes, templates, platforms, equipment and labor that may be required in performing such part of the Work. All stakes or other marks shall be preserved by Contractor until removal is authorized by Buyer's Purchasing Representative. Buyer shall furnish, on request from Contractor, all location and limit marks reasonably necessary per the Specifications for the conduct of the Work.
- B. Basic elevations and controlling location reference points as may be designated in the drawings or Specifications shall be established by the Contractor. Contractor shall provide such survey work as required for the execution of the Work. Contractor shall be responsible for the accuracy of such intermediate lines and grades which shall be subject to check from time to time by Buyer. Failure to check shall not relieve Contractor of responsibility for the accuracy of all lines and grades. Dimensions shown on the drawings or Specifications are to be verified in the field by the Contractor.

#### **21. UTILITIES.**

Unless otherwise provided in this Order/Agreement, Contractor shall furnish all the water and electric current and other utilities as may be required for the performance of this Order/Agreement. At no additional expense to Buyer, Contractor shall install and maintain any necessary temporary electrical and water supply connections, facilities and piping, but only at such locations and in such workmanlike manner as may be authorized in writing by Buyer. Before final acceptance all temporary connections, facilities and piping installed by Contractor shall be removed in a workmanlike manner, to the satisfaction of Buyer.

#### **22. UTILITY SHUT-OFF.**

If Contractor requires the temporary shut-off of any utility (which term as used in this clause and the following clause shall include all supply, disposal, distribution and communication systems, and all similar facilities) Contractor shall notify Buyer twenty-four hours in advance of the time Contractor

requires the shut-off. Contractor shall then perform the Work requiring the shut-off on such days and at such hours as Buyer may direct. Regardless of the days or hours fixed by Buyer, no extra compensation will be paid for such work.

**23. EXISTING UNDERGROUND UTILITIES.**

Underground utilities which are known by Buyer to exist are shown in their approximate locations only because exact locations are unknown to Buyer. Contractor shall excavate with utmost care so as not to cause damage or interruption of service. If any utility shown on the drawings is damaged as a result of any failure of Contractor or any of its subcontractors of any tier or any of their respective agents, representatives or employees to exercise utmost care, the Contractor shall be solely liable and shall indemnify and hold Buyer harmless from any claims, suits, damages or losses including any costs associated with repairing such utility. If an existing utility requires relocation and such relocation is not specified in the Order/Agreement, Buyer shall issue a written field order pursuant to the "Changes" clause to provide for the relocation.

**24. BUYER AND CONTRACTOR REPRESENTATIVE.**

For all purposes in the administration of this Order/Agreement, Buyer and Contractor shall be represented only by that person respectively designated by each party elsewhere in this Order/Agreement or otherwise designated in writing by each party as the "Buyer Purchasing Representative" and "Contractor Representative" assigned to administer this Order/Agreement for such party, and by such person(s) as such Representatives may authorize in writing to act for him. The term "Representative" and "Engineer" and "Field Engineer" and "Inspector" as used in this Order/Agreement shall mean such designated person or any person(s) so authorized in writing by such representative to act for Buyer with such limitations in authority as may be set forth.

**25. PERSONNEL SUPERINTENDENCE.** Contractor shall keep continuously on the Work at the site a competent superintendent or foreman acceptable to Buyer fully authorized to receive instructions and act on behalf of Contractor in performance of the Order/Agreement as so authorized pursuant to Clause 24 above.

**26. SUPERINTENDENCE BY BUYER.**

A. The duties of the Buyer Purchasing Representative or his designee as authorized in Clause 24 above shall be as follows:

- (1) Make decisions at the site or in the field on behalf of Buyer including the resolution of discrepancies in accordance with the clause herein entitled "Specifications and Drawings."
- (2) Inspect details of the Work as it progresses,
- (3) Suspend or cause to be suspended Contractor's operations for unsafe practices or any other act or omission detrimental to sound construction practices and Work resumption, or cause to be resumed operations when such unsafe practices are corrected, and

(4) Assist in making other determinations and findings for Buyer provided for in this Order/Agreement.

B. A field decision shall be binding on Contractor and Buyer when such decision is in writing (Buyer Form 60-506) and signed by Buyer's Purchasing Representative and the Contractor Representative provided that such decision relates only to changes in (1) the Work, and (2) schedules.

C. The mutually agreed to field decision shall permit the Contractor to immediately proceed with the Work as changed. The final agreed to pricing change(s) shall be processed in accordance with the clause herein entitled "Changes."

**27. CONTRACTOR'S EMPLOYEES.**

Buyer may, by a written order signed by the Buyer Purchasing Representative, require Contractor to remove from the Work any employee, agent or representative of Contractor or any of its subcontractors, Buyer deems incompetent, careless or otherwise objectionable.

**28. WORKMEN'S PASSES.**

Contractor must obtain a pass (or suitable badge) for each person who is to work in any restricted area, and any person to whom the cognizant Security Officer will not issue a pass or whose pass is cancelled will not be permitted to work in any such area. Contractor may obtain such passes by submitting the required information to Buyer Purchasing Representative reasonably in advance of the time passes are needed.

**29. ENVIRONMENT, HEALTH AND SAFETY (EHS)**

A. At all times the Contractor shall comply with all applicable local, state, and federal EHS ordinance, statutes, and regulations, which includes, but is not limited to, all rules, regulations and orders established by the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and Department of Transportation (DOT). Contractor shall comply at all times with Buyer EHS policies and procedures and site-specific EHS requirements and emergency procedures.

B. The Contractor will obtain any necessary licenses, registrations, or certifications required by local ordinance or state or federal statute or regulation for the work performed. Contractor will ensure that Contractor employees performing work on Buyer premises possess the required individual licenses, registrations, or certifications and are adequately trained for the work being performed; including relevant EHS requirements and any EHS training that is required by state or federal regulations.

C. The Contractor will use appropriate safety precautions and practices to eliminate, or minimize to the extent practical, the generation of vapors, mist, fumes, odors, and/or dusts or particulates to which Buyer employees may be exposed. Buyer approval is required before starting any work other than routine cleaning and housekeeping that will generate airborne fumes, mists, chemical vapors, odors, or dust or particulates in occupied Buyer locations.

D. The Contractor shall, unless otherwise specified herein, provide all equipment, including personal

protective equipment (PPE) necessary to safely perform the work in this contract. The contractor will ensure that PPE is appropriate for the task, is in good condition, and is used correctly by the Contractor employees.

- E. The Contractor will provide Material Safety Data Sheets (MSDSs) to the Buyer for all chemical and/or hazardous materials that will be brought onto Buyer premises and/or used to perform work under this contract. Only chemicals and/or hazardous materials approved in advance by the Buyer may be brought onto Buyer premise. The Contractor shall ensure that all containers of chemical and/or hazardous materials products brought onto Buyer premises are labeled as to their contents and hazards.
- F. The Contractor will promptly notify the Buyer Purchasing Representative of all accidents or injuries involving Contractor employees occurring on Buyer premises and the receipt of all notices of violation or other regulatory citations relevant to work performed on Buyer premises. The contractor hereby indemnifies and holds the Buyer harmless from and against any noncompliance by Contractor with applicable local, state, and federal EHS ordinance, statutes, and regulations.
- G. Contractors shall comply with the following additional requirements while on Buyer premises:
  - (1) Immediately clean up all spills.
  - (2) Flammable chemicals/materials may not be left on Buyer premises.
  - (3) Maintain work areas in a clean condition and free of clutter and debris.
  - (4) Do not block or obstruct fire exits or block, remove or disable fire alarms, intercoms, or sprinklers without approval from the Buyer Purchasing Representative.
  - (5) Trip, slip and fall hazards must be barricaded or identified using warning signs, cones, or other means.
  - (6) Powered equipment and compressed gas cylinders must be de-energized and secured when not in use and must not be used or left unattended in areas other than in the immediate vicinity where the work is being performed.
  - (7) Follow appropriate lock-out/tag-out procedures for electrical and mechanical equipment.
  - (8) Obtain approval from Buyer Purchasing Representative prior to the start of any welding, brazing, cutting, or other "hot work".
  - (9) Consult the Buyer Purchasing Representative concerning the removal of all wastes generated from performance of contracted work.

### **30. CONTRACTOR'S WORK AREA.**

- A. Contractor shall confine all its operations, including storage, vehicle parking and the movement of materials, equipment and workmen to the areas specified herein, or approved by Buyer; provided, however, that at Buyer's option, premises adjacent to the construction site may be made available for use by Contractor without cost whenever such use will not interfere with other

use or purposes of Buyer and Buyer gives its written consent.

- B. Materials and equipment shall be neatly and safely stored with the least possible interference to existing traffic lanes.
- C. Temporary buildings may be erected if approved by Buyer in writing.

### **31. BUYER'S RIGHT TO DO WORK.**

If Contractor refuses or fails to prosecute any part of the Work with such diligence as will ensure its completion within the time specified in this Order/Agreement, as the same may be modified in writing from time to time, or otherwise fails to perform any of its obligations under this Order/Agreement, Buyer may, at any time after three (3) days' written notice to Contractor, or in an emergency endangering life or property, after such notice, if any, as may be reasonable under the circumstances, without prejudice to any other rights or remedies Buyer may have, make good such deficiencies by such means as Buyer may deem expedient and charge the cost thereof to Contractor.

### **32. POSSESSION OR USE PRIOR TO COMPLETION.**

Buyer may pursuant to a written field order signed by the Buyer Representative which expressly refers to this clause, take possession of or use of any completed or partially completed part of the Work at any time prior to final completion. Unless otherwise agreed in writing, such possession or use shall not be deemed an acceptance of any part of the Work nor relieve Contractor of the risk of loss. If such possession or use delays the progress of the Work or causes additional expense to Contractor, an equitable adjustment shall be made in the Order/Agreement price and time for completion and the Order/Agreement shall be modified in writing accordingly; provided, however, if Contractor fails to complete the Work within the time specified in this Order/Agreement, as the same may be modified in writing from time to time, Buyer may take possession of or use all or any part of the Work without payment of additional compensation to Contractor or extension of time for completion of such possession or use.

### **33. MATERIAL AND WORKMANSHIP.**

- A. Unless otherwise specifically provided in this Order/Agreement, all material (which term as used in this Order/Agreement shall include all materials, equipment and other items incorporated or to be incorporated in the Work covered by this Order/Agreement) shall be new and of the most suitable grade for the purpose intended.
- B. Unless otherwise specifically provided in this Order/Agreement, reference to any material or patented process by trade name, make or catalog number, whether or not coupled with the words "or equal," shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and Contractor may, at his option, substitute any material or process which, in the judgment of Buyer, is equal to that so referred to. All substitutions, including "or equal"

items, must have the prior written approval of Buyer.

- C. When required by this Order/Agreement or when requested by Buyer, Contractor shall promptly furnish to Buyer for its approval full information concerning, and samples of, the material to be incorporated in the Work. Material installed or used without required approval shall be at the risk of subsequent rejection.
- D. Approval by Buyer of material shall not relieve Contractor of any warranty with respect thereto or any obligation or liability in connection with this Order/Agreement.
- E. All Work under this Order/Agreement shall be performed in a skillful and workmanlike manner.

**34. CODES AND STANDARDS.**

Material and workmanship specified by reference to codes or standards shall, unless otherwise specified, comply with the latest revision of such codes or standards in effect on the effective date of the Order/Agreement.

**35. PROTECTION OF PROPERTY.**

At all times Contractor shall use suitable precautions to prevent damage to Buyer property or the property of third parties. If any such property is damaged by any negligent act or omission of Contractor or any of its subcontractors of any tier or any of their respective agents or employees in connection with the performance of this Order/Agreement, Contractor shall, at no cost to Buyer, promptly and equitably reimburse the owner of such property for such damage or repair or otherwise make good the same to the owner's satisfaction. If Contractor fails to do so, Buyer may do so and charge to or otherwise recover from Contractor the cost thereof. This clause shall not be construed to relieve Contractor of, or limit, Contractor's liability under any other provision of this Order/Agreement for loss or destruction of or damage to any property.

**36. PROTECTION OF MONUMENTS AND MARKS.**

Contractor shall carefully protect all land monuments and property marks from disturbance and damage and shall not move the same without the prior written consent of Buyer.

**37. PROTECTION OF WORK AND MATERIAL.**

At all times Contractor shall adequately protect from damage or deterioration all Work performed and all materials, equipment and other items incorporated or to be incorporated therein. All reasonable requests of Buyer to enclose or otherwise protect such property shall be complied with promptly at no cost to Buyer.

**38. RISK OF LOSS.**

Contractor shall bear the risk of any loss or destruction of or damage to the Work performed under this Order/Agreement or any materials, equipment or other items incorporated or to be incorporated therein until the completion of the Work and its final acceptance by Buyer.

**39. INSPECTION AND ACCEPTANCE.**

- A. Contractor shall (1) maintain an adequate inspection system and perform such inspections as will assure that the Work will be free from defects and otherwise conform to the Order/Agreement requirements and (2) maintain and

make available to Buyer adequate records of such inspections.

- B. Contractor shall (1) be responsible for notifying the appropriate city, county or other inspection agency whenever the Work has advanced to the point at which an inspection is required under this Order/Agreement or any applicable law or ordinance, (2) have the Work ready for inspection upon the arrival of such inspectors, and (3) notify Buyer in advance, when possible, of their arrival.
- C. All material and workmanship shall be subject to inspection and test by Buyer at all reasonable times and places, including the period of manufacture or performance and the premises of subcontractors and suppliers.
- D. No inspector (other than the Buyer Purchasing Representative) is authorized to change any of the Order/Agreement requirements.
- E. Neither the presence nor absence of an inspector, nor any inspection or test performed, nor any failure to discover defective or nonconforming Work shall relieve Contractor of any Order/Agreement requirement.
- F. If the Specifications call for the Work to be covered or buried (as in the case of certain conduit or pipes) Contractor shall, at no cost to Buyer, uncover or remove such portion of the Work as may be necessary if Contractor covered or buried the Work prior to Buyer's having fully inspected and approved the Work.
- G. Contractor shall, at no cost to Buyer, promptly and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformity with the Order/Agreement requirements, unless Buyer consents in writing to accept such material or workmanship with an appropriate adjustment in the Order/Agreement price, in which event the Order/Agreement shall be modified in writing accordingly. Contractor shall promptly segregate and remove rejected material from the site.
- H. If Contractor does not promptly and satisfactorily replace rejected material or correct rejected workmanship, Buyer may (1) by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to Contractor, or (2) terminate or cancel Contractor's right to proceed in accordance with the "Cancellation for Default-Damages for Delay" clause.
- I. Contractor shall furnish all facilities reasonably needed for such inspection and test as may be performed by Buyer. All inspection and test by Buyer shall be performed in such manner as not unnecessarily to delay the Work. Contractor shall be charged with any additional cost of inspection if the Work is not ready for inspection at the time stated or advised by Contractor.
- J. Should it be considered necessary by Buyer at any time before acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such



Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or his subcontractors Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Order/Agreement, an equitable adjustment shall be made in the Order/Agreement price to compensate Contractor for the additional Work involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, Contractor shall, in addition, be granted a suitable extension of time and the Order/Agreement shall be modified in writing accordingly.

- K. Unless otherwise provided in this Order/Agreement, final acceptance by Buyer shall be made as promptly as practicable after completion and inspection of all Work required by this Order/Agreement. Final acceptance shall be conclusive except as regards latent defects, fraud or such gross mistakes as may amount to fraud, and except as regards Buyer's rights under the "Warranty" clause or under any other warranty or guarantee made or given in connection with this Order/Agreement.

#### **40. PRICE BREAKDOWN AND INVOICES.**

- A. Within ten days after commencing Work, Contractor shall submit to Buyer for approval a breakdown of the total Order/Agreement price. Such breakdown shall consist of an allocation of costs for all items of labor, materials, equipment, supplies, services and all other expenditures of whatever nature which may be chargeable to the Work by Contractor and each of its subcontractors.
- B. The construction and equipment cost breakdown requirements shall be provided to Buyer in such a manner as to provide reasonable cost allocations and description for depreciation and insurance purposes.
- C. Contractor shall submit to Buyer three (3) copies of an invoice for each payment provided for in this Order/Agreement. Each invoice shall be in the form prescribed by Buyer and shall be accompanied by such evidence in support thereof as may reasonably be required by Buyer.
- D. The invoice shall be serially numbered and one marked "original." Buyer's Order/Agreement number must appear on all copies of the invoices.
- E. Contractor, in connection with any proposal it makes for a Contract modification pursuant to the "Changes" clause or any other clause of this Order/Agreement shall furnish a price breakdown, itemized as required by Buyer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit and shall cover all Work involved in the modification, whether such Work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time

extension, a justification therefore shall be furnished.

- F. Contractor shall furnish for that portion of the Work covered under each invoice submittal:

- (1) A list of every subcontractor, material man, laborer and other person furnishing services, labor or materials in connection with the Work, and
- (2) Original, duly executed Forms 31-567, 31-567A, 31-567B or 31-567C for itself, every subcontractor, material man, laborer and other person furnishing services, labor or materials in connection with the Work, or
- (3) A receipt in full together with an affidavit that the receipt covers all the services, labor, equipment, and materials for which a lien might be filed, or
- (4) Except as covered by the release or receipt in full, Contractor may furnish a bond satisfactory to Buyer against any claim or lien or otherwise.

- G. **Effective January 1, 2008 and is applicable if specified in this Order.**

- (1) Utilization of PLSC- Seller agrees to use the Buyer's PLSC in its submission of invoices for labor, travel expense, and/or authorized Other Direct Costs (ODCs). The PLSC is a web-based reporting system that enables Seller to make entries electronically and submit invoices via the internet for approval and payment. An "off-line" access database program, which enables Seller to prepare data for upload to the PLSC can also be used. Seller can create its own invoice from PLSC for their internal files.
- (2) The PLSC system validates all entries, and enables Seller to more quickly submit and certify to time and expense data for payment. Buyer's payment terms commence upon the submission of a valid invoice via PLSC. If the Order specifies that there is a customer requirement for receipts associated with travel expenses or ODC items, then the payment terms commence upon receipt of copies of all valid expenses submitted to the bill to address identified on the face of the Order.
- (3) Seller can ascertain invoice status (submitted, approved or paid) via the PLSC web site, for real-time updates. The PLSC can also be queried to provide prior invoice information.
- (4) A "Vendor Administrator" (a role for a person established within the Seller's organization) will be given login information, a PLSC password, and the link to the PLSC web site. The PLSC web site contains extensive instructions to guide new users. Training is also available for any users who require additional assistance in using the tool. In addition, a Help Desk identified at the PLSC web site is also available.
- (5) Requirements for utilizing the PLSC include when applicable:
  - Provision of the level of detail in billed items, in accordance with the terms of the Order

- Daily entry of time expended on each task
  - Submission of weekly time, travel and ODC expenses
  - Submission of monthly invoices (unless other periods have been specified in this Order)
  - Submission of receipts. Payments will not be released until receipts are received.
  - Prompt correction of items identified by the PLSC approver, for any rejected entries
- (6) Seller shall submit receipts (if required) for authorized travel and ODC expenses to the bill to location and shall include: Purchase Order number, Purchase Order type, item number, and a brief description of the Service or Product. Seller shall also provide such evidence as Buyer may reasonably require, in support of the invoice. No entries for time or expense shall be entered into the PLSC prior to completion of Services or incurrence of expenses. Payment of PLSC invoices shall not constitute approval or acceptance of Services or Products rendered. At any time prior to final payment under this Order, Buyer may have invoiced entries audited as to validity. Payment of Seller's PLSC invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced.
- (7) Requirements for Vendor Administrator enrollment - Provide the following information for your Vendor Administrator (plus an alternate) who will be authorized to enter invoices into PLSC for your company:
- Full Company Name
  - Buyer Vendor Number or Order No.
  - Name – First, Last, Middle Initial
  - Email Address
  - Unique ID Number (Security feature – typically, the last 4 digits of your social security number)
- (8) Prior to January 1, 2008, the above information is to be emailed to [PLSC.IT@ngc.com](mailto:PLSC.IT@ngc.com). Information submitted effective January 1, 2008 is to be provided to Buyer's authorized purchasing representative.

#### **41. PROGRESS PAYMENTS.**

- A. No progress payments will be made under Order/Agreement unless this Order/Agreement contains another clause specifically providing that progress payments will be made. If so provided for, Buyer shall make progress payments monthly as the Work proceeds (or at more frequent intervals if deemed advisable by Buyer). The approved price breakdown shall be used as the basis for determining progress payments. Subject to the retention provided for in Clauses 41.B, and 42., and subject to the approval by Buyer of the estimated values involved, each progress payment shall be equal to the estimated value of Work in place at the site plus the value

of materials purchased and suitably stored at the site for timely and permanent incorporation in the Work, less the total of all previous payments and retention, provided that such estimated values shall not include any Work added by field order until the price adjustment for such Work has been incorporated in the Order/Agreement by a change order or other Order/Agreement modification signed by both parties.

- B. In making progress payments, ten percent of each such payment shall be retained by Buyer until completion and final acceptance of all of the Work under the Order/Agreement. However, if Buyer at any time after 50 percent of the Work has been completed finds that satisfactory progress is being made, it may make any of the remaining progress payments in full. Also, whenever the Work is substantially complete, Buyer, if it considers the amount retained to be in excess of the amount adequate for the protection of Buyer, may release to Contractor all or a portion of such excess amount. Further, on completion and acceptance of any separate part of the Work for which a price is stated separately in the Order/Agreement, payment may be made therefore without retention.
- C. All material and Work covered by progress payments made shall thereupon become the sole property of Buyer, but this provision shall not be construed as relieving Contractor from the risk of loss of or the sole responsibility for all material and Work upon which payments have been made, or from Contractor's obligation to restore any damaged material or Work, or as waiving the right of Buyer to require the fulfillment of all of the terms of this Order/Agreement. This paragraph shall not apply to scrap or materials furnished by Contractor that are not intended for permanent incorporation in the Work, and the same shall remain the property of Contractor.

#### **42. FINAL PAYMENT.**

Upon (a) the final acceptance by Buyer of all of the Work called for by this Order/Agreement, (b) the submission by Contractor, if requested, of an affidavit, together with receipts, releases or other satisfactory evidence in support thereof, stating that all payments and claims for which Contractor is responsible hereunder have been made or settled, except as specifically listed therein, and (c) the submission by Contractor as required by Clauses 40. and 43. of a release and waiver by Contractor of all liens and rights of lien and all claims against the Work site or property and Buyer under or arising out of this Order/Agreement or its performance other than such claims, if any, as may be specifically excepted by Contractor from the operation of the release in stated amounts set forth therein or in estimated amounts where the amounts are not susceptible of exact statement. Buyer shall pay Contractor the amount due Contractor under this Order/Agreement, provided, however, that Buyer may retain from any payment, until the claim involved is settled, such amount as may reasonably be necessary to protect Buyer from loss on account of any lien, claim, suit or action for which

Contractor is responsible under this Order/Agreement or any claim Buyer may have against Contractor in connection with this Order/Agreement.

**43. PAYMENT FOR LABOR, MATERIAL, AND WAIVER OF LIENS.**

- A. Contractor shall be responsible for the prompt payment of all persons who perform labor upon or furnish services, materials, equipment, supplies or other items (including but not limited to water, gas, power, light, heat, oil, gasoline, telephone service and rental of equipment) used or to be used in the performance of the Work called for by this Order/Agreement.
- B. Contractor shall (1) indemnify and save harmless Buyer from all claims, demands, causes of action or suits of whatever nature arising out of the services, labor and materials furnished by Contractor or its subcontractors and from all laborer's, material men's and mechanic's liens upon the real property upon which the Work is located arising out of the services, labor and materials furnished by Contractor or any of its subcontractors under this Order/Agreement, and (2) keep said property free and clear of all liens and claims and encumbrances arising from the performance of this Order/Agreement by Contractor or its subcontractors.
- C. Contractor for its subcontractors, material men, laborers and for all other persons performing any labor or furnishing any services, labor or materials for any of the Work, hereby waives, to the full extent permitted by law, all right to file or maintain any mechanical or other liens or claims for and on account of the services, labor or materials to be furnished hereunder.
- D. It is the intention of the parties hereto, and Contractor agrees, that if Contractor or any of its subcontractors of any tier fail to pay all such persons, Buyer may, at any time after five (5) days' written notice to Contractor, pay such persons directly and deduct such payments from any amounts due Contractor hereunder.

**44. MAINTENANCE INFORMATION AND TOOLS.**

For each piece of equipment installed in the Work, Contractor shall, as a condition precedent to final payment, provide Buyer with the following: three (3) each of working drawings, operating instructions, performance curves and data, and maintenance and parts manuals, and one (1) each of nonstandard tools required in the normal maintenance, adjustment, use and operation of the equipment. For small commercial standard equipment the information and tools to be provided shall be limited to that normally available from the manufacturer. The provisions of this clause do not apply to Buyer furnished equipment.

**45. PAYMENT OR TERMINATION OF SUBCONTRACTORS.**

- A. If Contractor fails to pay any of its subcontractors and such failure jeopardizes the completion of the Work within the time specified in this Order/Agreement, then Buyer, upon notice to Contractor, may make payment directly to any such subcontractor in accordance with the actual subcontract price for work performed under this

Order/Agreement. To the extent of any such direct payments to a subcontractor, payments made to Contractor or to be made, or both shall be adjusted and any refund due Buyer as a result of such adjustment shall be promptly paid.

- B. In addition, Buyer may terminate the Work under the Order/Agreement being performed by any subcontractor in accordance with the clause herein entitled "Termination for Convenience" and (1) contract directly with such subcontractor, or (2) upon request by Buyer, Contractor shall assign the subcontract involved to Buyer. The terms and conditions of Contractor's subcontracts shall make Buyer a third party beneficiary to the Termination for Convenience Clause by giving Contractor or Buyer the right to terminate the subcontract.

**46. BUYER FURNISHED PROPERTY.**

- A. Buyer shall deliver or cause to be delivered to Contractor, for installation under or other use in the performance of this Order/Agreement, the property, if any, described in this Order/Agreement as property to be furnished by Buyer. The Furnished Property shall be installed or used in accordance with any provisions of this Order/Agreement that specifically refer to its installation or use and, to the extent such property is not specifically referred to it, shall be used wherever practicable, provided that it complies with the specifications and this Order/Agreement. In no event shall the Furnished Property be used where it does not comply with the specifications and the Order/Agreement and the fact that it is furnished shall not be construed as establishing that it does comply. The Order/Agreement price and time for completion specified in this Order/Agreement are based upon the expectation that the Furnished Property will be delivered to Contractor in a condition suitable for the intended use (except for property to be furnished "as is") at the time stated in the Order/Agreement, or if not so stated, in sufficient time to enable Contractor to meet such time for completion. If the Furnished Property is not delivered within such time or is received by Contractor in a condition not suitable for the intended use, Contractor shall promptly notify Buyer in writing and Buyer shall promptly issue a written field order pursuant to the "Changes" clause to provide for the return, repair or other disposition of any unsuitable property (except for property to be furnished "as is") and for the furnishing or procurement of substitutes for any undelivered property, or for such other remedial action as may be appropriate. The parties shall then proceed in accordance with the "Changes" clause, an equitable adjustment shall be made as provided therein and the Order/Agreement shall be modified in writing accordingly. The foregoing provisions for adjustment are exclusive and Buyer shall not be liable to suit for breach of contract by reason of any delay in delivery of Furnished Property or delivery of such property in a condition not suitable for the intended use.

- B. Buyer may, by a written field order issued pursuant to the "Changes" clause, increase, decrease or change the property to be furnished by Buyer.
- C. Title to all Furnished Property is and shall remain in Buyer.
- D. Contractor shall maintain suitable and accurate records, acceptable to Buyer and open to its inspection, showing the receipt, use and disposition of all Furnished Property.
- E. The Furnished Property shall, unless otherwise provided herein, be used only in the performance of this Order/Agreement.
- F. At all times Contractor shall adequately protect from damage or deterioration all Furnished Property. All reasonable requests of Buyer to enclose or otherwise protect such property shall be complied with promptly at no cost to Buyer.
- G. Buyer shall at all reasonable times have access to the premises wherein any Furnished Property is located.
- H. Contractor, upon delivery to it of any Furnished Property, assumes the risk of and shall be responsible for any loss or destruction of or damage to such property. Contractor shall promptly report to Buyer all instances of loss, destruction or damage of Furnished Property. When the Furnished Property is no longer needed by Contractor for the performance of this Order/Agreement and in event upon the completion (or termination or cancellation) of the Work, and as a condition precedent to its final acceptance, Contractor shall return all the Furnished Property to Buyer in as good condition as when received, except for reasonable wear and tear and except to the extent such property has been incorporated in the Work, or reasonably consumed or used in the intended manner in the performance of Work under and in accordance with this Order/Agreement.

#### **47. SALVAGE AND CLEAN UP.**

- A. Unless otherwise provided in this Order/Agreement, all material excavated, demolished or removed from existing improvements by Contractor and not required for incorporation in the Work (such as waste, rubble and salvable materials) shall be stored, destroyed, removed from the site or otherwise disposed of by Contractor, as directed by Buyer.
- B. Contractor shall keep its work and storage areas cleared of debris at all times.
- C. Upon completion of the Work and before final acceptance, Contractor shall, unless otherwise specified herein or authorized by Buyer, remove from the site all construction equipment, debris, surplus materials and temporary construction, clean both sides of all glass installed and leave the premises in a broom-clean neat and workmanlike condition.

#### **48. RESTORATION OF EXISTING IMPROVEMENTS.**

Unless otherwise specified, all existing structures and other improvements altered or removed by Contractor

in the execution of the Work shall be appropriately repaired, replaced or otherwise restored by Contractor at no cost to Buyer. Quality of the restoration shall be as good as existing and meet the approval of Buyer.

#### **49. WARRANTY.**

Contractor warrants that all Work performed and all material (as defined in 33.A.) furnished under this Order/Agreement will be free from defects in workmanship, material and design (excluding any defect in any design furnished by Buyer) and will conform to the requirements of the Order/Agreement.

- A. Buyer shall give Contractor written notice of any such defect or nonconformance within one year (or such longer warranty period as may be specified elsewhere in this Order/Agreement) after final acceptance by Buyer of all Work required by this Order/Agreement. In such notice, or within sixty (60) days thereafter, Buyer shall, at its sole discretion, direct Contractor to correct, to partially correct, or not to correct the defect or nonconformance.

- (1) Contractor shall comply with any such direction. If the direction is to correct or to partially correct, Contractor shall, at no cost to Buyer, promptly and satisfactorily correct or partially correct, as directed, the defect or nonconformance and remedy any damage to other parts of the Work or any other property resulting from such defect or nonconformance. This warranty shall then continue as to any corrected or partially corrected Work for one year (or such longer warranty period as may be specified elsewhere in this Order/Agreement) after acceptance by Buyer of the correction or partial correction. In addition, if the direction is to partially correct or not to correct, Contractor shall promptly repay to Buyer such portion of the Order/Agreement as is equitable under the circumstances.

- (2) If Contractor fails to comply with any timely direction to correct or to partially correct any such defect or nonconformance, Buyer may do so and recover from Contractor the cost thereof.

- B. The rights and remedies of Buyer provided in this clause are in addition to and do not limit any rights and remedies afforded to Buyer by any other clause of this Order/Agreement or by law.

#### **50. AS-BUILT DATA.**

Promptly after completion of all Work, and as a condition precedent to final payment, Contractor shall deliver to Buyer all data necessary to revise the drawings and specifications to conform to the "as-built" condition. Contractor shall also deliver survey data establishing the location and elevation, to any accuracy of 0.1 foot horizontally and vertically, of all underground utilities installed under this Order/Agreement or encountered by Contractor in performing the Work.

#### **51. CONTRACTOR'S LIABILITY INSURANCE.**

- A. Prior to commencing Work hereunder, or within such further time as Buyer may allow in writing, Contractor shall secure, and obtain Buyer's approval of, such comprehensive general and

automobile liability insurance as will protect Contractor against all claims for bodily injury (including death) or property damage that may arise from operations under this Order/Agreement, whether such operations be by Contractor or any subcontractor of any tier or any of their respective agents or employees, in not less than the limits of liability stated elsewhere in this Order/Agreement.

- B. Two copies of Certificates of such insurance, containing a ten (10) day prior notice of cancellation to Buyer, shall be filed with the Buyer Purchasing Representative within five (5) days of the notice of Order/Agreement award or at least five (5) days prior to the commencement of any Work.
- C. The Certificates shall show that such insurance covers Contractor's contractual liability under the clause herein entitled "Responsibility for Claims."
- D. The Contractor shall provide, in addition to any other required insurance, insurance and evidence thereof adequate to cover Buyer's employee(s), the Contractor's employee(s), or third parties against any (1) injury, including death at any time resulting there from, while on the premises of Buyer and/or Work site, traveling to or from said premises; (2) damages to, or destruction of, property belonging to Buyer, Buyer's employee(s), Contractor's employee(s), or third parties arising out of a negligent act(s) of commission or omission of the Contractor or Contractor's employee(s) or subcontractor's in the performance of this Order/Agreement.
- E. Contractor shall maintain such insurance in full force and effect at all times until the Work called for by this Order/Agreement has been completed and finally accepted by Buyer and all the operations at the site, including removal of construction equipment and clean-up operations have been concluded.

## **52. CONTRACTOR'S FIRE INSURANCE.**

Contractor shall secure immediately after the execution of this Order/Agreement and obtain Buyer's approval of, fire insurance with extended coverage and vandalism and malicious mischief endorsements (or such other insurance as Buyer may require and approve) in such form and with such insurers as Buyer may approve, insuring the Work called for by this Order/Agreement to the full insurable value thereof. The policies providing such insurance shall name as insured's the Buyer's Corporation and Contractor. All subcontractors of every tier, without naming them, shall be designated therein as insured's in their capacity as subcontractors. Such insurance shall be for the benefit of said parties as their respective interests may appear.

- A. The policies providing such insurance shall contain endorsements that cancellation thereof may be effected only upon ten (10) days' written notice to Buyer. Copies of such policies shall be filed with Buyer, Contractor shall maintain such insurance in full force and effect at all times until

the Work called for by this Order/Agreement has been completed and finally accepted by Buyer.

- B. In the event of loss, the proceeds from such insurance shall be paid to Buyer as trustee for, and for distribution to, the interested parties as their respective interests may appear. Buyer shall have the exclusive right to adjust and settle any loss with the insurers and any such settlement shall be final and binding upon all interested parties. provided that if within ten (10) days of the occurrence of the loss any interested party gives Buyer written notice of its desire to participate with Buyer in the settlement negotiations. Buyer shall not make final settlement with the insurers to the extent of such party's interest without the approval of such party.

## **53. BUYER NAMED INSURED.**

If Contractor has or secures, either voluntarily or pursuant to the requirements of this Order/Agreement, any fire or other physical damage insurance of any type covering all or any part of the Work performed under this Order/Agreement or any materials, equipment or other items incorporated or to be incorporated therein while the same are located on property owned, leased or occupied by Buyer, the policies providing such insurance shall name the entity listed on the Purchase Order/Subcontract as an additional insured. Such insurance shall be for the benefit of the named insured as their respective interests may appear. Copies of the policies or certificates of insurance as may be required by Buyer shall be filed with Buyer for its information.

## **54. WORKMEN'S COMPENSATION.**

Contractor and all of its subcontractors of every tier shall, in accordance with the applicable laws relating to workmen's compensation or employer's liability insurance, cover or maintain insurance with respect to all of their employees working on or about the construction site, regardless of whether such coverage or insurance is mandatory or merely elective under the law. Contractor shall defend, protect, indemnify and hold Buyer harmless from and against all claims, suits, and actions arising from any failure of Contractor or any such subcontractor so to do.

## **55. RESPONSIBILITY FOR CLAIMS.**

Contractor shall defend, protect, indemnify and hold Buyer harmless from and against all claims, suits and actions arising from any negligent act or omission of Contractor or any of its subcontractors of any tier or any of their respective agents or employees in connection with the performance of this Order/Agreement.

## **56. FIRE PROTECTION.**

- A. Contractor shall provide adequate fire extinguishing equipment including, as a minimum, portable extinguishers suitable for the types of hazards involved and any other extinguishers specified herein or required by Buyer.
- B. Welding, cutting and other open flame operations shall be performed only after obtaining a permit, if required by Buyer (daily permits may be

required), and only under conditions approved by Buyer.

- C. Smoking shall be confined to areas free from fire hazards and any smoking regulations in effect in any area where Work is being performed shall be strictly observed.

**57. COMPLIANCE WITH LAWS.**

- A. Contractor and all its subcontractors of every tier shall comply with all applicable Federal, state and local laws and ordinances and all lawful orders, rules and regulations there under, including but not limited to social security and income tax withholding laws, workmen's and unemployment compensation laws, safety and fire protection standards, and building codes, and Contractor shall defend, protect, indemnify and hold Buyer harmless from and against all claims, suits and actions arising from any failure of Contractor or any such subcontractors so to do.
- B. On any Contractor's invoices or statements or in any other form satisfactory to Buyer, Contractor shall submit certification that all Work was performed and materials furnished in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 USC 201-219) as amended and of regulation and orders of the U.S. Department of Labor issued under Section 14 thereof.
- C. Buyer is an Equal Opportunity employer and Contractor shall comply with the provisions of the President's Executive Order 11246 as supplemented and all related regulations of the Department of Labor.
- D. Unless otherwise waived and without limiting the generality of the foregoing, Contractor shall obtain and pay all necessary licenses and permits in connection with the performance of this Order/Agreement all without additional cost or charge to Buyer.

**58. COMPLIANCE WITH SITE REGULATIONS.**

If any Work is performed hereunder at a Government facility, Contractor and all its subcontractors of every tier shall comply with all regulations applicable at such facility.

**59. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY.**

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Products delivered under this Order or, at Seller's option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such Products

solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. Government only if and to the extent Buyer has agreed to indemnify the U.S. Government.

**60. TAXES.**

Except as may otherwise be provided, the prices indicated in this Order/Agreement include all applicable Federal, state and local taxes and duties. Contractor shall pay, when and as the same become due and payable, all taxes, assessments and similar charges which at any time prior to final settlement of this Order/Agreement are properly and legally taxed, assessed or imposed upon Contractor, arising out of or in connection with the performance of any Work, furnishing or any materials, or performing any services required hereunder. Contractor shall bear the risk of any such taxes and Buyer shall not be liable therefore. It is understood that Contractor is a "General Contractor," as defined under applicable California law and regulations, and will report and pay any and all applicable California sales or use taxes.

**61. INDEPENDENT CONTRACTOR.**

Contractor shall perform the Work provided for as an independent contractor and at its sole risk and responsibility. Employees and subcontractors engaged in Contractor's services hereunder shall not be in any sense employees or subcontractors of Buyer, but shall be employees and subcontractors of Contractor during the period of this Order/Agreement and shall be subject to the rules and regulations and management of Contractor. Contractor shall not act in any sense as agent or representative of Buyer. Contractor shall establish and enforce rules and regulations for its employees and subcontractors while on the Work site, including all security and safety regulations as herein provided.

**62. TITLE TO WORK.**

Title to all of the Work completed and all material, equipment and fixtures installed in the Work, shall vest in Buyer upon installation thereof at the construction site, and Contractor shall deliver to Buyer all necessary indicia of ownership relating thereto.

**63. COMPOSITION OF CONTRACTOR.**

If Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable under this Order/Agreement.

**64. ASSIGNMENT.**

No assignment of any rights or delegation of any duties under this Order/Agreement shall be binding upon Buyer until its written consent thereto has been obtained, except Contractor may assign rights to moneys due or to become due providing it advises Buyer in writing of such assignments.

**65. TERMINATION FOR CONVENIENCE.**

- A. The performance of Work under this Order/Agreement may be terminated by Buyer in accordance with this clause in whole, or from time to time in part for any reason and whenever Buyer so desires. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance of Work under the Order/Agreement is terminated and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination and except as otherwise directed by Buyer, Contractor shall:

- (1) Stop work under the Order/Agreement on the date and to the extent specified in the Notice of Termination;
- (2) Place no further orders or subcontracts for materials services or facilities except as may be necessary for completion of such portion of the Work under the Order/Agreement as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to Buyer in the manner, at the times and to the extent directed by Buyer, all of the right, title and interest of Contractor under the orders and subcontracts so terminated, in which case Buyer shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of Buyer to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
- (6) Transfer title and deliver to Buyer, in the manner, at the times and to the extent, if any, directed by Buyer, (a) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information and other property which, if the Order/Agreement had been completed, would have been required to be furnished to Buyer;
- (7) Use Contractor's best efforts to sell, in the manner at the times, to the extent and at the price or prices directed or authorized by Buyer, any property of the types referred to in (6) above; provided, however, that Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed and at a price or prices approved by Buyer, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Buyer to Contractor under this Order/Agreement or shall otherwise be credited to the price or cost of the Work covered by this Order/Agreement or paid in such other manner as Buyer may direct;
- (8) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination, and
- (9) Take such action as may be necessary, or as Buyer may direct, for the protection and preservation of the property related to this Order/Contract which is in the possession of

Contractor and in which Buyer has or may acquire an interest.

- C. After receipt of a Notice of Termination, Contractor shall submit to Buyer its termination claim, in the form and with the certification prescribed by Buyer. Such claim shall be submitted promptly but in no event later than six months after the effective date of termination. If Contractor fails to submit its termination claim within the time allowed, Buyer may determine on the basis of information available to it the amount, if any, due Contractor by reason of the termination, and such determination shall be final. After Buyer has made a determination under this paragraph, Buyer shall pay Contractor the amount so determined, which payment shall be deemed to satisfy all claims of Contractor against Buyer by reason of the termination.
- D. Subject to the provisions of 65.C., Contractor and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the total or partial termination of Work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on Work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Order/Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Order/Agreement price of Work not terminated. The Order/Agreement shall be amended accordingly, and Contractor shall be paid the agreed amount. Nothing in 65.E., prescribing the amount to be paid to Contractor in the event of failure of Contractor and Buyer to agree upon the whole amount to be paid to Contractor by reason of the termination of Work pursuant to this clause, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Contractor pursuant to this paragraph 65.D.
- E. In the event of the failure of Contractor and Buyer to agree as provided in 65.D. upon the whole amount to be paid to Contractor by reason of the termination of Work pursuant to this clause, Buyer shall pay Contractor the following amounts (but without duplication of any amounts agreed upon in accordance with 65.D.), which payment shall be deemed to satisfy all claims of Contractor against Buyer by reason of the termination:
  - (1) With respect to all Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
    - (a) The cost of such Work;
    - (b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in 65.B.(6), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this

Order/Agreement, which amounts shall be included in the cost on account of which payment is made under (a) above; and

- (c) A sum, as profit on (a) above, to be fair and reasonable, provided, however, that if it appears that Contractor would have sustained a loss on the entire Order/Agreement had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (2) The reasonable cost of the preservation and protection of property incurred pursuant to 65.B.(9), and other reasonable cost incidental to termination of Work under this Order/Agreement, including expense incidental to the determination of the amount due to Contractor as the result of the termination of Work under this Order/Agreement.

The total sum to be paid to Contractor under (1) above shall not exceed the total Order/Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Order/Agreement price of Work not terminated. Except for the normal spoilage and except to the extent that Buyer shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor under (1) above, the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to Buyer, or to a buyer pursuant to 65.B.(7).

- F. Contractor and Buyer agree that any determination of costs under 65.C. or 65.E. shall be governed by the principles and procedures set forth or referred to in Section XV, Part 4, of the Defense Acquisition Regulation (DAR) as in effect on the date of this Order/Agreement even though this is not a subcontract under a Government contract.
- G. In arriving at the amount due Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to Contractor, applicable to the terminated portion of this Order/Agreement, (2) any claim which Buyer may have against Contractor in connection with this Order/Agreement, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to Buyer.
- H. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Order/Agreement, Contractor may file with Buyer request in writing for an equitable adjustment of the price or prices specified in the Order/Agreement relating to the continued portion of the Order/Agreement (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

- I. Buyer may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by Contractor in connection with the terminated portion of this Order/Agreement whenever in the opinion of Buyer the aggregate of such payments shall be within the amount to which Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by Contractor to Buyer upon demand, together with interest computed at the rate of ten (10) percent per annum, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to Buyer, provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by Buyer by reason of the circumstances.

- J. Unless otherwise provided for in this Order/Agreement by applicable statute, Contractor, from the effective date of termination and for a period of three (3) years after final settlement under this Order/Agreement, shall preserve and make available to Buyer at all reasonable times at the office of Contractor, and without charge, all Contractor's books, records, documents and other evidence bearing on the costs and expenses of Contractor under this Order/Agreement and relating to the Work terminated hereunder.

- K. Contractor shall include in each of its subcontracts a clause similar to this clause 65.

#### **66. CANCELLATION FOR DEFAULT – DAMAGES FOR DELAY.**

- A. If Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Order/Agreement as the same may be modified in writing from time to time, or fails to complete said Work within such time, Buyer may, by written notice to Contractor, cancel Contractor's right to proceed with the Work or such part of the Work as to which there has been delay. In such event Buyer may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work such materials, tools and plans as may be on the site of the Work and necessary therefore. Whether or not Contractor's right to proceed with the Work is terminated, Contractor and its sureties shall be liable for any damage to Buyer resulting from Contractor's refusal or failure to complete the work within the specified time.
- B. If liquidated damages are provided for in this Order/Agreement and if Buyer so cancels Contractor's right to proceed, the resulting damage shall consist of such liquidated damages



until such reasonable time as may be required for final completion of the Work together with any increased costs occasioned by Buyer in completing the Work.

- C. If liquidated damages are provided for in this Order/Agreement and if Buyer does not so cancel Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until the Work is completed or accepted.
- D. Contractor shall not be liable to Buyer for resulting damage if and to the extent: (1) the delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of Buyer, acts of another contractor in the performance of a contract with Buyer, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and such subcontractors or suppliers, and (2) Contractor, within ten (10) days after the beginning of any such delay, or within such further period before final payment under this Order/Agreement as Buyer may allow in writing, notifies Buyer in writing of the cause of the delay.
- E. If, after notice of cancellation issued pursuant to this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to the Termination for Convenience clause.
- F. The rights and remedies of Buyer provided in this clause are in addition to any other rights and remedies provided by law or under this Order/Agreement. The terms subcontractors or suppliers means subcontractors or suppliers at any tier.
- G. By written notice to Contractor, Buyer may cancel the whole or any part of this Order/Agreement in the event of suspension of Contractor's business, insolvency of Contractor, institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against Contractor, appointment of a trustee or receiver for Contractor's property or business, or any assignment by Contractor for the benefit of creditors. Such cancellation shall be deemed "for default" in accordance with the provisions of this clause and rights and obligations of the parties shall be determined as herein provided.

**67. INCONSISTENCY OF PROVISIONS.**

In the event of any conflict or inconsistency between the provisions of the Order/Agreement, the provisions of any drawings and specifications, and the provisions of these General Conditions, the provisions of these

General Conditions shall control unless specifically amended by a particular provision of the Order/Agreement.

**68. NONWAIVER.**

Any failure at any time of Buyer to enforce any provision of this Order/Agreement shall not constitute a waiver of such provision or prejudice the right of Buyer to enforce such provision at any subsequent time.

**69. CHOICE OF LAW.**

This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

**70. SUCCESSORS OR PARTIES.**

This Order/ Agreement is binding on the parties and their respective legal representatives, trustees, successors and assigns.

**71. OFFSET COMMITMENT.**

This clause shall only apply to orders in excess of \$10,000.00.

- A. Definition: "Offset" means the obligations that Buyer undertakes, in order to market its Products, to assist a customer country in reducing any trade imbalance caused by its purchase of Buyer's Products or to meet other customer country national objectives.
- B. Buyer presently has made certain Offset arrangements with customer countries and anticipates that certain future Foreign Military Sales (FMS) or foreign direct sales customers will require an offset agreement as a condition of their procurement of Buyer's products. Notwithstanding that this Order is or is not made in direct support of a foreign sale, Seller agrees that it is obligated to support Buyer's offset commitments as a condition of this Order.
- C. Seller agrees, at Buyer's request, to expeditiously develop an aggressive offset program to achieve participation consistent with the total value of Seller's purchase orders with Buyer. The provisions of this clause shall provide the basis upon which Buyer and Seller shall develop specific offset commitments consistent with Buyer's prime contract commitments to its customers.

**72. DISPUTES.**

Either party may litigate any dispute arising under or relating to this order. Such litigation shall be brought and jurisdiction and venue shall be proper only in a state or federal district court in Los Angeles County. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance.

- 73. WAIVER OF RIGHT TO JURY TRIAL.** Buyer and Seller hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either Seller against Buyer or Buyer against Seller on any matter whatsoever arising under, relating to, or in any way connected with this Order, the relationship of Seller and Buyer or any claim of injury or damage, or the enforcement of any remedy

under any law, statute or regulation now or hereafter in effect.

**74. RECORD RETENTION REQUIREMENTS.**

Supplier shall retain all documents, notes, records and all other documentation with regard to the Services, including records of hours worked by each Supplier employee, for a period of four (4) years after completion of such Services provided by Supplier.

**75. AUDIT RIGHTS.**

During the Term of this Order / Agreement and for a period of four (4) years thereafter, Buyer shall have the right to audit such records of Supplier to ensure compliance with the terms and conditions of this Order / Agreement. Such books and records shall be made available at Buyer's facility in the United States for verification, copying, audit and inspection by Buyer or its representatives, including authorized third-party auditors. Any such audit shall be conducted during normal business hours upon reasonable prior written notice to Supplier provided, however, that Supplier shall provide reasonable assistance necessary to enable Buyer to conduct such audit and shall not be entitled to charge Buyer for any such assistance. In the event such audit reveals that Supplier has billed Buyer in excess of the correct amount to be billed, Supplier shall promptly pay to Buyer the amounts over paid.