

## **TERMS AND CONDITIONS – Cost-Reimbursement Under U.S. Government Contract**

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1. **GENERAL/ACCEPTANCE** - This purchase order (which term shall be deemed to include plans, specifications, regulations and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the supplies and/or services subject to these terms and conditions. Any of the following shall constitute Seller's unqualified acceptance of this purchase order and these terms and conditions: (a) acknowledgment of this purchase order; (b) furnishing of any part of the supplies/services under this purchase order; (c) acceptance of any payment for the supplies/services or (d) commencement of performance under this purchase order. Unless otherwise stated in Buyer's specifications, the latest revision of applicable standards, specifications, or similar documents as of the date of this purchase order shall apply. Any additional or different terms proposed by Seller are objected to and rejected unless accepted in writing by Buyer.

2. **BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE** - (a) Buyer's Authorized Purchasing Representative is the individual authorized by Buyer's cognizant procurement organization to administer and/or execute the purchase order. Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the purchase order. (b) Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the supplies or services being provided under this purchase order. No such action shall be deemed to be a change under the Changes clause of this purchase order and shall not be the basis for an equitable adjustment.

3. **ASSIGNMENT, SUBCONTRACTING, AND PLACE OF PERFORMANCE** - (a) Neither this purchase order nor any payments hereunder are assignable or transferable, in whole or in part, without Buyer's written approval, which approval will not be unreasonably withheld. (b) Neither the entirety nor any part of this purchase order may be further subcontracted without the prior written consent of Buyer. This provision shall not apply to purchases of standard commercial articles, including electronic components or raw materials including casting, forgings, and rough welded structures on which Seller will perform further work.

(c) Seller further agrees that no subcontract placed under this purchase order shall provide for payment on a cost-plus-a-percentage-of-cost basis and to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this purchase order.

(d) Seller shall notify Buyer of any change in the place of performance, including but not limited to change in design, manufacturing, process, assembly, integration, or testing location of components or lower subassemblies, with regard to the requirements of this purchase order. Such notification shall be made to the Buyer's Authorized Purchasing Representative not less than thirty (30) days prior to the change to the place of performance. Buyer may charge to Seller any additional cost of inspection or requalification in connection with any change in the place of performance of this purchase order.

4. **CHANGES** - (a) Buyer's Authorized Purchasing Representative may at any time, by written order, without notice to any surety, make changes or additions within the general scope of this purchase order in any one or more of the following: (1) drawings, designs, statement of work or specifications, or other technical documents; (2) method of shipment or packing; (3) time and place of inspection, delivery or acceptance; (4) quantities, where reasonable; (5) delivery schedules, where reasonable; and (6) the amount of Buyer/Government-furnished property. Seller acknowledges any such direction provided by anyone other than Buyer's Authorized Purchasing Representative is of no force and effect and Seller accepts all risks of accepting and/or otherwise proceeding with such unauthorized direction.

(b) If any authorized change causes an increase or decrease in the cost of, or the time required for, performance of any work under this purchase order, whether changed or not changed by any such written order, Seller shall notify Buyer in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this purchase order. Any claim by Seller for such adjustment must be asserted within fifteen (15) days, or such other period as may be agreed on in writing by the parties, after Seller's receipt of the notice of the change. Seller will make available all supporting documentation for Buyer's examination to allow Buyer, its authorized representatives, and its customer, including the U.S. Government, to verify any claim for adjustment by Seller. If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the Disputes provision of this purchase order.

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Pending resolution of any such adjustment, Seller will diligently pursue the performance of the order as changed.

5. **CHOICE OF LAW** - Irrespective of the place of performance, this purchase order shall be governed and construed and all disputes arising under or related to this purchase order shall be resolved according to the law of the state from which this purchase order is issued, without regard to its conflict of laws principles.

6. **COMPLIANCE WITH LAWS AND REGULATIONS** - (a) Seller shall comply with any applicable laws, Executive Orders, or regulations (including export administration regulations).

(b) Seller agrees to indemnify Buyer against any loss, cost, liability or damage by reason of Seller's violation of any applicable laws, Executive Order, or regulation.

(c) Seller agrees that performance of this purchase order is subject to the laws and regulations of the Department of Defense, Department of Energy, or other Federal Government agency, including but not limited to those identified in these terms and conditions. Any knowing willful act to falsify, conceal, or alter a material fact, or any false, fraudulent, or fictitious statement or representation, in connection with the performance of work under this order may be punishable in accordance with applicable U.S. Federal statutes.

7. **TERMINATION** - (a) Buyer may terminate performance of work under this purchase order in whole or, from time to time, in part, if --

- (1) Buyer determines that a termination is in Buyer's interest; or
- (2) Seller defaults in performing this purchase order and fails to cure the default within ten (10) days (unless extended by Buyer) after receiving a notice specifying default. Default includes failure to make progress in the work so as to endanger performance.

(b) Buyer shall terminate by delivering to Seller a Notice of Termination specifying whether termination is for default of Seller or for convenience of Buyer, the extent of termination, and the effective date. If, after termination for default, it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of Buyer.

(c) After receipt of a Notice of Termination, and except as directed by Buyer, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the purchase order.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to Buyer, as directed by Buyer, all right, title, and interest of Seller under the subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this purchase order; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by Buyer, deliver to Buyer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and any other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the purchase order had been completed, would be required to be furnished to Buyer, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for

this purchase order, the cost of which Seller has been or will be reimbursed under this purchase order.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this purchase order that is in the possession of Seller and in which Buyer has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (6) above; provided however, that Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this purchase order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.

(d) Seller shall submit complete termination inventory schedules no later than sixty (60) days from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this 60-day period.

(e) Up to 90 days following notice of termination, Seller may submit to Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Buyer. Seller may request Buyer to remove those items or enter into an agreement for their storage. Within fifteen (15) days, Buyer will accept the items and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. Seller shall submit the proposal promptly, but no later than six (6) months from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this six (6)-month period.

However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after six (6) months or any extension. If Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) above, Seller and Buyer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. This purchase order shall be amended, and Seller paid the agreed amount.

(h) If Seller and Buyer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, Buyer shall determine, on the basis of information available, the amount, if any, due Seller, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this purchase order, not previously paid, for the performance of this purchase order before effective date of the termination, and part of those costs that may continue for a reasonable time with the approval of or as directed by Buyer; however, Seller shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this purchase order if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

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(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of Seller's termination settlement proposal may be included.

(4) A portion of the fee payable under the purchase order, determined as follows:

(i) If this purchase order is terminated for the convenience of Buyer, the settlement shall include a percentage of the fee equal to the percentage of work completed as contemplated under this purchase order, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If this purchase order is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by Buyer is to the total number of articles (or amount of services) of a like kind required by this purchase order.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) above.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this purchase order, shall govern all costs claimed, agreed to, or determined under this clause.

(j) Seller shall have the right under the Disputes clause in this purchase order to appeal any determination made by Buyer under paragraph (f) or (h) above or paragraph (l) below, except that if Seller failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal or dispute. If Buyer has made a determination of the amount due under paragraph (f), (h) or (l), Buyer shall pay Seller (1) the amount determined by Buyer if there is no right of appeal or dispute, or (2) the amount finally determined pursuant to action under the Disputes clause of this purchase order.

(k) In arriving at the amount due Seller under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to Seller, under the terminated portion of this purchase order;

(2) Any claim which the Buyer has against Seller under this purchase order; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by Seller or sold under this clause and not recovered by or credited to Buyer.

(l) Seller and Buyer must agree to any equitable adjustment in fee for the continued portion of the purchase order when there is a partial termination. Buyer shall amend this purchase order to reflect the agreement.

(m)(1) Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Seller for the terminated portion of the contract, if Buyer believes the total of these payments will not exceed the amount to which Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or later date determined by Buyer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this purchase order does not include a fee.

**8. INSPECTION** – (a) Buyer and its customer may inspect and test

material, work in progress and supplies at all times and places, during manufacture and otherwise. Buyer's inspection may, in its sole discretion, include physical, visual and/or mechanical review, as well as any documentation necessary to substantiate the meeting of quality requirements or specific requirements set forth in the purchase order. If inspection and test are made on Seller's premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Inspections and tests by Buyer shall be performed in such manner as not to delay the work. Buyer may charge to Seller any additional cost of inspection and test when material, work or supplies are not ready at the time such inspection and test is requested by Buyer. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test.

(b) The inspection, review or approval by Buyer of any work, or of any drawing, design, or other document, will not be deemed to relieve Seller of any of its obligations under any purchase order, or to constitute a waiver of any defects or nonconformities. The acceptance by Buyer of any supplies or services under any purchase order will not be deemed to limit or affect any warranty or right of indemnity granted by Seller under such purchase order, these terms and conditions or otherwise.

(c) Except as otherwise agreed in writing, all shipments and supplies furnished under this purchase order shall be subject to final inspection and acceptance by Buyer after receipt by Buyer at Buyer's facility or other destination as identified in this purchase order notwithstanding any previous inspection, or the earlier passing of title to Buyer or any prior payment by Buyer, or any prior inspection of any type. Seller shall maintain a quality control and inspection system acceptable to Buyer, and its customer.

**9. RESPONSIBILITY FOR SUPPLIES** - Except as specifically otherwise provided in this purchase order, Seller shall be responsible for supplies meeting the requirements of this purchase order until final inspection and acceptance thereof by Buyer and shall bear all risks as to rejected supplies or supplies requiring correction after notice of rejection notwithstanding any prior acceptance.

**10. SUBSTITUTIONS** - Seller shall not substitute materials or accessories without written consent of Buyer.

**11. MATERIAL AUTHENTICITY** – (a) All material delivered under this purchase order shall be authentic and traceable to the original manufacturer. Seller shall provide authenticity and traceability records to Buyer upon request. Seller shall immediately notify Buyer if Seller cannot provide electronic parts, components, and/or assemblies traceable to the original component manufacturer (OCM) / the original equipment manufacturer (OEM). Upon receipt of such notification, Buyer reserves the right to terminate the purchase order at no cost to Buyer or provide specific material validation test and inspection protocol requirements. In the event that Seller delivers items that are determined not to be authentic, Seller shall take corrective action as required by the terms of this purchase order. Seller shall establish and maintain a material authenticity process which ensures the requirements of this clause are met. Seller's obligation to substantiate authenticity shall survive acceptance of and payment for supplies delivered under this purchase order. (b) If this purchase order is for the (1) supply of electronic parts, (2) supply of end items, components, parts or assemblies containing electronic parts, or (3) provisioning of services where the Seller will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service then the provisions of paragraphs (a)–(e) of DFARS 252.246-7007, "Contractor Counterfeit Electronic Part Detection and Avoidance System," in effect on the date of this purchase order, including its definition of "electronic parts", are incorporated in this paragraph by reference. Where necessary to make these provisions of DFARS 252.246-7007 applicable to this purchase order "Contracting Officer" shall mean both "Contracting Officer" and "Buyer".

(c) The substance of this clause shall be incorporated into any subcontract or purchase order entered into by Seller for the performance of any part of the work under this purchase order.

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- 12. DEFECTIVE WORK** – (a) Notwithstanding any prior acceptance, Buyer, at its option, may reject or require prompt correction (in place or elsewhere), of any supplies or services which are, in Buyer's judgment, defective in material or workmanship or otherwise fail to meet the drawings, designs, statement of work, specifications or other technical documents, or other requirements of this purchase order.
- (b) All supplies furnished under this purchase order shall be subject to inspection at Buyer's facility or other destination as identified in this purchase order notwithstanding any previous source inspection, and Seller shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the supplies and all records (such as affidavits, test reports, drawings, etc.) required to be furnished.
- (c) All services performed under this purchase order shall be performed in accordance with the standards of care and diligence customarily exercised by persons performing such services in the industry.
- (d) Buyer may, in addition to any rights it may have by law, prepare for shipment and ship the supplies to Seller, require Seller to remove them, direct their correction in place or, with authorization by Seller, correct them and the expense of any such action, including transportation both ways, if any, shall be borne by Seller. If Seller fails promptly to remove such supplies and to proceed promptly to replace or correct them, Buyer may replace or correct such supplies at the expense of Seller, including any excess cost.
- (e) If Seller delivers nonconforming services, Buyer may require Seller to promptly correct or replace the nonconforming services. Redelivery to Buyer of any corrected or replaced services shall be at Seller's expense. In addition, Buyer may (i) correct the nonconforming services or (ii) obtain replacement services from another source at Seller's expense.
- (f) Buyer may recover by set off or otherwise any and all costs, expenses and damages paid, incurred or suffered as a result of or relating to holding, returning, replacing, correcting or rejecting defective or nonconforming supplies or services. Seller shall not again tender rejected or corrected supplies or services unless Seller discloses the former tender and rejection or requirement of correction.
- (g) All repair, replacement and other correction and redelivery shall be completed within the original delivery schedule unless otherwise directed by Buyer's Authorized Purchasing Representative.
- (h) Seller shall immediately notify Buyer upon discovery of actual or potential nonconformance affecting delivered product.
- 13. DELIVERY** – (a) The parties expressly agree that time is and shall remain a material element of this purchase order and no acts of Buyer, including without limitation, modifications to this purchase order or acceptance of late deliveries, shall constitute a waiver of this clause.
- (b) Seller will deliver acceptable supplies and services in strict conformity with any delivery schedule and shipping instructions set forth in this purchase order. Unless otherwise provided in this purchase order, delivery in whole or in part shall not be made more than ten (10) days prior to required delivery dates. Buyer may return earlier deliveries at Seller's risk and expense. Seller shall comply with the delivery schedule but shall not make material or production commitments in advance of such time as Seller reasonably believes necessary to meet the schedule without prior written approval by Buyer. Representatives of Buyer, the Government, or both, shall at all reasonable times have access to Seller's plant for the purpose of assuring delivery in accordance with the schedule.
- (c) If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to: (1) terminate this purchase order, or (2) fill such purchase order or any portion thereof, from sources other than Seller and to reduce Seller's purchase order quantities accordingly at no increase in unit price, without any penalty to Buyer. Alternatively, Buyer may require Seller to provide consideration for the late delivery. This condition shall not limit Buyer's rights or remedies under the Termination clause of this purchase order.
- (d) Buyer may delay delivery or acceptance where such delay is due to causes beyond its control. Seller will hold any goods so delayed subject to the direction of Buyer. In such case, Buyer will be responsible only for Seller's additional direct costs in holding the goods or delaying performance at Buyer's request. Causes beyond Buyer's control include, but are not limited to, Government action or failure of the Government to act, strike or other labor trouble, fire or unusually severe weather.
- 14. QUANTITY** - Buyer need not accept any variation in quantity except as specified in this purchase order. Over-shipments may be returned to Seller at Seller's expense, which shall include a reasonable cost for Buyer's handling, or be retained by Buyer at no increase in price. To the extent that supplies covered by this purchase order are produced in accordance with drawings or specifications which are proprietary to Buyer or to Buyer's customer, Seller shall not manufacture or retain for the purpose of display, or otherwise, any more such supplies, or parts thereof, than are required to be delivered under this purchase order. Any such excess supplies, or parts thereof, shall be delivered free of charge to Buyer at the designated delivery point at Seller's risk and expense or destroyed and the destruction certified by Seller.
- 15. DISPUTES** - Any dispute arising under this purchase order which is not settled by agreement of the parties will be litigated in the state or federal courts of the state from which Buyer's purchase order is issued. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this purchase order, Seller shall proceed diligently with the performance of this purchase order unless otherwise agreed between Buyer and Seller.
- 16. FEDERAL, STATE, AND LOCAL TAXES** - Except as may be otherwise provided in this purchase order, the price includes all applicable Federal, State and Local, taxes and duties.
- 17. GOVERNMENT OR BUYER PROPERTY**- If, in connection with the performance of this purchase order, any property is furnished to Seller by Buyer or by the Government, Seller shall assume the risk of, and be responsible for, any loss, theft, destruction or damage to the property while in Seller's possession or control except to the extent that this purchase order, with the prior approval of Buyer or the Government, as applicable, provides for the relief of Seller from such liability. In the absence of such approval, Seller shall return all such property in a condition as good as when received except for reasonable wear and tear for the utilization of such property in accordance with the provisions of the prime contract. Seller shall establish and maintain a system in accordance with the provisions of FAR 52.245-1 for the control of the Government or Buyer owned property. Seller shall also notify Buyer if approval of its property system has been withdrawn by the Government. At all times, Buyer and the Government shall have access to Seller's facilities for the purpose of reviewing its compliance with the management of Government or Buyer property related to this purchase order.
- 18. INDEMNITY AND INSURANCE**- (a) Seller will defend, indemnify and hold harmless Buyer and its affiliates, and their officers, agents, employees, successors and assigns, against any claims, loss, damage or expense, including, without limitation, payment of direct, special, incidental and consequential damage, and expenses of defending claims, including attorneys' fees, for property loss and/or damage, and personal injury and/or death, which may be sustained by third parties and/or by Buyer, its agents, employees or subcontractors, at any tier, which results from Seller's performance or nonperformance of this purchase order except for claims resulting from the sole negligence of Buyer. Buyer will inform Seller of any claim, demand or suit asserted or instituted against it and, to the extent of Buyer's ability to do so, permit Seller to defend the same or make settlement in respect thereof.
- (b) Buyer, at its option, may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification provided above but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify. Seller and its subcontractors, at their sole cost and expense, will at all times, prior to commencement and throughout the period of performance of this purchase order, maintain with reputable insurance companies that are authorized to do business under the laws of the

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state or states in which the work is being performed, insurance coverage in at least the minimum amounts as follows:

- (1) Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed sufficient to cover all of its general and special employees and such insurance shall provide waiver of subrogation against Buyer.
- (2) Employer Liability insurance in the amount of \$1,000,000.
- (3) Commercial General Liability (CGL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage. Coverage shall include premises and operations, products and completed operations and contracts.
- (4) Commercial Automobile Liability (AL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage covering all owned, hired and non-owned vehicles.

Renewal insurance certificates, if applicable, shall be provided to Buyer at least fifteen (15) days prior to the expiration date of the insurance policies.

Additional insurance types and/or limits will be necessary if the work involves extra hazardous operations. The extra hazardous operations include but are not limited to aviation operations or products, nuclear hazard operations, professional engineering advice, large construction projects, hazardous waste, medical care, food service, crane operation, work above ground, work below ground, and demolition or explosives operations.

At Buyer's request, Seller will name Buyer as an additional insured under required liability policies, will provide Buyer a certificate(s) of insurance and provide Buyer ten (10) days' prior written notice of cancellation or material change of any such coverage.

c) Seller shall comply with the provisions of FAR 52.215-10, 52.215-11, 52.215-12, and 52.215-13 which are incorporated herein by reference to the extent that such clauses are or become applicable to this purchase order. Seller shall indemnify and hold harmless Buyer from any amount, loss and expense, including interest assessed by the Government under 10 U.S.C. § 2306a, by which this purchase order is determined by the Government to have been defectively priced because of Seller's or Seller's subcontractor's failure to comply with such provisions. The rights of the parties under this clause shall survive completion or termination of this purchase order.

- 19. INTELLECTUAL PROPERTY INDEMNITY** – (a) Seller shall indemnify Buyer, Buyer's customer and/or the Government and their respective officers, agents and employees against liability and losses, including costs, for infringement of any patent, copyright, trademark, or other intellectual property arising out of the manufacture or delivery of supplies or performance of services under this purchase order or out of the use or disposal by, or for the account of, Buyer, Buyer's customer and/or the Government of such supplies or services. This indemnity shall not apply unless Seller shall have been informed as soon as practicable by Buyer, Buyer's customer and/or the Government of the suit or action or other proceedings alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof.

(b) Notwithstanding the above, when this purchase order is performed under the authorization and consent of the Government to infringe United States patents, Seller's liability for Seller's patent infringement under this purchase order shall be coextensive with Buyer's liability.

- 20. INVOICING AND PAYMENT** - (a) Invoicing - Buyer shall make payments to Seller when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by Buyer in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this purchase order and the terms of this purchase order. Seller may submit to an authorized representative of Buyer in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this purchase order.

(b) Reimbursing Costs - (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with

respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

(i) Those recorded costs which, at the time of request for reimbursement, Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for this purchase order.

(ii) When Seller is not delinquent in paying costs of purchase order performance in the ordinary course of business, costs incurred, but not necessarily paid, for

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made –

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of Seller's payment request to Buyer;

(B) Materials issued from Seller's inventory and placed in the production process for use on this purchase order;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by Seller for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to Seller's subcontractors.

(2) Accrued costs of Seller contributions under employee pension plans shall be excluded until actually paid unless –

(i) Seller's practice is to make contributions to the retirement fund quarterly or more frequently, and;

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from Seller's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (f) below, allowable indirect costs under this purchase order shall be obtained by applying indirect cost rates established in accordance with paragraph (c) below.

(4) Any statements in specifications or other documents incorporated in this purchase order by reference designating performance of services or furnishing of materials at Seller's expense or at no cost to Buyer shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Final Indirect Cost Rates

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) Seller shall submit to Buyer its proposed final indirect cost rates and supporting cost data within the six (6) month period following the expiration of each of its fiscal years, or such later date as may be approved by Buyer.

The proposed rates shall be based on Seller's actual cost experience for that period. Buyer and Seller shall establish the final indirect cost rates as promptly as practical after receipt of Seller's proposal.

(3) Seller and Buyer shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify:

(i) the agreed-upon final annual indirect cost rates; (ii) the bases to which the rates apply; (iii) the periods for which the rates apply; (iv) any specific indirect cost items treated as direct costs in the settlement, and; (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or

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disallowance provided for in this contract. The understanding is incorporated into this purchase order upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause contained in this purchase order.

(d) Billing Rates - Until final annual indirect cost rates are established for any period, Buyer shall reimburse Seller at billing rates established by Buyer subject to adjustment when the final rates for the period are established. These billing rates --

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) Quick-Closeout Procedures - When Seller and Buyer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(f) Audit - At any time or times before final payment, Buyer may have Seller's invoices or vouchers and statements of cost audited. Any payment may be:

(1) Reduced by amounts found by Buyer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(g) Final Payment - (1) Seller shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than 60 days (or longer, as Buyer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon Seller's compliance with all terms of this purchase order, Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid. Any adjustment in indirect cost rates for the most recent fiscal year shall be submitted to Buyer in accordance with paragraph (d) above.

(2) Seller shall pay to Buyer any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this purchase order, to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by Buyer. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer. Before final payment under this purchase order, Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --

(i) An assignment to Buyer in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Buyer under this purchase order, and;

(ii) A release discharging Buyer, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this purchase order, except --

(A) Specified claims stated in exact amounts, or in estimated amounts, when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of Seller to third parties arising out of the performance of this purchase order; provided, that the claims are not known to Seller on the date of the execution of the release, and that Seller gives notice of the claims in writing to Buyer within six (6) years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Seller under the patent clauses of this purchase order, excluding, however, any expenses arising from Seller's indemnification of Buyer against patent liability.

### **21. FEE - (a) Fixed Fee -**

(1) If applicable, Buyer shall pay Seller for performing this purchase order the fixed fee specified in the purchase order.

(2) Payment of the fixed fee shall be made as specified in the purchase order; provided, that after payment of 85 percent of fixed fee, Buyer may withhold further payment of fee until a reserve is set aside in an amount that Buyer considers necessary to protect Buyer's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

### **(b) Incentive Fee --**

(1) If applicable, Buyer shall pay Seller for performing this purchase order a fee determined as provided in this purchase order.

(2) Target cost and target fee - The target cost and target fee specified in the purchase order are subject to adjustment if this purchase order is modified in accordance with paragraph (4) below.

(i) "Target cost," as used in this purchase order, means the estimated cost of this purchase order as initially negotiated, adjusted in accordance with paragraph (4) below.

(ii) "Target fee," as used in this purchase order, means the fee initially negotiated on the assumption that this purchase order would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (4) below.

(3) Withholding of payment - Normally, Buyer shall pay the fee to Seller as specified in the purchase order. However, when Buyer considers that performance or cost indicates that Seller will not achieve target, Buyer shall pay on the basis of an appropriate lesser fee. When Seller demonstrates that performance or cost clearly indicates that Seller will earn a fee significantly above the target fee, Buyer may, at the sole discretion of Buyer, pay on the basis of an appropriate higher fee. After payment of eighty-five percent (85%) of the applicable fee, Buyer may withhold further payment of fee until a reserve is set aside in an amount that Buyer considers necessary to protect the Buyer's interest. This reserve shall not exceed fifteen percent (15%) of the applicable fee or \$100,000, whichever is less.

(4) Equitable adjustments - When the work under this purchase order is increased or decreased by a modification to this purchase order or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this purchase order.

(5) Fee payable -- (i) The negotiated fee payable under this purchase order, including limitations or allowable adjustments, shall be identified in the purchase order document. The fee may be subject to adjustment to the extent allowable by applicable regulation.

(ii) If this purchase order is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this purchase order.

(iii) For the purposes of fee adjustments, "total allowable cost" shall not include allowable costs arising out of --

(A) Any of the clauses covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of Seller or any of its subcontractors;

(B) After negotiating the target cost, if a subsequent statute, court decision, written ruling, or regulation that results in Seller being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(C) Any direct cost attributed to Seller's involvement in litigation as required by Buyer pursuant to a clause of this purchase order, including furnishing evidence and information requested by Buyer relating to the litigation ;

(D) The purchase and maintenance of additional insurance not in the target cost and required by Buyer, or claims for



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reimbursement for liabilities to third persons pursuant to the insurance clause;

(E) Any claim, loss, or damage resulting from a risk for which Seller has been relieved of liability by the Government/Buyer Property clause.

(iv) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph, unless otherwise specifically provided in this purchase order.

(6) Contract modification - The total allowable cost and the adjustment fee determined as provided in this clause shall be evidenced by a modification to this purchase order signed by Buyer and Seller.

(c) Award Fee - The Award Fee criteria, if applicable, are contained in the purchase order.

**22. LIMITATION OF COST AND FUNDS -** (a) It is estimated that the total cost to Buyer, exclusive of any fee, for the performance of this purchase order will not exceed the estimated cost set forth in the purchase order, and Seller agrees to use its best efforts to perform the work specified in the purchase order and all obligations under this purchase order within such estimated cost. If at any time Seller has reason to believe that the costs which it expects to incur in the performance of this purchase order in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five per cent (75%) of the estimated cost then set forth in the purchase order, or if, at any time, Seller has reason to believe that the total cost to Buyer, exclusive of any fixed fee, for the performance of this purchase order will be either greater or substantially less than the then estimated cost thereof, Seller shall notify Buyer in writing to that effect, giving its revised estimate of such total cost for the performance of this purchase order.

(b) Buyer shall not be obligated to reimburse Seller for costs incurred in excess of the estimated cost set forth in the purchase order, and Seller shall not be obligated to continue performance under this purchase order or to incur costs in excess of the estimated cost set forth in the purchase order, unless and until Buyer shall have notified Seller in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this purchase order. No such increase in the estimated cost shall entitle Seller to any increase in the fee to be paid to Seller unless the increase in cost is caused by an increase in scope. When and to the extent that the estimated cost set forth in the purchase order has been increased, any costs incurred by Seller in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

(c) If by reason of the limited funds allotted by the Government to the prime contract, as of the date of this purchase order, there has been allotted to this purchase order only the sum allotted set forth in the purchase order, then such sum shall become a limitation of liability under this purchase order. This sum may be increased from time to time solely at the discretion of Buyer. Upon the making of any such increase, Buyer shall notify Seller in writing of the amount thereof. Notwithstanding any other provisions of this purchase order

(i) Seller shall not be bound to take any action in connection with the performance of this purchase order which would cause the amount for which Buyer would be obligated hereunder to exceed the sum then allotted to this purchase order and the obligation of Seller to proceed with the performance of this purchase order shall be limited accordingly, (ii) Buyer shall not be obligated to pay to Seller either for reimbursement of costs or fee or otherwise, any amount in excess of the sum allotted to this purchase order (provided, however, that if Seller incurs any costs for which funds are not allotted, Buyer may ratify and pay the same) and (iii) if at any time Seller has reason to believe that the costs which it expects to incur in the performance of this purchase order in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five per cent (75%) of the difference between the sum then allotted to this purchase order and a proportionate amount

of the fee, if any, set forth in the purchase order, it shall notify Buyer in writing to that effect.

(d) If Buyer determines that the estimated cost or the sum then allotted has been expended and that the estimated cost or the sum allotted, as the case may be, will not be increased by it pursuant to paragraph (b) or (c) of this clause, Buyer shall terminate this purchase order for the convenience of Buyer pursuant to the Termination clause of this purchase order.

(e) In the event that the estimated cost and the sum allotted are not increased sufficiently to allow completion of the work contemplated by this purchase order, Seller shall be entitled, subject to the limitations of paragraph (c) of this clause, to a percentage of the fee set forth in the purchase order equivalent to the percentage of completion of the work contemplated by this purchase order.

(f) Buyer shall not be liable for more than the amount allotted to this purchase order, including the complete settlement of any termination claim.

**23. PAYMENT OF INDIRECT COSTS -** Indirect costs shall be paid at rates which are concurrently and customarily approved by the Seller's cognizant Government Audit Agency and accepted by the Government as overhead rates of Seller in performing other Government cost-plus-fixed-fee prime and subcontracts calling for services and/or supplies similar to those herein.

**24. PAYMENT FOR OVERTIME PREMIUMS -** Seller agrees to notify Buyer promptly of any proposed overtime that may be required under this purchase order. In no event shall Seller perform any work under this purchase order on an overtime basis without the prior written authorization of Buyer.

**25. LIENS -** (a) Seller warrants that it has title to the supplies to be delivered under this purchase order and shall deliver same free of all liens, claims and encumbrances.

(b) If this purchase order provides Seller with advance payments or milestone billings during its performance, title to all property under this purchase order shall vest in Buyer immediately upon acceptance of this purchase order. For purposes of this clause, property includes all parts, material, inventories, works in progress, special tooling or special test equipment to which Buyer is entitled to acquire title, nondurable tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, drawing and technical data to the extent Seller is required to deliver such under this purchase order.

**26. SECURITY REQUIREMENTS -** (a) Seller shall be responsible for safeguarding all classified information in accordance with the provisions of Seller's Security Agreement with the Department of Defense and with all applicable Government requirements including, without limitation, of FAR 52.204-2, "Security Requirements", which is incorporated herein by reference. The "Changes" clause referenced in 52.204-2(c) shall mean the Changes clause within this purchase order.

(b) The provisions of DFARS 252.204-7012, "Safeguarding Covered Defense Information and Cyber Incident Reporting" in effect on the date of this purchase order are incorporated in this paragraph by reference. In subparagraph (c)(1)(ii), Seller shall report any cyber incident to the Department of Defense (DoD) at <http://dibnet.dod.mil> and to Buyer's Authorized Purchasing Representative within seventy two (72) hours of discovery.

(c) Seller shall include the substance of this clause, including this paragraph (c) in its lower-tier purchase orders and subcontracts that require access to classified information or covered defense information as defined by 252.204-7012.

**27. NEWS OR ADVERTISING RELEASES -** No news release in any way relating to Buyer or Seller concerning this purchase order shall be made by either party to any news media or to the general public without prior approval of the other party. Seller will not, and will require its suppliers and subcontractors to not, advertise or publish the fact that Buyer has ordered supplies or services from Seller, or the terms or nature of such order. Seller will not, and will cause its employees and other representatives to not, disclose such information in company periodicals, press releases, public lectures, sales or other promotional literature, or otherwise. The parties agree that in the

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event a news release is so approved and made, such news release will recognize Buyer and Seller.

- 28. NOTICE TO BUYER OF POTENTIAL DELAYS** - (a) Whenever Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof, including all relevant information with respect to the delay, to Buyer. Such occurrences shall include, but not be limited to: (1) actual or potential labor disputes or strikes; (2) fires, floods, unusually severe weather; (3) acts of nature, (4) acts of the Government in either its sovereign or contractual capacity, and any other cause for delay. Neither receipt of such notice by Buyer nor any provision of these terms and conditions will be deemed to be a waiver by Buyer of any of its rights under any purchase order, these terms, at law or otherwise.

(b) Seller shall include the substance of this clause, including this paragraph (b), in all its purchase orders issued at all tiers under this purchase order.

- 29. EXCUSABLE DELAYS** - (a) Except with respect to defaults of its subcontractors, Seller shall not be in default by reason of any failure in performance of this purchase order in accordance with its terms (including any failure by Seller to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of Seller and Seller could not have obtained the supplies or services from another source. Such causes may include, but are not restricted to acts of God or of the public enemy; acts of Government in either its sovereign or contractual capacity; acts of Buyer; fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller.

(b) If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both Seller, and its subcontractor and without the fault or negligence of either of them, Seller shall not be deemed to be in default, unless: (1) the supplies or services to be furnished by Seller's subcontractor were obtainable from other sources; (2) Buyer shall have ordered Seller in writing to procure such supplies or services from such other sources, and; (3) Seller shall have failed to comply reasonably with such order.

(c) Upon request of Seller, Buyer shall ascertain the facts and extent of such failure and, if Buyer shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of Buyer under the Termination clause of this purchase order. Seller shall promptly notify Buyer in writing of the facts relating to any cause which may result in delay or failure to perform.

- 30. OFFSET NOTIFICATION** - This clause shall only apply to purchase orders in excess of fifty thousand dollars (\$50,000.00).

(a) Definition: "Offset" means the obligations that Buyer undertakes, in order to market or sell 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) To the exclusion of all others, Buyer or its assignees shall be entitled to all benefits or Offset credits which might result from this purchase order. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for Offset credits.

(c) Seller agrees to use reasonable efforts to identify the foreign content of items that Seller either produces itself or procures from subcontractors for work under this purchase order. Promptly after selection of a non-U.S. subcontractor for work under this purchase order, Seller shall notify Buyer of the name, address, subcontractor point of contact (including telephone number) and dollar value of the subcontract.

(d) Seller shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this purchase order.

- 31. ORDER OF PRECEDENCE** - The various documents constituting this purchase order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this purchase order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items: (a) provisions required by statute, regulation or Government contract; (b) typed purchase order form; (c) this terms and conditions document; (d) statement of work; (e) specifications; and (f) drawing(s).

- 32. INTELLECTUAL PROPERTY RIGHTS** - (a) The rights of the U.S. Government in technical data, computer software and inventions pertaining to the supplies and/or services delivered under this purchase order are set forth in the applicable FAR and DFARS clauses incorporated by reference. Buyer shall have the right to utilize the supplies and/or services in performance of Buyer's contractual obligations to its customer, including the right to copy and modify any technical data and computer software delivered under this purchase order and the right to deliver such technical data and computer software to Buyer's customer if it is required as a deliverable under Buyer's contract with its customer.

(b) This purchase order does not confer or grant to Seller, in any manner whatsoever, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Buyer, except as needed to perform the work ordered by Buyer under this purchase order.

- 33. PROTECTION OF INFORMATION** - (a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller which relates to the subject matter of this purchase order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and paragraphs (b) through (g) of this clause shall not apply.

(b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller, paragraphs (c) through (g) of this clause apply.

(c) For purposes of this clause, "Information" shall mean information disclosed to Seller by Buyer in connection with this purchase order, which is either identified to Seller as being proprietary or which is information a reasonable person would understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer's products, services, equipment or processes, as well as duplicates, copies or derivative works thereof. Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Seller from a third party without obligation of confidence. The prohibitions in this clause are meant to co-exist with DFARS 252.204-7000, incorporated by reference herein. To the extent there is any conflict with this clause and DFARS 252.204-7000, or other applicable U.S. Government Procurement Regulations incorporated into this Purchase Order, the latter shall, when applicable, take precedence over any conflicting provision to the extent that such regulations so require.

(d) Information furnished to Seller shall remain Buyer's proprietary property, shall be duplicated only as authorized in writing by Buyer, and shall be returned to Buyer upon request or when no longer required for the performance of this purchase order. Seller shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties, including any foreign national, firm or country, and foreign nationals employed by or associated with Seller's company except as specifically authorized by Buyer. Seller agrees not to use Information to develop any product, service or system, or to support any third party in the development of any product, service or system.



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(e) Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller's proprietary data and information will be used by Buyer only upon approval by Seller.

(f) Seller's obligations with respect to Information disclosed hereunder prior to the performance in full or termination of this purchase order shall not, except as expressly set forth herein, be affected by such performance in full or termination.

(g) Buyer, or its authorized representative(s), may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. Seller will, in all of its contracts with its suppliers relating to any Buyer purchase order, include provisions which secure for Buyer all of the rights and protections provided for by this clause.

**34. STOP WORK ORDER** – In accordance with the provisions of the "Stop-Work Order" clause set forth in FAR 52.242-15, with its Alternative I in effect on the date of this purchase order, Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by any purchase order for a period of ninety (90) days after the order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of such an order, Seller will immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the indicated 90-day period, Buyer will take the actions prescribed in FAR 52.242-15. Where necessary to make FAR 52.242-15 applicable to this purchase order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and "Government" shall mean "Buyer" or the "Government".

**35. PERFORMANCE MONITORING** - For the purpose of monitoring Seller's performance, Buyer and Buyer's Customer shall have the right, at all reasonable times, to visit Seller's plant or such parts thereof as may be engaged in work relating to this purchase order. In addition, Buyer and Buyer's Customer shall have the right, at all reasonable times to visit the plants of Seller's subcontractors or such parts thereof as may be engaged in work relating to this purchase order and Seller will cause a like provision to be included in all such related lower-tier subcontracts. Nothing herein contained shall give Buyer or Buyer's Customer the right to issue direct orders or instructions to Seller's lower-tier subcontractors. Seller shall receive prior notice of any visit made pursuant to the provisions of this clause. All arrangements for such visits to the plant or plants of lower-tier subcontractors by Buyer or Buyer's Customer shall be made through Seller, and all such visits to a lower-tier subcontractor's plant shall be made in conjunction with representatives of Seller unless such representatives stipulate they have no desire to participate in the visit.

**36. TOXIC SUBSTANCES CONTROL ACT** - Seller warrants that each and every chemical substance delivered under this purchase order shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act (15 USC § 2601).

**37. WARRANTY** – (a) Seller warrants, at the time of delivery to Buyer, that the supplies or services covered by this purchase order will conform to the design, specifications, drawings, samples or other descriptions referred to in this purchase order; will be free from defects in material and workmanship; will be free from all liens and encumbrances; and, to the extent that the Seller knows or has reason to know of the purpose for which the supplies or services are intended, will be fit and sufficient for such purpose. The warranties contained in this paragraph shall run to Buyer and its customers.

(b) Seller further warrants that supplies and services provided under this purchase order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which would interfere in any manner with Buyer's property rights as described in the Intellectual Property Rights and Protection of Information clauses in this purchase order. In so far as the FAR 52.227-1, Authorization and Consent, regulation applies as to any patent infringement claim, if applicable under this purchase order, no warranty of non-infringement of any such patent claim is provided.

**38. ENTIRE AGREEMENT** - This purchase order, including attachments and documents incorporated herein by reference, constitutes the entire agreement between Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller. No amendment or modification of this purchase order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller. The rights and remedies afforded to either party pursuant to any part or provision of this purchase order are in addition to any other rights and remedies afforded by other parts or provisions of this purchase order, by law, or otherwise.

### **39. EXPORT RELATED REQUIREMENTS –**

A. Export Compliance. Performance of this purchase order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2799 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations or "ITAR") or 50 United States Code 2401-2420 (Export Administration Act of 1979, as amended), 50 United States Code 1701-1706, (International Emergency Economic Powers Act, as amended), and 15 Code of Federal Regulations 730 – 774 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) a Foreign Person as that term is defined in the Export Laws and Regulations and has disclosed to Buyer's Representative in writing the country in which it is incorporated/authorized/organized to do business, and all nationalities of any dual or third-country national employees who will require access to the data, articles or services provided hereunder. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there under.

1. Registration. If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program in accordance with the ITAR.
2. Foreign Persons. Seller shall not re-transfer any export-controlled information (e.g., technical data or software) to any other non-U.S. person or entity (including the Seller's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export Laws and Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of the Buyer. No consent granted by Buyer in response to Seller's request shall relieve Seller of its obligations to comply with the provisions of paragraph A of this clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

B. Political Contributions, Fees and Commissions. If this purchase order is valued in an amount of \$500,000 or more, then in performance of this purchase order, Seller shall not directly or indirectly pay, offer or agree to pay any political contributions or any fees or commissions.

For purposes of this section and pursuant to 22 CFR 130.6, political contribution means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

1. To or for the benefit of, or at the direction of, any non-U.S. candidate, committee, political party, political faction, or government or governmental subdivision, or any individual

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elected, appointed or otherwise designated as an employee or officer thereof; and

2. For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

For purposes of this section and pursuant to 22 CFR 130.5, fee or commission means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

1. To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with the Seller; and
2. For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization.

C. Import Compliance. Both parties shall comply with all U.S. Customs laws and regulations (e.g., 19 CFR) and all other applicable U.S. government regulations pertaining to importations of goods and materials into the United States.

For International Purchase Orders (purchase orders issued to entities addressed in foreign countries): Specifically, without excluding other regulations, Seller shall comply with and adhere to the commercial invoice requirements detailed in 19 CFR 141 subpart F of the regulations, and provide additional information as requested by the Buyer. Seller shall immediately upon discovery, notify Buyer of any change to the shipment data related to product valuation, quantities shipped, country of origin, port of export and any additional information directed by the Buyer. Seller will timely provide pre-alert shipping information and documentation prior to shipment arrival to the U.S. Buyer will direct Seller where to send pre-alert shipping information and documentation. Pre-alert shipping documentation includes, but is not limited to, a commercial invoice, airway bill, bill of lading, and other required documentation as directed by U.S. regulations and Buyer.

For Domestic Purchase Orders (purchase orders issued to entities addressed in the United States): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, Customs clearance, duty, taxes, and fees for goods entering into the United States. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for goods procured through a domestic purchase order.

D. Indemnification. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney's fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph A or B. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this purchase order.

E. Subcontracts. The substance of this clause shall be incorporated into any lower-tier subcontract or purchase order entered into by the Seller for the performance of any part of the work under this purchase order.

F. Notification. Seller agrees to provide prompt notification to Buyer in the event of changes in circumstances such as ineligibility to contract with U.S. Government, debarment, assignment of consent agreement, and initiation or existence of a U.S. Government investigation, that could affect Seller's performance under this purchase order. Seller further agrees to provide prompt notification to Buyer should any offer, agreement or payment of political contributions, fees or commissions (as defined herein and pursuant to this purchase order) be made in contravention of the prohibition in Section B.

**40. RESEARCH INVOLVING HUMAN SUBJECTS** - No research involving human subjects, as defined in 45 CFR Part 46, may be performed by Seller on this purchase order without prior written approval of Buyer's Human Research Protection Administrator (HRPA). Any Buyer approved research involving human subjects must, at all times, (a) conform to any conditions or restrictions provided in the HRPA's written approval, (b) be guided by "Ethical Principles and Guidelines for the Protection of Human Subjects," The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, April 18, 1979 ("The Belmont Report"), and (c) remain in full compliance with the applicable regulations of the Government agency or instrumentality funding the research (e.g., 32 CFR Part 219 for the Department of Defense).

**41. FIRST TIER SUBCONTRACT REPORTING** – If this purchase order is for an amount of \$30,000 or greater and issued pursuant to a government prime contract as a "first-tier subcontract" as that term is defined under FAR 52.204-10, Seller understands that certain information concerning the content of this purchase order is reportable by Buyer under the requirements of FAR 52.204-10 and will be made available to the public. Seller is required as a condition of acceptance of this purchase order to provide necessary information required by FAR 52.204-10, including executive compensation of Seller's top five executives, unless an exception or exemption applies. Failure to provide such information shall be a material breach by Seller.

### **42. RESERVED**

**43. STANDARDS OF SERVICES** – All services hereunder shall be performed by employees or agents of Seller who are experienced and highly skilled in their professions and in accordance with the highest standards of workmanship in their profession. Seller shall not change or transfer such employees once assigned except for good cause. Buyer shall have the right to request and have replaced any personnel who fail to perform to Buyer's satisfaction.

**44. NON-WAIVER AND REMEDIES** - A party's failure at any time to enforce any provision of any purchase order shall not constitute a waiver of the provision or prejudice a party's right to enforce that provision at any subsequent time. The parties' rights and remedies as provided in this purchase order are in addition to others provided by law; any failure to state a right or remedy herein does not constitute a waiver of such other rights and remedies.

**45. FEDERAL ACQUISITION REGULATION (FAR), DoD FAR SUPPLEMENT (DFARS)** - The following clauses set forth in the (FAR) and the (DFARS) as in effect on the date of this purchase order are incorporated herein by reference. Where necessary to make the clauses applicable to this purchase order, "Contractor" shall mean "Seller", "Contracting Officer" shall mean "Buyer" and the "Government" shall mean "Buyer" or the "Government" whenever appearing in the clauses, unless otherwise noted. Seller shall include the following clauses in its lower-tier purchase orders as required. If any of the following FAR/DFARS clauses do not apply to a particular purchase order, such clauses are considered to be self-deleting.

### **a) All Orders**

52.203-3	Gratuities
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
52.204-2	Security Requirements
52.204-9	Personal Identity Verification of Contractor Personnel
52.208-8	Required Sources for Helium and Helium Usage Data
52.211-5	Material Requirements
52.215-15	Pension Adjustment and Asset Reversions

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52.215-18	Reversions or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	252.204-7008	Compliance with Safeguarding Covered Defense Information Controls
52.215-19	Notification of Ownership Changes	252.204-7009	Limitations on the Use and Disclosure of Third-Party Contractor Reported Cyber Incident Information
52.222-21	Prohibition of Segregated Facilities	252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting
52.222-22	Previous Contracts and Compliance Reports	252.204-7014	Limitations on the Use or Disclosure of Information by Litigation Support Contractors
52.222-26	Equal Opportunity	252.204-7015	Disclosure of Information to Litigation Support Contractors
52.222-41	Service Contract Act of 1965	252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material
52.222-50	Combating Trafficking in Persons	252.222-7000	Restrictions on Employment of Personnel
52.223-3	Hazardous Material Identification and Material Safety data ( <i>Alt I applies if this order is for other than DoD.</i> )	252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials
52.223-4	Recovered Material Certification	252.225-7000	Buy American Act-Balance of Payments Program Certificate
52.223-5	Pollution Prevention and Right-to-Know Information	252.225-7001	Buy American Act and Balance of Payments Program
52.223-7	Notice of Radioactive Materials	252.225-7002	Qualifying Country Sources as Subcontracts
52.223-11	Ozone-Depleting Substances	252.225-7007	Prohibition on Acquisition of United States Munitions list Items from Communist Chinese Military Companies
52.223-15	Energy Efficiency in Energy-Consuming Products	252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (OCT 2014) ( <i>Paragraphs (c)(6) and (d) are hereby deleted. Upon Seller notification of noncompliance with the terms of this clause and provision of specific information related to the source of the noncompliance, Buyer will facilitate management of the allowance for up to 2% otherwise noncompliant specialty metal content in the end item. The 2% minimal content exception does not apply to and cannot be used to exempt specialty metals contained in high-performance magnets. Upon review of Seller's information, Buyer will advise of the availability of the allowance.</i> )
52.224-1	Privacy Act Notification		Duty-Free Entry
52.224-2	Privacy Act ( <i>Applicable only if the order requires the design, development, or operation of a system of records subject to the Privacy Act of 1974.</i> )		Restriction on Acquisition of Ball and Roller Bearings
52.225-1	Buy American Act – Supplies	252.225-7013	Restrictions on Acquisition of Forgings
52.225-2	Buy American Act Certificate	252.225-7016	Exclusionary Policies and Practices of Foreign Governments
52.225-3	Buy American Act – Free Trade Agreements – Israeli Trade Act	252.225-7025	Restriction on Acquisition of Carbon Alloy and Armor Steel Plate
52.225-5	Trade Agreements	252.225-7028	Buy American Act – Free Trade Agreements – Balance of Payments Program
52.225-8	Duty Free Entry	252.225-7040	Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States
52.225-13	Restrictions on Certain Foreign Purchases	252.225-7043	Anti-Terrorism/Force Protection Policy for Defense Contractors Outside the United States
52.227-9	Refund of Royalties	252.227-7013	Rights in Technical Data - Noncommercial Items ( <i>the term "Government" shall remain through this clause, the term "Contracting Officer" shall mean both "Contracting Officer and Buyer"</i> )
52.227-10	Filing of Patent Applications - Classified Subject Matter		
52.227-11	Patent Rights – Ownership by the Contractor		
52.227-13	Patent Rights—Ownership by the Government		
52.227-14	Rights in Data – General		
52.232-39	Unenforceability of Unauthorized Obligations		
52.232-40	Providing Accelerated Payments to Small Business Subcontractors		
52.233-3	Protest After Award		
52.234-1	Industrial Resources Developed Under Defense Production Act Title III		
52.236-13	Accident Prevention		
52.242-15, Alt I	Stop-Work Order		
52.244-6	Subcontracts for Commercial Items		
52.245-1, Alt. 1	Government Property ( <i>except in clauses (e)(1), (e)(2)(ii), (e)(3)(i), (f)(1)(ii), "Government" shall remain</i> )		
52.245-9	Use and Charges		
52.246-3	Inspection of Supplies – Cost-Reimbursement		
52.246-5	Inspection of Services— Cost-Reimbursement		
52.247-63	Preference for U.S. Flag Air Carriers		
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels		
252.203-7002	Requirement to Inform Employees of Whistleblower Rights		
252.204-7000	Disclosure of Information		

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252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation ( <i>the term "Government" shall remain through this clause, the term "Contracting Officer" shall mean both "Contracting Officer and Buyer"</i> )	<b><u>e) All Orders of \$25,000 or Greater (\$30,000 or Greater if Prime Contract dated on or after September 28, 2006)</u></b>
252.227-7015	Technical Data - Commercial Items	52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
252.227-7016	Rights in Bid or Proposal Information	<b><u>f) All Orders of \$75,000 or Greater</u></b>
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions	52.211-15 Defense Priority and Allocation Requirements
252.227-7019	Validation of Asserted Restrictions – Computer Software	<b><u>g) All Orders of \$100,000 and Greater</u></b>
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	52.222-35 Equal Opportunity for Veterans
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government	<b><u>h) All Orders Greater than \$150,000</u></b>
252.227-7030	Technical Data - Withholding of Payment	52.203-5 Covenant Against Contingent Fees
252.227-7037	Validation of Restrictive Markings on Technical Data	52.203-6 Restrictions on Subcontractor Sales to the Government
252.228-7005	Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	52.203-7 Anti-Kickback Procedures
252.229-7011	Reporting of Foreign Taxes - US Assistance Programs	52.203-8 Cancellation, Recession, and Recovery of Funds for Illegal or Improper Activity
252.231-7000	Supplemental Cost Principles	52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
252.235-7003	Frequency Authorization	52.203-12 Limitation on Payments to Influence Certain Federal Transactions
252.235-7004	Protection of Human Subjects	52.203-16 Preventing Personal Conflicts of Interest
252.239-7010	Cloud Computing Services	52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights
252.239-7018	Supply Chain Risk	52.215-2 Audit and Records – Negotiation
252.243-7001	Pricing of Contract Modifications	52.215-14 Integrity of Unit Prices ( <i>less paragraph (b) of this clause</i> )
252.244-7000	Subcontracts for Commercial Items	52.215-22 Limitations on Pass-Through Charges – Identification of Subcontract Effort ( <i>All Non-DoD &gt;\$100,000</i> )
252.246-7001	Warranty of Data	52.215-23 Limitations on Pass-Through Charges ( <i>All Non-DoD &gt;\$100,000</i> )
252.246-7003	Notification of Potential Safety Issues	52.219-8 Utilization of Small Business Concerns
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System ( <i>for paragraphs (a)-(e) the term "Contractor" shall mean "Seller" and the term "Contracting Officer" shall mean both "Contracting Officer" and "Buyer"</i> )	52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation
252.247-7023	Transportation of Supplies by Sea ( <i>paragraphs (a) through (e) apply to all orders; all paragraphs apply to transactions greater than \$100,000</i> )	52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam era, and Other Eligible Veterans
252.247-7024	Notification of Transportation of Supplies by Sea	52.223-14 Toxic Chemical Release Reporting ( <i>if prime contract dated on or before May 31, 2011</i> )
	<b><u>b) All Orders Greater than \$3,000 (Greater than \$3,500 if Prime Contract dated on or after October 1, 2015)</u></b>	52.242-13 Bankruptcy
52.222-54	Employment Eligibility Verification	52.244-5 Competition in Subcontracting
52.223-18	Encourage Contractor Policies to Ban Text Messaging While Driving	52.248-1 Value Engineering
	<b><u>c) All Orders of \$10,000 or Greater</u></b>	252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
52.222-40	Notification of Employee Rights under the National Labor Relations Act	252.225-7006 Acquisition of the American Flag
	<b><u>d) All Orders Greater than \$15,000</u></b>	252.225-7012 Preference For Certain Domestic Commodities
52.222-20	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000	252.249-7002 Notification of Anticipated Contract Termination or Reduction
52.222-36	Equal Opportunity for Workers with Disabilities	<b><u>i) All Orders of Greater than \$500,000</u></b>
		52.209-7 Information Regarding Responsibility Matters
		252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns

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**j) All Orders of \$500,000 or Greater (\$550,000 or Greater if Prime Contract dated on or after September 28, 2006 through September 30, 2010; \$650,000 or Greater if Prime Contract dated on or after October 1, 2010 through September 30, 2015; \$700,000 or Greater if Prime Contract dated on or after October 1, 2015)**

52.219-9 Small Business Subcontracting Plan  
 252.219-7003 Small Business Subcontracting Plan (DoD Contracts)

**k) All Orders of \$500,000 or Greater (\$650,000 or Greater if Prime Contract dated on or after June 14, 2007 through September 30, 2010; \$700,000 or Greater if Prime Contract dated on or after October 1, 2010 through September 30, 2015; \$750,000 or Greater if Prime Contract dated on or after October 1, 2015)**

52.230-2 Cost Accounting Standards  
 52.230-3 Disclosure and Consistency of Cost Accounting Practices  
 52.230-5 Cost Accounting Standards – Educational Institution  
 52.230-6 Administration of Cost Accounting Standards

**l) All Orders Greater than \$750,000**

52.214-26 Audit and Records – Sealed Bidding  
 52.214-27 Price Reduction for Defective Cost or Pricing Data – Modifications – Sealed Bidding  
 52.214-28 Subcontractor Cost or Pricing Data – Modifications- Sealed Bidding  
 52.215-10 Price Reduction for Defective Cost or Pricing Data  
 52.215-11 Price Reduction for Defective Cost or Pricing Data -- Modifications  
 52.215-12 Subcontractor Cost or Pricing Data  
 52.215-13 Subcontractor Cost or Pricing Data – Modifications  
 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data  
 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modification

**m) All Orders Greater than \$1 Million**

252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements

**n) All Orders Greater than \$1.5 Million**

252.211-7000 Acquisition Streamlining

**o) All Orders of Greater than \$5,000,000 (\$5.5 Million or Greater if Prime Contract dated on or after October 1, 2015)**

52.203-14 Display of Hotline Poster(s)

**p) All Orders of Greater than \$5,000,000 and Period of Performance of 120 days or Greater (\$5.5 Million or Greater if Prime Contract dated on or after October 1, 2015)**

52.203-13 Contractor Code of Business Ethics and Conduct  
*(Notwithstanding any alterations to this clause to reflect the relationship between Buyer and Seller, all disclosures of violation of the civil False Claims Act or of federal criminal law shall be directed to the Office of the Inspector General of the agency issuing the prime contract, with a copy to the Contracting Officer of the prime contract.)*