

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

1. **GENERAL/ACCEPTANCE** - The 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/services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this purchase order: (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 the Seller are objected to and are hereby rejected unless the same shall be accepted in writing by the Buyer.

2. **BUYER'S AUTHORIZED REPRESENTATIVE** - (a) The Buyer's Authorized Purchasing Representative is the individual authorized by Buyer's cognizant procurement organization to administer and/or execute the purchase order. The Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of the 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. ALLOWABLE COST 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 that, at the time of the request for reimbursement, Seller has paid by cash, check, or other form of actual payment for items or services purchases 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 (g) below, allowable direct costs under this Purchase Order shall be obtained by applying indirect cost rates established in accordance with paragraph (d) 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) [Reserved]

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

(ii) 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 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.

(e) 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.

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

(g) 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:

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

- (1) Reduced by amounts found by Buyer not to constitute allowable costs; or
- (2) Adjusted for prior overpayments or underpayments.
- (h) 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 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 the Buyer against patent liability.

**4. 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 the 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 Schedule are subject to adjustment if this Purchase Order is modified in accordance with paragraph (d) 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 (d) 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 (d) below.

(3) Withholding of payment - Normally, Buyer shall pay the fee to Seller as specified in the Schedule. 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 85 percent 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 15 percent 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 fee payable under this Purchase Order shall be the target fee increased by \_\_\_\_\_ cents for every dollar that the total allowable cost is less than the target cost or decreased by \_\_\_\_\_ cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than \_\_\_\_\_ cents of the target cost.

(ii) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(iii) 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.

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

(A) Any of the causes 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 Subcontractor;

(B) The taking effect, after negotiating the target cost, of a 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 the Seller's involvement in litigation as required by the Buyer pursuant to a clause of this Purchase Order, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(D) The purchase and maintenance of additional insurance not in the target cost and required by Buyer, or claims for reimbursement for liabilities to third persons pursuant to the insurance clause;

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

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

(v) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), 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.

**5. 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 the Seller to any increase in the fee to be paid to the 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 the 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 the 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 clause hereof entitled "Termination."

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

**6. 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 the Seller in performing other Government cost-plus-fixed-fee prime and subcontracts calling for services and/or supplies similar to those herein.

**7. PAYMENT FOR OVERTIME PREMIUMS** - The 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.

**8. 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. Buyer shall be entitled to the right of set-off against any amounts payable under this Purchase Order.

(b) Neither the entirety nor any part of this Purchase Order may be further subcontracted without the prior written consent of Buyer.

(c) This provision shall not apply to purchases of standard commercial articles or raw materials including casting, forgings, and rough welded structures on which Seller will perform further work.

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

(e) Seller shall notify Buyer of any change in the place of performance with regard to the requirements of this purchase order. Such notification shall be made to the cognizant Northrop Grumman purchasing representative not less than 30 days prior to the change to the place of performance.

**9. CHANGES** - Buyer's 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.

(b) If any such change causes an increase or decrease in the estimated 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 (1) the estimated cost or time of performance, or both, (2) the amount of any fee to be paid to Seller, and/or (3) such other provisions as may be affected, by written modification of this purchase order. Any claim by Seller for such adjustment must be asserted within 15 days, or such other period as

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

may be agreed on in writing by the parties, after Seller's receipt of the notice of the change. Seller will make available its books and records 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 set forth in these terms and conditions. Pending resolution of any such adjustment, Seller will diligently pursue the performance of the order as changed.

**10. CHOICE OF LAW** - Irrespective of the place of performance, this purchase order will be construed and interpreted according to the federal common law of Government contracts as enunciated and applied to federal judicial bodies and boards of contract appeals of the federal Government. To the extent that the federal common law of Government contracts is not dispositive, the laws of the state from which the Buyer's purchase order is issued shall apply, not including its rules with respect to choice of laws.

**11. 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) If a Government Contract number is indicated, 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 Federal statutes.

**12. 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 the purchase order issued to Seller by Buyer. Unless otherwise provided in this purchase order, delivery in whole or in part shall not be made more than 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 the 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) 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.

**13. 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.

**14. 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 the 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 clause hereof entitled "Termination." Seller shall promptly notify Buyer in writing of the facts relating to any cause which may result in delay or failure to perform.

**15. 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.

**16. GOVERNMENT OR BUYER FURNISHED PROPERTY** - (a) 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, destruction of 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 the Buyer and/or Government, provides for the relief of Seller from such liability. In the absence of such approval, Seller shall return all such property in as good a condition 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 Subpart 45.5 for the control of Government or Buyer-owned property. Seller shall also notify Buyer if approval of its property system has been withdrawn by the Government.

(b) Title - (1) The Buyer or Government shall retain title to all Buyer or Government-furnished property, as applicable.

(2) Title to all property purchased by Seller for which Seller is entitled to be reimbursed as a direct item of cost under this Purchase Order shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to Seller, shall pass to and vest in the Government upon --

(i) Issuance of the property for use in Purchase Order performance;

(ii) Commencement of processing of the property or use in Purchase Order performance; or

(iii) Reimbursement of the cost of the property by Buyer, whichever occurs first.

(4) All Government-furnished property, all property acquired by Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), and all Buyer-furnished Property is subject to the provision of this clause. Title to Buyer-furnished property or Government property shall not be affected by its incorporation into or attachment to any property not owned by Buyer or the Government, nor shall Government or Buyer-furnished property become a fixture or lose its identity as personal property by being attached to any real property.

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

**17. INDEMNITY** - (a) If Seller, in connection with the performance of this purchase order, shall send any of its agents or employees onto premises owned or controlled by Buyer, Seller shall provide safety protection for persons and property in accordance with all applicable laws and regulations and indemnify and save harmless Buyer from and against any and all liabilities and losses whatsoever, whether resulting from or contributed to by negligence of buyer, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to, or death of, any person whomsoever, or loss of or damage to any property whatsoever, suffered or sustained in the course of, or in connection with, the performance of the work. 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.

(b) Should Certified Cost or Pricing Data be required under this purchase order, seller shall indemnify and hold harmless the Buyer from any amount, loss and expense, including interest assessed by the Government under 10 USC 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 hereunder shall survive completion or termination of this purchase order.

**18. INSPECTION AND CORRECTION OF DEFECTS** (a) Seller shall provide and maintain an inspection system acceptable to Buyer covering the supplies (which term includes technical data when this Purchase Order does not include the clause entitled "Warranty of Technical Data), fabricating methods, special tooling and/or services under this Purchase Order. Complete records of all inspection work performed by Seller shall be maintained and made available to Buyer during performance of this Purchase Order and for as long afterwards as required by Seller's recordkeeping system for Government contract documents.

(b) All supplies and services shall be subject to inspection and test by Buyer and the Government, to the extent practicable, at all reasonable times, including the period of performance, and places, and in any event prior to final acceptance. Buyer and the Government may also inspect the plant or plants of Seller or of any of its subcontractors engaged in the performance of this Purchase Order. If any inspection or test is made by Buyer or the Government on the premises of the Seller or any of its subcontractors Seller shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Buyer and Government inspectors in the performance of their duties. All inspections and tests by Buyer or the Government shall be performed in such a manner as will not unduly delay the work. Final inspection and acceptance shall be made as promptly as practicable after delivery. The time and place of delivery, final inspection, and acceptance shall be as set forth in the Purchase Order.

(c) At any time during performance of this Purchase Order, but not later than one (1) year (or such other period as may be provided in the Purchase Order) after delivery by Seller to Buyer of the services performed and articles to be delivered hereunder, Buyer may require the Seller to replace or correct, as directed by Buyer, any failure by the Seller to comply with the requirements of this Purchase Order. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (f) below. Except as otherwise provided in paragraph (e) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this Purchase Order entitled "Allowable Cost and Payment," but no additional fee shall be payable with respect thereto. Corrected articles or services shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed.

(d) If the Seller fails to proceed with reasonable promptness to perform such replacement or correction, Buyer (i) may by contract or otherwise perform such replacement or correction and charge to Seller any increased cost occasioned Buyer thereby, or may make an equitable reduction in any fee paid or payable under this

Purchase Order; or (ii) may require the delivery of undelivered supplies or services at an equitable reduction in any fee paid or payable under this Purchase Order; or (iii) may terminate this Purchase Order for default as provided in the clause of this Purchase Order entitled "Termination." Failure to agree on the amount of increased cost to be charged to Seller or to the fee reduction shall be a dispute under the Disputes clause of this Purchase Order.

(e) Notwithstanding the provisions of paragraph (c) and (d) above, Buyer may at any time require by correction or replacement by Seller, without cost to Buyer, nonconforming supplies or services, if the nonconformances are due to fraud, lack of good faith or willful misconduct on the part of any of the Seller's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Seller's business, or (ii) all or substantially all of the Seller's operations at any one plant or separate location in which this Purchase Order is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this Purchase Order. Buyer may at any time also require correction or replacement by the Seller, without cost to Buyer, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Seller after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(f) This clause applies in the same manner to corrected or replacement supplies or services as to supplies or services originally delivered under this Purchase Order.

(g) Except as otherwise provided in this clause and as may be provided in the Purchase Order, Seller shall have no obligation or liability to correct or replace supplies or services that were nonconforming at the time of delivery.

(h) Except as otherwise provided in the Purchase Order, the Seller's obligation to correct or replace Buyer or Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to Seller) shall be governed by the provisions of the clause of this Purchase Order entitled "Government or Buyer Furnished Property."

**19. INTELLECTUAL PROPERTY** – (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.

**20. INTELLECTUAL PROPERTY INDEMNITY** – (a) Seller shall indemnify Buyer, Buyer's customer and/or the Government and their respective officers, agents and employees against liability, 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. The foregoing 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 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 foregoing, when this Order is performed under the authorization and consent of the Government to infringe

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

United States patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

**21. MILITARY SECURITY REQUIREMENTS** - (a) Seller shall be responsible for safeguarding all classified information in accordance with the provisions of the Seller's Security Agreement with the Department of Defense and with all applicable Government requirements including, without limitation, of FAR 52.204-2 which is incorporated herein by reference.

(b) Seller agrees to insert in all subcontracts under this purchase order which involve access to classified information, provisions which shall conform substantially to the language of Subparagraph (a) above and to this Subparagraph (b).

**22. NEWS OR ADVERTISING RELEASES** - No news release in any way relating to Buyer or Seller concerning the purchase order shall be made by either party to any news media or to the general public without the 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 event a news release is so approved and made, such news will recognize Buyer and Seller.

**23. NOTICE TO THE 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 thereto, to the Buyer. Such occurrences shall include (1) actual or potential labor disputes; (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 and conditions, at law or otherwise.

(b) Seller agrees to insert this clause including this subparagraph (b) in any purchase order or subcontract hereunder.

**24. ORDER OF PRECEDENCE** - The various documents constituting this Purchase Order shall, insofar as is possible, be so interpreted 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) Statement of Work; (d) this Terms and Conditions document; (e) Specifications; and (f) Drawing(s).

**25. 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 that 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.

(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. (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, termination or cancellation of this purchase order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.

(g) Buyer or its representatives 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 Paragraph.

**26. QUANTITY** - Buyer need not accept any variation in quantity except as specified in this purchase order. Overshipments may be returned to Seller at Seller's expense, which shall include a reasonable cost for the 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 therefore, 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.

**27. SPECIAL TOOLING, SPECIAL TEST EQUIPMENT, AND FACILITIES** - (a) Unless specifically provided to the contrary in this Purchase Order, Seller warrants that the estimated cost set forth in this Purchase Order does not include as a direct charge to this Purchase Order the cost of any special tooling, test equipment, or facilities as the same are defined in Part 45 of the FAR. Any such special tooling, test equipment or facilities to be charged to Buyer will be covered by a separate purchase order.

(b) The Seller represents that it now has or can readily procure without the assistance of Buyer or the Government all facilities necessary for the performance of this Purchase Order, except as set forth herein.

**28. 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 the 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

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

representatives of Seller unless such representatives stipulate they have no desire to participate in the visit.

**29. 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 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 the 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 another 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 60 days from the effective date of termination, unless

extended in writing by the Contracting Officer upon written request of Seller within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, 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 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 sorted, within 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 6 months from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this 6-month period.

However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 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
  - (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 the fee equal to the percentage of completion of work 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

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

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) The 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 the 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), the Buyer shall pay the 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 the 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 the Buyer.

(l) The 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) The 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 the 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 the 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 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.

**30. 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).

**31. 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 2751-2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401-2420 (Export Administration Act) and 15 Code of Federal Regulations 768-799 (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 a U.S. Person as that term is defined in the Export Laws and Regulations. Seller shall comply

with any and all Export Laws and Regulations, and any license(s) issued thereunder. (b) Foreign Personnel. Seller shall not give any Foreign Person access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph b shall relieve it if its obligations to comply with the provisions of paragraph a or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph a, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

(c) Indemnification. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of the Export Laws and Regulations and breach of the warranty set forth in paragraph a. Any failure of Seller to comply with the requirements or any breach of the warranty contained in paragraph a shall be a material breach of this Purchase Order.

(d) Subcontracts. The substance of this Clause shall be incorporated into any subcontract entered into by the Subcontractor/Seller for the performance of any part of the work under this Purchase Order.

**32. NONWAIVER 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.

**33. 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. If any of the following FAR/DFARS clauses do not apply to a particular purchase order, the seller must advise the buyer which clauses do not apply and the buyer must acknowledge in writing his/her agreement with the Seller at which time such clauses are automatically deleted from this purchase order.

**a. All Orders**

52.203-10	Price or Fee Adjustment for Illegal or Improper Activity
52.204-2	Security Requirements
52.211-5	Material Requirements
52.211-15	Defense Priority and Allocation Requirements
52.214-27	Price Reduction for Defective 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
52.215-15	Pension Adjustment and Asset Reversions
52.215-18	Reversions or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions
52.215-19	Notification of Ownership Changes
52.215-20	Requirements for Cost or Pricing Data or Other Than Cost or Pricing Data
52.215-21	Requirements for Cost or Pricing Data or Other Than Cost or Pricing Data - Modifications



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

52.219-8	Utilization of Small Business Concerns	252.227-7036	Declaration of Technical Data Conformity
52.222-21	Prohibition of Segregated Facilities	252.227-7037	Validation of Restrictive Markings on Technical Data
52.222-26	Equal Opportunity	252.228-7001	Ground and Flight Risk
52.222-41	Service Contract Act of 1965, As Amended	252.228-7005	Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles
52.223-7	Notification of Radioactive Materials	252.231-7000	Supplemental Cost Principles
52.225-1	Buy American Act – Balance of Payments Program - Supplies	252.243-7001	Pricing of Contract Modifications
52.225-3	Buy American Act – North American Free Trade Agreements – Israeli Trade Act – Balance of Payments Program	252.246-7001	Warranty of Data – Alternate I
52.225-5	Trade Agreements	252.247-7024	Notification of Transportation of Supplies by Sea
52.225-8	Duty Free Entry	<b>b. All Orders of \$10,000 or Above</b>	
52.225-13	Restrictions on Certain Foreign Purchases	52.222-20	Walsh-Healey Public Contracts Act
52.225-15	Sanctioned European Union Country End Products	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans
52.227-1	Authorization and Consent	52.222-36	Affirmative Action for Workers with Disabilities
52.227-10	Filing of Patent Applications - Classified Subject Matter	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.227-11	Patent Rights – Retention by the Contractor (Short Form) (if Seller is small business)	<b>c. All Orders of \$25,000 or Above</b>	
52.227-12	Patent Rights – Retention by the Contractor (Long Form) (if other than small business)	52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.227-14	Rights in Data – General	<b>d. All Orders of \$100,000 or Above</b>	
52.233-3	Protest After Award	52.203-6	Restrictions On Subcontractor Sales to the Government
52.242-15, Alt I	Stop Work	52.203-7	Anti-Kickback Procedures
52.244-6	Subcontracts for Commercial Items	52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
52.245-17	Special Tooling	52.203-12	Limitation on Payments to Influence Certain Federal Transactions
52.245-18	Special Test Equipment	52.215-2	Audit and Records – Negotiation
52.247-63	Preference for U.S. Flag Air Carriers	52.215-14	Integrity of Unit Prices
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels	52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation
252.204-7000	Disclosure of Information	52.223-13	Certification of Toxic Chemical Release Reporting
252.222-7000	Restrictions On Employment of Personnel	52.223-14	Toxic Chemical Release Reporting
252.223-7006	Prohibition On Storage and Disposal of Toxic and Hazardous Materials	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
252.225-7001	Buy American Act and Balance of Payments Program	52.248-1	Value Engineering
252.225-7013	Duty-Free Entry	252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
252.225-7014, Alt I	Specialty Metals	252.247-7023	Transportation of Supplies By Sea
252.225-7025	Restrictions on Acquisition of Forgings	252.249-7002	Notification of Anticipated Contract Termination or Reduction
252.225-7028	Exclusionary Policies and Practices of Foreign Governments	<b>e. All Orders of \$500,000 or Above</b>	
252.225-7030	Restriction on Acquisition of Carbon, Alloy and Armor Steel Plate	52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan
252.225-7036	Buy American Act – North American Free Trade Agreement Implementation Act – Balance of Payments Program	52.230-2	Cost Accounting Practices
252.227-7013	Rights in Technical Data - Noncommercial Items	52.230-3	Disclosure and Consistency of Cost Accounting Practices
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	52.230-5	Cost Accounting Standards – Educational Institution (if applicable)
252.227-7015	Technical Data - Commercial Items	52.230-6	Administration of Cost Accounting Practice
252.227-7016	Rights In Bid or Proposal Information	252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (if applicable)
252.227-7017	Identification and Assertion of Use, Release and Disclosure Restrictions	252.225-7026	Reporting of Contract Performance Outside the United States
252.227-7019	Validation of Asserted Restrictions – Computer Software	<b>f. All Orders of \$550,000 or Above</b>	
252.227-7025	Limitations On the Use or Disclosure of Government Furnished Information Marked With Restrictive Legends	52.214-26	Audit and Records – Sealed Bidding (if applicable)
252.227-7030	Technical Data - Withholding of Payment	52.214-28	Subcontractor Cost or Pricing Data – Modifications-Sealed Bidding (if applicable)
		52.215-12	Subcontractor Cost or Pricing Data
		52.215-13	Subcontractor Cost or Pricing Data – Modifications

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

**g. All Orders of \$1,000,000 or Above**

252.211-7000 Acquisition Streamlining