

# T-15

## NORTHROP GRUMMAN INTERNATIONAL TRADING, INC.

### INTERNATIONAL PURCHASE ORDER TERMS AND CONDITIONS U. S. GOVERNMENT FIXED-PRICE – SUPPLY

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#### 1. DEFINITIONS.

- A. BUYER means Northrop Grumman International Trading, Inc.
- B. BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer's cognizant procurement organization to administer and/or execute the Order.
- C. CLASSIFIED INFORMATION means any information or material, regardless of physical form or characteristics, that is owned by, produced or for, or under the control of the United States Government, and determined pursuant to Executive Order 12356, April 2, 1982 (47 Federal

Register 14874, April 6, 1982) or prior orders to require protection against unauthorized disclosure, and is so designated as "Confidential," "Secret," or "Top Secret." See FAR 52.204-2, Security Requirements.

- D. INCOTERMS means the set of international rules for the interpretation of terms used in foreign trade contracts as prepared and published by the International Chamber of Commerce, Paris, France. When a term covered by such Incoterms is specified in this Order, such term shall be governed by the Incoterms 2010. In case of a conflict between the provisions of the Incoterms

and the provisions of this Order, the provisions of this Order shall govern.

- E. ORDER means the instrument of contracting including this Purchase Order and all referenced documents, including any subsequent changes or modifications.
- F. PARTIES means Buyer and Seller collectively.
- G. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by its customer for the acquisition of Products.
- H. PRODUCTS means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any related services described in the Order.
- I. PROPRIETARY INFORMATION means all Technical Data and all financial or business information that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the data as Proprietary to the party disclosing the information.
- J. SELLER means the party with whom Buyer is contracting.
- K. TECHNICAL DATA means all designs, dimensions, specifications, drawings, patterns, know how, or other information concerning, methods, manufacturing processes, equipment, gauges and tools used in the design, manufacture, assembly, operation, repair, testing, maintenance, or modification of Products. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation. Technical Data may be recorded in a written, or printed document, computer or electronic file, electromagnetic tape or disc, software, or any other tangible form of expression. Technical Data also includes unclassified and classified information that is required for defense articles, in accordance with International Traffic in Arms Regulations (ITAR) 22 CFR § 120.10. Also includes technical information in support of defense services, any information covered by an invention secrecy order and software directly related to defense articles as defined in (ITAR) § 121.8(f).
- L. PROPRIETARY INFORMATION EXCHANGE AGREEMENT means an Agreement executed by the Parties that outlines the terms for the exchange of company proprietary data and information between the Parties.

## **2. ACCEPTANCE.**

This Order is Buyer's offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and signed by Buyer's authorized purchasing representative. Seller's acknowledgement, acceptance of payment, or commencement of performance, shall conclusively evidence acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in Seller's acceptance.

## **3. ORDER OF PRECEDENCE.**

In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

- A. Change Order Document
- B. Purchase Order Document
- C. Purchase Order Terms and Conditions.
- D. FAR/DFARS Clauses
- E. Statement of Work.
- F. Specification/Drawing
- G. Supplier Quality Assurance Requirements (SQAR)
- H. Supplier Data Requirements List (SDRL)/Data Item Description (DID).
- I. Other Referenced Documents.

## **4. DELIVERY.**

- A. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Buyer reserves the right to return overshipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of overshipments and early shipments.
- B. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be borne by Seller.
- 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 Order, or (2) fill such Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer or (3) accept late delivery and recover from Seller any costs Buyer incurs caused by the late delivery. This condition shall not limit Buyer's rights under the default clause contained herein.
- D. All Parties expressly agree that time is and shall remain a material element of this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

## **5. INVOICE AND FREIGHT BILL.**

Seller shall send a commercial invoice for each shipment. The invoice, written in English, shall include the following information taken from Buyer's Purchase Order: (a) Order number; (b) item number; (c) part serial number (if serialized); (d) part number; (e) part description; (f) country of origin; (g) unit of measure; (h) unit price; and (i) unit ECCN or ITAR designation. Seller's invoice shall also include: (j) Seller's phone number and address; (k) invoice number; (l) date prepared; (m) item quantity; (n) extended item price; and (o) total invoice value. Seller will also include other information on the invoice as

directed by Buyer, which may include, but not be limited to, reference to export licenses or Assist Value data. If Seller's "remit to" address is different than the address indicated on the Purchase Order, clearly identify the "remit to" address on the invoice. No invoice shall be issued prior to shipment of Products. Seller shall also provide documentation to support its invoice as Buyer may reasonably require. For each shipment made at Buyer's expense (e.g., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice. Seller shall submit invoices and required copies to the addresses as instructed by Buyer. Buyer reserves the right to return invoices failing to comply with these instructions for resubmittal of a correct invoice. For additional invoicing and submission information, please refer to the Buyer Invoice Instructions document on the OASIS website located at

<https://oasis.northgrum.com/general/docs/InvoiceInstructionsFSC.pdf>.

**6. PAYMENT.**

Payment shall be in U.S. Dollars unless otherwise noted in the Purchase Order. . If other than U.S. Dollars, the date of export determines the currency exchange rate. Payment due dates, including discount periods, will be calculated from the date of acceptance of Products or correct invoice, whichever is later. Unless freight and other charges are itemized, any discount will be taken on the full amount invoiced. Buyer has the right, without loss of discount privileges, to pay invoices covering Products shipped in advance of schedule on the normal maturity after the date specified for delivery. Payment shall not constitute acceptance of Products. Buyer's payment to Seller shall be drawn on a U.S. commercial bank in U.S. Dollars and made by Buyer's check in favor of Seller air mailed to such address as Seller shall designate in writing. Nothing in this clause shall preclude Buyer and Seller from agreeing to have payment made by electronic funds transfer or other such means. Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this Order.

**7. PACKING AND SHIPPING.**

- A. Unless otherwise specified in this order, all shipments are to be made in accordance with "Incoterms" 2010, Free Carrier (FCA) Seller's Premises.
- B. Prior to exportation, one copy of the required commercial invoice and packing list shall be enclosed in a waterproof envelope or wrapper, clearly marked "Customs Invoice," and securely attached to the outside of the No. 1 shipping container in each shipment. For shipment to the U.S., Seller's invoice will be used as the customs invoice if it meets U.S. Customs Service requirements, but it must be marked "Invoice for Customs Purposes Only". At the time of shipment of the Products ordered herein, Seller shall forward via FAX, or other electronic means, copies of commercial invoices and bills of lading

covering each shipment marked to the attention of the Buyer's applicable traffic office.

- C. All goods shall be prepared (cleaned, preserved, etc.) and packed per best commercial practice for export shipment in a manner to comply with carrier regulations and prevent damage or deterioration during handling, shipment and indoor storage for up to ninety (90) days at destination. If requested, Seller shall submit two copies of its proposed packaging procedure and packing design to Buyer for review not less than sixty (60) days prior to first shipment, and shall prepare and package in accordance with said procedure and design.
- D. Each unit container (individual part box or other innermost package), each intermediate container, and each shipping container (shipping box, crate or other outermost package) in each shipment shall be marked with its country of origin clearly in English.
- E. Number and mark each container with a consecutively assigned number and applicable Order number. The No. 1 shipping container in each shipment shall contain one copy in English of the packing list.
- F. The packing list shall include the following information: container number, Order number, item, serial number (as applicable), part number and any applicable test reports.
- G. Unless otherwise specified on the face of this Order, the price stated includes the cost of preparing and packing for shipment, boxing, crating, container marking, furnishing packing lists and test reports.
- H. Shipping documents shall include bar coding or other specialized marking as required by Buyer.
- I. Seller shall provide the applicable Export Control Classification Number (ECCN) or International Traffic In Arms Regulations (ITAR) control statement for all Products furnished by Seller to Buyer. If Seller is a distributor, Seller shall obtain the ECCN or ITAR classification information from its source of supply. If Seller is manufacturing to Buyer's design it shall utilize the ECCN or ITAR classification identified in Buyer's furnished engineering data. Seller will include the ECCN or ITAR designation on its packing slips and shipping documentation and also provide to Buyer on Buyer's request.

**8. INSPECTION AND ACCEPTANCE.**

Unless otherwise specified Buyer's final inspection and acceptance shall be at destination. Failure to inspect and accept or reject Products shall not relieve the Seller from responsibility for compliance with Order requirements nor impose liability on Buyer.

**9. NONCONFORMING GOODS.**

If Seller fails to deliver or delivers defective or nonconforming Products, Buyer may:

- A. Accept all or part of the defective or nonconforming Products at an equitable price reduction; or
- B. Reject all or any part of a delivery of defective or non-conforming Products, and demand delivery

- of conforming Products. All rejected Products shall be shipped to Seller at Seller's expense; or
- C. Make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Product to comply in all respects with Order requirements and charge the expense incurred to Seller; or
- D. Terminate this Order for default in whole or in part.

#### **10. WARRANTY.**

- A. Seller warrants that all Products delivered under this Order will: be free from defects in materials, workmanship, and manufacturing processes; conform to all requirements of this Order; and be free of all liens and encumbrances. To the extent Products are not manufactured pursuant to detailed design and specifications furnished by Buyer, Seller warrants that the Product shall be free from design and specifications defects.
- B. If any Product fails to comply in any respect to the warranty set forth above, Seller, at Buyer's option, shall promptly repair or replace the Product. Transportation of replacement Product and return of nonconforming Product shall be at Seller's expense. If repair or replacement of Product is not timely, Buyer may elect to return, repair, replace, or repro cure the nonconforming Product at Seller's expense. All warranties shall run to Buyer and its customers.
- C. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.
- D. Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by its successors and customers.
- E. The rights of Buyer set forth in this clause shall be in addition to, and not in lieu of, any other right Buyer may have under this Order, or in law or equity.

#### **11. CHANGES.**

- A. Buyer's authorized representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order in (1) drawings, designs, specifications, planning, and/or other technical documents; (2) method of shipment, packaging, or packing; (3) place of delivery; (4) reasonable adjustments in quantities or delivery schedules or both; (5) place of inspection; and (6) place of acceptance.
- B. If the change causes an increase or decrease in the cost or time required to perform this Order, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Order in writing accordingly.
- C. Any claim for adjustment shall be unconditionally waived unless: (i) asserted in writing and delivered to Buyer within 15 days of the date of the written change order; and (ii) a fully supported proposal is delivered to Buyer's

authorized representative within 45 days after Seller's receipt of such direction.

- D. If Seller claims the cost of any Property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
- E. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.
- F. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause hereof. However, Seller shall not be excused from proceeding with the Order as changed.

#### **12. BUYER AUTHORIZATION.**

- A. 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 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 Product hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment.

#### **13. DISPUTES; GOVERNING LAW.**

- A. This Order and any dispute arising under or in connection with it shall be governed by and interpreted in accordance with the substantive laws of the State from which the Order is placed, United States of America (USA), except for that State's laws on conflicts of law. The Parties agree the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Order.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon, in writing, either Party may only bring suit in federal or state court in the state from which this Order is issued.
- C. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, Seller shall proceed diligently, as directed by Buyer, with performance of the Order.
- D. To the maximum extent permitted by law, the parties waive any right to a jury trial and agree that such dispute shall be decided by a judge only.

#### **14. TERMINATION FOR CONVENIENCE.**

Buyer may at any time terminate all or any part of this Order in accordance with the contract clause entitled "Termination for Convenience of the Government (Fixed-Price)" set forth at 52.249-2 of the FAR, which clause is hereby incorporated herein and made a part

hereof by this reference, except that the term "contract" therein shall mean this Order, the term "Contracting Officer" therein shall mean "Buyer", the term "Government" therein shall mean "Buyer" except that in subparagraph (b) (8) and at the first occurrence thereof in paragraph (h) it shall mean "Buyer or the Government" and in paragraph (n) it shall mean "Buyer and the Government", the term "Contractor" therein shall mean "Seller", paragraphs (d) and (j) thereof are deleted, the period "120 days" in paragraph (c) is changed to "60 days", the period "1 year" in paragraph (e) is changed to "3 months" and the period "90 days" in paragraph (l) is changed to "45 days"; provided, however, that if this Order is a first-tier subcontract under a U.S. Government prime contract, the period "1 year" in paragraph (e) is changed to "180 days."

#### **15. TERMINATION FOR DEFAULT.**

- A. The FAR 52.249-8 "Default (Fixed Price Supply and Service)" clause is by this reference incorporated herein and made a part hereof except that the term "contract" therein shall mean this Order, the term "Contractor" therein shall mean "Seller", the term "Contracting Officer" therein shall mean "Buyer", the term "Government" in all paragraphs thereof except paragraph (c) shall mean "Buyer" and all reference therein to "Disputes" shall mean the Disputes clause of this Order. Buyer may terminate this Order in whole, or in part, for Seller's default in accordance with this clause. In addition, Buyer may terminate this Order in whole, or in part, in the event one of the following occurs, is threatened, or is imminent with respect to Seller: insolvency; bankruptcy; suspension of business; sale of a substantial part of Seller's assets; filing for dissolution; liquidation proceedings; appointment of a trustee or receiver for Seller's property or business; or assignment.
- B. As set forth in FAR 52.249-8 the Parties agree that in the event a determination is made whether by the Parties or a court that the default termination was inappropriate, the Parties' rights and obligations shall be solely governed by the Termination for Convenience clause contained herein and Seller shall be entitled to a recovery no greater than that permitted in said Termination for Convenience clause.

#### **16. BUYER'S PROPERTY.**

- A. Seller shall be responsible for all Buyer-furnished property (e.g. dies, molds, jigs, tools, materials, etc.) in accordance with Buyer's T-55 Purchase Order Terms and Conditions (Property Control), which is incorporated herein and available on the Buyer's Oasis Website, <https://oasis.northgrum.com/contract/isaterms.htm>
- B. Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage to Buyer's property while in Seller's possession or control. Seller shall, at its sole cost, maintain insurance covering any loss or damage to Buyer materials, tools, and/or equipment for the full replacement value, and protecting against all perils normally

covered in an "all-risk" policy including but not limited to fire, windstorm, hurricane, tornado sandstorm, explosion, riot, civil commotion, aircraft, earthquake, floor or other acts of nature during such time as they remain in Sellers possession.

- C. If Seller cannot locate Buyer-furnished property, Seller has five (5) business days to find the misplaced item. After such period, the property shall be deemed "lost" and Seller must reimburse Buyer for its full replacement cost. The search period begins either:
  - 1. Upon Seller's notification to Buyer of a misplaced item (where the reimbursement shall take place on the 6<sup>th</sup> business day the item is lost), OR
  - 2. Five (5) business days after Property Transfer Authorization issuance date (i.e. ten (10) business days total) where the reimbursement shall take place on the 11th business day the item is lost.

#### **17. GOVERNMENT PROPERTY.**

- A. Seller shall be responsible for all Government-furnished property in accordance with Buyer's T-55 Purchase Order Terms and Conditions (Property Control), which is incorporated herein and available on the Buyer's Oasis Website, <https://oasis.northgrum.com/contract/isaterms.htm>
- B. If, in performing this Order, any government property is furnished to Seller, Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage to government property while in Seller's possession or control except to the extent that this purchase order provides otherwise. Seller shall return all Government property in a condition as good as when received except for reasonable wear and tear. Seller shall establish and maintain a system for control of Government property in accordance with FAR 52.245-1. Seller shall notify Northrop Grumman if the Government determines that its system is inadequate.
- C. If Seller cannot locate Buyer-furnished property, Seller has five (5) business days to find the misplaced item. After such period, the property shall be deemed "lost" and Seller must reimburse Buyer for the full replacement cost of the item. The search period begins either:

- 1. Upon Seller's notification to Buyer of a misplaced item (where the reimbursement shall take place on the 6<sup>th</sup> business day the item is lost), OR
- 2. Five (5) business days after Property Transfer Authorization issuance date (i.e. ten (10) business days total) where the reimbursement shall take place on the 11th business day the item is lost.

#### **18. DISPOSAL OF PRODUCTS.**

Seller shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use. Upon completion or

termination of this Order, Seller shall, at Seller's expense, dispose of all Products, including partially completed Products, as required or directed by Buyer.

**19. NOTIFICATION OF STATUS CHANGES.**

By accepting this Order, Seller certifies that all representations and certifications applicable to this Order included in the "Subcontractor Annual Compliance Certification", form number P0-F006, and the "Supplier Profile Capability, Quality System and Capacity Questionnaire", form number P0-F003 remain valid. If Seller's status under any of the applicable representations and certifications has changed, Seller must complete and submit to Buyer a new "Subcontractor Annual Compliance Certification" or "Supplier Profile Capability, Quality System and Capacity Questionnaire" prior to taking any action indicating acceptance as stated on the face of the Order.

**20. TAXES.**

The price of this Order includes all applicable Taxes. For purposes of this clause, "Taxes" includes, but is not limited to, federal, state, local taxes, excise, transfer, purchase, use, imposts, levies, duties, surcharges, sales, import taxes, turnover, added value, export taxes, tariffs, and surcharges imposed on Buyer and/or its subcontractors, by any authority of any country arising out of or related to the work or services performed by Seller hereunder. Seller is solely responsible for, and shall pay, all such Taxes related to any Buyer-furnished equipment, tools or data. The Order price shall include all applicable Taxes, if any, and shall be listed separately on the invoice. Use or sales taxes for which Buyer has furnished a valid exemption certificate or other evidence of exemption shall not be included.

**21. ASSIGNMENT.**

- A. Seller shall not assign any of its rights under this Order without Buyer's prior, written consent, except as specifically stated in this clause. Seller may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:
  - 1. The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and setoff or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller;
  - 2. Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.
- B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.
- C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled

to receive the same, any classified document or any of Buyer's Proprietary information (including this Order) until and unless authorized to do so by Buyer's authorized representative.

**22. SUBCONTRACTING.**

- A. Seller shall not subcontract without the prior written authorization of Buyer for the design or procurement of the whole or any major component of any Product ordered hereunder, and Seller shall require a like agreement from immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.
- B. No subcontract placed under this Order shall provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.404-4(c) of the Federal Acquisition Regulation (FAR).
- C. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

**23. RESERVED.**

**24. SUBCONTRACT DELIVERABLES.**

Seller agrees and acknowledges that all deliverables, or portions thereof, under this Order ("Deliverable Materials") may be incorporated into deliverables under the next higher tier or prime contract. Seller hereby grants Buyer the right to deliver the Deliverable Materials or any portion thereof under the next higher tier or prime contract. Seller further hereby agrees to deliver the Deliverable Materials under this Order with the appropriate markings required by the government regulations incorporated into this Order.

**25. INFRINGEMENT INDEMNIFICATION.**

- A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will defend, indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under this Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.
- B. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.
- C. If the use or sale of the Product is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer and extend this indemnification thereto.
- D. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order, which does not require research, development, or design work by Seller.

Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with Products not delivered by Seller if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.

- E. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

## **26. INSURANCE.**

- A. During the entire Order period Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation against Buyer. Seller shall also maintain, at their sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.
- B. Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:
1. Commercial General Liability (CGL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
  2. Automobile Liability (AL) – Combined Single Limit (CSL) \$2,000,000 bodily injury and/or property damage covering all owned, hired and non-owned vehicles.
- C. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- D. General Liability and Automobile Liability insurance coverage shall provide that Buyer is named as an additional insured and if requested by Buyer, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates.
- E. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- F. Buyer and Seller agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negli-

gence of the agents, subcontractors or employees of the indemnified parties.

- G. Additional insurance types and/or limits will be necessary if the work involves extra hazardous operations. The extra hazardous operations include dispensing of medical care, operations involving the nuclear hazard, providing professional engineering advice, large construction projects (above \$5,000,000) hazardous waste, food service, crane operation, work above ground, work below ground, and operations involving demolition or explosives.

## **27. LABOR DISPUTES.**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer including all relevant information including, but not limited to, nature of dispute, labor organizations involved, estimated impact on Seller's performance of Buyer's order and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

## **28. COMPLIANCE WITH LAWS.**

Seller warrants that it shall comply with all applicable Federal, State and local laws, rulings, and regulations of the United States of America, and all laws and regulations of Seller's country, during the performance of this Order.

## **29. RESERVED.**

## **30. ASBESTOS.**

Seller shall not provide any Product that contains asbestos and shall submit certification to Buyer on demand that the Products contain no asbestos.

## **31. OFFSET COMMITMENT.**

This clause shall only apply to Orders in excess of \$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. Notwithstanding that this Order is or is not made in direct support of a foreign sale, Seller agrees that it is obligated to support Buyer's Offset commitments as a condition of this Order.
- C. The offset credits arising out of or resulting from, directly or indirectly, this Order are for the exclusive use of Buyer and may be used by Buyer and any of its affiliates and subsidiaries to fulfill all past, present and future Offset obligations. In addition, Seller agrees to identify and retain for Buyer's use any rights to offset credits generated by its suppliers and subcontractors arising out of or resulting from this Order.
- D. Seller shall provide a copy of each Order or Subcontract placed with a foreign source under this Order in support of Buyer's rights to offset credit.

- E. Seller shall execute all necessary documents to evidence Buyer's right to use or assign any offset credits.
- F. Buyer reserves the right to assign offset credits generated through Seller's efforts under this Order to third parties.
- G. Seller shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this Order.

### 32. EXPORT AND IMPORT COMPLIANCE.

#### A. Export Compliance

General. Performance of this 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 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 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-US 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.

1. 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:

- (a) 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 elected, appointed or otherwise designated as an employee or officer thereof; and
- (b) 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.

2. 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:

- (a) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with the Seller; and
- (b) 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.

1. For International 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.

2. For Domestic 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, NGC 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 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 Order.

F. **Notification**

Seller agrees to provide prompt notification to Buyer in the event of changes in circumstances such as ineligibility to contract with US Government, debarment, assignment of consent agreement, and initiation or existence of a US Government investigation, that could affect Seller's performance under this 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 Order) be made in contravention of the prohibition in Section B.

**33. RELIANCE.**

Seller represents and warrants that Seller is an expert fully competent in all phases of the work involved in producing and supporting all Products and performing all services purchased under this Order.

**34. RELEASE OF INFORMATION AND ADVERTISING.**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use the name "Northrop Grumman" or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

**35. RESERVED.**

**36. INDEMNITY FOR DEFECTIVE COST OR PRICING DATA.**

Seller hereby indemnifies and agrees to hold Buyer harmless from any and all price or cost reductions made pursuant to the FAR 52.215-10 "Price Reduction for Defective Cost or Pricing Data" clause or the FAR 52.215-11 "Price Reduction for Defective Cost or Pricing Data – Modifications" clause, or any other provisions of the prime contract or higher-tier subcontract under which this Order is issued, and from and against any and all cost disallowances or non-recognitions of costs under such prime contract or subcontract, if such price or cost reduction, cost disallowance or non-recognition of costs arises or results

directly or indirectly because:

- A. Seller, or any Seller subcontractor at any tier or prospective subcontractor hereunder, furnished cost or pricing data that were not complete, accurate and current as certified in Seller's Certificate of Current Cost or Pricing Data; or
- B. Seller, or any Seller subcontractor or prospective subcontractor at any tier hereunder, furnished data of any description that were not accurate.

Accordingly, without limitation of the foregoing, the price of this Order shall be reduced and the Order shall be modified in writing as necessary to reflect the full amount of any and all such price or cost reductions and any and all such cost disallowances or non-recognitions of costs. The rights and remedies of Buyer under or pursuant to this indemnity shall be cumulative and additional to any other or further rights and remedies provided under this Order or at law or in equity.

**37. HEADINGS.**

The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.

**38. PARTIAL INVALIDITY.**

If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

**39. NONWAIVER.**

A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

**40. COMPLETE AGREEMENT.**

This Order is the Parties' final expression of their agreement and is the complete and exclusive statement

of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between the Parties, whether such understandings, proposal, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order.

**41. RESPONSIBILITY FOR CLAIMS/INDEMNITY.**

Seller shall, at its own expense, defend, indemnify and hold harmless Buyer from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of Seller, its subcontractors, agents, or employees in the performance of this Order. If Seller fails to defend, hold harmless, and indemnify Buyer as provided in this clause, then Seller shall pay for any damages, attorney's fees, and any other fees, costs, and expenses that may be incurred by Buyer in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.

**42. - 43. RESERVED.**

**44. INDEPENDENT CONTRACTOR.**

Seller is and shall be deemed to be an independent contractor at all times during its performance of the work specified in the Order. Under no circumstance shall Seller be deemed an agent for Buyer.

**45. RESERVED.**

**46. - 65. RESERVED.**

**66. INTELLECTUAL PROPERTY RIGHTS.**

Seller as part consideration for this Order and without further cost to Buyer hereby grants and agrees to grant to Buyer and its customers an irrevocable, non-exclusive, royalty-free right to license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with Seller's performance of this Order and Seller hereby grants to Buyer a license to repair, rebuild or relocate and to have repaired, rebuilt or relocated the Products purchased by Buyer under this Order.

**67. SUCCESSORS OF PARTIES.**

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

**68. TECHNICAL, BUSINESS, AND PROPRIETARY INFORMATION.**

A. Seller agrees to keep confidential and not to disclose to any other person any Technical, Business or Proprietary Information (Buyer Provided Information") received from Buyer in connection with this Order. Seller further agrees to use any Buyer Provided Information related to this order and received from Buyer only for purposes necessary for performing this Order, however the foregoing limitation shall not apply to items produced for direct sale to the U.S. Government in the event that the U.S.

Government has an unlimited right to license or use Buyer's Proprietary Information.

B. Seller may disclose Buyer Provided Information to its subcontractors, in accordance with the "Export and Import Compliance" clause herein and the Proprietary Information Agreement as required for the performance of this Order, provided that each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to such Technical Information.

C. All documents and other tangible media (excluding Products) containing or conveying Buyer Provided Information and transferred in connection with this Order, together with any copies thereof, are and remain the property of the Buyer.

D. Neither the existence of this Order nor the disclosure of Buyer Provided Information or any other information hereunder shall be construed as granting expressly by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by the Buyer or Buyer's customer, except as specifically set forth herein.

E. Seller's obligations with respect to Buyer Provided Information disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.

F. If the performance of this Order requires the exchange of Proprietary Information between the Parties, a separate Proprietary Information Agreement may be executed by the Parties. All proprietary information exchanged between the Parties shall be governed by the terms of the separate Proprietary Information Agreement, if one exists.

**69. TECHNICAL DATA RESTRICTIONS.**

A. In addition to and without limiting the clause "TECHNICAL, BUSINESS AND PROPRIETARY INFORMATION" herein, the following restrictions shall apply to all designs, drawings, and other technical documents and information furnished or disclosed to Seller by Buyer (herein called "Technical Data") and to any Products manufactured by use of Technical Data. Seller shall comply with any restrictions imposed, in connection with the disclosure, delivery or export of Technical Data by Buyer to Seller, by any governmental agency of the United States of America under the laws and regulations of the United States relating to exports and foreign transactions, including, but not limited to the Export Administration Act or the International Traffic in Arms Regulations (ITAR).

B. In addition and without limitation, the following offshore procurement procedures shall apply:

1. Seller shall not deliver the Products to any party other than Buyer or to an agency of the U.S. Government;

2. The use of the Technical Data is limited to the manufacture of the Products described in the Order;
3. The disclosure of the Technical Data may not be made to any other person without the prior written consent of the Buyer and as authorized by applicable United States Government export authorizations;
4. No rights in Technical Data shall be acquired by any foreign person, including Seller;
5. Seller, including subcontractors, must destroy or return to Buyer all of the Technical Data exported pursuant to the Order upon fulfillment of the terms of the Order; and
6. All of Seller's subcontracts must contain all the provisions stated in this Technical, Business and Proprietary Information clause, including this paragraph.

**70. CONTROL OF TECHNICAL DATA AND NON-DISCLOSURE AGREEMENTS.**

- A. For the purposes of this clause, Technical Data is defined in ITAR 22 CFR 120-130, including paragraph 120.6, 120.9, and 120.10 and includes, but it not limited to: a) drawings, b) specifications, c) process specifications, d) process information, e) know-how information, f) technical assistance, g) detailed process information, or h) manufacturing know-how.
- B. Seller shall comply with all provision of 22 CFR 120-130, and shall not disclose any technical data for any purpose not contemplated under the terms of this Order.
- C. Prior to any disclosure of technical data, Seller shall execute Non-Disclosure Agreements (NDA) with its subcontractors, or potential subcontractors, whenever sub-licensing activity (if specifically authorized in writing by Buyer) involves the disclosure of technical data between Seller and non United States subcontractors, or with any subcontractor, U.S. or Foreign, located outside of the U.S. The Non-Disclosure Agreements shall incorporate all the provisions of ITAR 22 CFR 120-130, and specifically address the provisions of paragraphs 22 CFR 124.8 and 124.9.
- D. Copies of signed Non-Disclosure Agreements (which may consist of Acceptance copies of sub-tier Purchase Orders or separate agreements either of which contain the contents of this clause) must be maintained on file for a period of five (5) years after Purchase Order completion. Seller, upon execution of each NDA obtained pursuant to this clause, shall provide a copy to Buyer.
- E. The complete content of this clause must be included in all agreements or orders issued to all affected subcontractors at any tier.

**71. FAILURE TO OBTAIN GOVERNMENT APPROVALS.**

- A. If Buyer or Seller is unable to obtain any required governmental approvals or licenses relating to import or export of Products, materials, or

technical data relating to this Order, Buyer may terminate the Order, in whole or in part, without recourse against, penalty to, or liability of Buyer except as stated in the "Termination for Convenience" clause. In such event, Buyer shall also have, to the extent permitted by applicable provisions of any national, state, provincial or local law, the option, but not the obligation, to take delivery of the applicable portion of Products at such place in Seller's country as Buyer shall designate, with an appropriate adjustment in price.

- B. If performance under this Order extends beyond the period of validity of the export license(s), a new license(s) application must be submitted by the Buyer. In the event Buyer is unable to obtain a new license to cover the exported technical data, Buyer may terminate this Order in whole or in part, without recourse against, penalty to or liability of Buyer except as stated in the "Termination for Convenience" clause.

**72. PRICES.**

The prices stated in this Order are firm fixed prices and are stated in United States Dollars and are not subject to exchange rate adjustments.

**73. APPLICABLE LANGUAGE.**

This Order is made in the English language and all correspondence between the parties of a technical and non-technical nature shall in the English language and shall employ the units of measure customarily used by Buyer in the United States of America, unless otherwise specified. All notices and other binding communications may, unless otherwise specified, be sent by facsimile, electronic mail, air mail, or other customary means.

**74. FOREIGN CORRUPT PRACTICES ACT.**

Seller shall comply with the Foreign Corrupt Practices Act, 15 U.S.C. 78 et. seq.

**75. - 77. RESERVED.**

**78. SUSPECT/COUNTERFEIT PARTS.**

If suspect/counterfeit parts are furnished under this Order and are found in any of the goods delivered hereunder, such items will be impounded by Buyer. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and the Seller shall be liable for all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged. Buyer's remedies described herein shall not be limited by any other clause which is agreed upon between Buyer and Seller in this Order. At Buyer's request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its Government customer for further investigation. Seller agrees that any Government or quasi-Government directive, such as a GIDEP alert indicating that such parts are counterfeit, shall be deemed definitive evidence that Seller's parts contain counterfeit parts.

**79. - 92. RESERVED.**

**93. CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM.**

Buyer has joined with the U.S. Bureau of Customs and Border Protection in the Customs Trade Partnership Against Terrorism (C-TPAT) program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of the United States to Buyer, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. Seller shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. In addition, Seller agrees to take such reasonable measures as may be required by Buyer to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in Seller's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Contact the authorized Purchasing Representative for assistance in identifying transportation companies that are validated under the C-TPAT program.

**94. EUROPEAN UNION REGISTRATION, EVALUATION, AUTHORIZATION AND RESTRICTION OF CHEMICALS (REACH).**

- A. Seller shall comply with any and all European Union (EU) Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) Regulation obligations with respect to any of the Products delivered by Seller to Buyer under the terms of this Order.
- B. Seller must provide Buyer with a list of substances contained in any of the Products that were included on the list of Candidate List substances published by ECHA on October 28, 2008. Thereafter, if a substance is added to the Candidate List by ECHA, and that substance is also contained in any Products, Seller must notify Buyer within 15 days.
- C. By accepting this Order, Seller recognizes and agrees that Buyer will thereafter act in reliance on Seller's acceptance of this Order as a contractual commitment that it is in compliance with EU REACH regulations, subject to the further provisions below.
- D. Should any Products contain substances listed on the Candidate List that are above 0.1% on a weight by weight basis within that Product, Seller shall provide Buyer with so-called Safe-Use information, pursuant to the provisions of

REACH Article 33 and shall maintain the REACH database for the life of this Order.

- E. As indicated, Buyer will act in reliance on the statements and commitments Seller makes regarding the Candidate List status of each of the substances contained in any of the Products. If Seller fails to comply with the provisions of this clause, Buyer may consider whether such failure constitutes a breach of this Order sufficient to warrant Termination for Default in accordance with the terms of this Order. Moreover, in the event failure to timely comply with these provisions results in a business interruption of Buyer's operations, Buyer will seek to recover the damages, including financial losses, it suffers as a consequence of such failure.

**95. RESERVED.**

**96. RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DFARS 252.222-7006).**

(Applicable to all subcontracts, task orders and Purchase Orders at every tier that utilize funds appropriated or otherwise made available by the U.S. Government Fiscal Year 2010 Defense Appropriations Act or subsequent DoD appropriations acts for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of \$1 million except for commercial items and commercially available off-the-shelf items.

- A. Seller agrees not to –

1. Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or
2. Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

- B. Seller agrees to flow down, this provision in all subcontracts, task orders and Purchase Orders at every tier that will be funded with in excess of \$1 million of Fiscal Year 2010 funds, except for those for commercial items, including commercially available off-the-shelf items.
- C. Failure to comply with this provision will be considered a material breach and, at the sole discretion of the Buyer, may result in termination for default or cause.

**97. - 198. RESERVED.**

**199. FAR/DFARS PROVISIONS/CLAUSES.**

- A. The FAR and DFARS clauses cited in paragraph C. below are incorporated herein by reference at the effective version found in Buyer's Prime Contract, or higher-tier subcontract under which this Order is a subcontract. The listed FAR and DFARS clauses are incorporated herein as if set forth in full text unless made inapplicable by its corresponding note, if any. Whenever said clauses include a requirement for the resolution of disputes between the parties in accordance with the "Disputes" clause herein, the dispute shall be disposed of in accordance with the clause entitled "Disputes" in these Terms and Conditions
- B. Where necessary to derive proper meaning in a subcontract situation from these clauses, "Contractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative (2) when title to property is to be transferred directly to the Government, and (3) in FAR 52.227-1, 52.227-2 and DFARS 252.227-7013 and 252.227-7014. To implement the increase in the simplified acquisition threshold from \$100,000 to \$150,000 for orders under prime contracts issued on or after October 1, 2010, all references to the "simplified acquisition threshold" or the amount of \$100,000, shall mean the new threshold of \$150,000, except in FAR 52.222-35. Seller shall be responsible for confirming with Buyer whether new orders are under prime contracts issued on or after October 1, 2010.

**C. FAR and DFARS clauses:**

<b>Clause</b>	<b>FAR Reference</b>
Gratuities NOTE: As used in this clause, "Government" means "Buyer" (except "Government" means "Buyer or Government" in the phrase "to any officer or employee of the Government"), "hearing" means opportunity to be heard, and "in any competent court", means "pursuant to the Disputes clause contained herein."	52.203-3
Restrictions on Subcontractor Sales to the Government NOTE: Applicable to any Order greater than \$100,000.	52.203-6
Anti-Kickback Procedures NOTE: The substance of this clause, except subparagraph (c)(1), is applicable to any Order and all lower-tier subcontracts which exceed \$100,000. Seller shall immediately notify Buyer of any alleged violations involving any of Buyer's or Seller's employees.	52.203-7
Limitation on Payments to Influence Certain Federal Transactions NOTE: Applicable to any Order greater than \$100,000.	52.203-12
Contractor Code of Business Ethics and Conduct NOTE: Applicable to any Order greater than \$5,000,000 and period of performance greater than 120 days (commercial items exempt). NOTE: 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 under which this subcontract is being issued, with a copy to the Contracting Officer of the prime contract.	52.203-13
Display of DoD Hotline Poster NOTE: Applicable to any Order greater than \$5,000,000 and period of performance greater than 120 days (commercial items exempt).	52.203-14
Security Requirements NOTE: Delete paragraph (c.) NOTE: Applicable if the Order involves access to classified information.	52.204-2
Personal Identity Verification of Contractor Personnel	52.204-9
Material Requirements	52.211-5
Defense Priority and Allocation Requirements	52.211-15
Audit and Records – Negotiation NOTE: Applicable to any Order greater than \$100,000.	52.215-2
Price Reduction for Defective Cost or Pricing Data NOTE: Applicable to any Order when cost or pricing data are required.	52.215-10

Clause	FAR Reference
Price Reduction for Defective Cost or Pricing Data – Modifications NOTE: Applicable if FAR 52.215-10 is not applicable to this Order.	52.215-11
Subcontractor Cost or Pricing Data NOTE: Applicable to any Order when cost or pricing data are required.	52.215-12
Subcontractor Cost or Pricing Data – Modifications NOTE: Applicable if FAR 52.215-12 is not applicable to this Order.	52.215-13
Integrity of Unit Prices NOTE: Delete paragraph (b) NOTE: Applicable to any Order greater than \$100,000.	52.215-14
Pension Adjustments and Asset Reversions NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	52.215-15
Facilities Capital Cost of Money NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and the Seller proposed Facilities Capital Cost of Money in its offer.	52.215-16
Waiver of Facilities Capital Cost of Money NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and the Seller did not propose Facilities Capital Cost of Money in its offer.	52.215-17
Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	52.215-18
Notification of Ownership Changes NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2.	52.215-19
Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications	52.215-21

Clause	FAR Reference
Limitation on Pass-Through Charges NOTE: Applicable to any Order when the total estimated Order value exceeds the threshold for obtaining cost or pricing data in FAR 15.403-4 and the contemplated contract type is expected to be any contract type except those contract types listed in FAR 15.408(n)(2)(i)(B)(2). Seller shall notify Buyer in writing if: (1) Seller changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under this Order. The notification shall identify the revised cost of the subcontract effort and shall include verification that Seller will provide added value; or; (2) Any subcontractor changes the amount of lower-tier subcontractor effort such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).	52.215-23
Incentive Price Revision – Firm Target NOTE: Applicable to any FPIF Order or line item.	52.216-16
Incentive Price Revision – Successive Targets NOTE: Applicable to any FPIS Order or line item.	52.216-17
Utilization of Small Business Concerns	52.219-8
Small Business Subcontracting Plan NOTE: Applicable to any Order greater than \$650,000 or lower threshold if effective under older higher-tier contract..	52.219-9
Notice to the Government of Labor Disputes	52.222-1
Contract Work Hours and Safety Standards Act – Overtime Compensation NOTE: Applicable to all subcontracts at any tier	52.222-4
Walsh-Healey Public Contracts Act NOTE: Applicable to any Order greater than \$15,000.	52.222-20
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans NOTE: Applicable to any Order of \$100,000 or more.	52.222-35
Affirmative Action for Workers With Disabilities NOTE: Applicable to any Order greater than \$15,000.	52.222-36

Clause	FAR Reference
Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans NOTE: Applicable to any Order of \$100,000 or more.	52.222-37
Notification of Employee Rights Under the National Labor Relations Act	52.222-40
Combating Trafficking in Persons	52.222-50
Employment Eligibility Verification NOTE: Applicable to any Order greater than \$3,000 with a period of performance of 120 days or greater.	52.222-54
Hazardous Material Identification and Material Safety Data	52.223-3
Notice of Radioactive Materials	52.223-7
Ozone-Depleting Substances	52.223-11
Toxic Chemical Release Reporting	52.223-14
Encouraging Contractor Policies to Ban Text Messaging While Driving	52.223-18
Privacy Act	52.224-2
Buy American Act – Supplies	52.225-1
Duty-Free Entry	52.225-8
Restrictions on Certain Foreign Purchases	52.225-13
Utilization of Indian Organizations and Indian-Owned Economic Enterprises	52.226-1
Authorization and Consent NOTE: Applicable only if contained in the controlling prime contract and to any Order greater than \$100,000.	52.227-1
Notice and Assistance Regarding Patent and Copyright Infringement NOTE: Applicable to any Order of \$100,000 or more except when both complete performance and delivery are outside the United States, its possessions and Puerto Rico.	52.227-2
Refund of Royalties	52.227-9
Filing of Patent Applications – Classified Subject Matter	52.227-10
Patent Rights – Ownership by the Contractor	52.227-11
Insurance – Work on a Government Installation NOTE: Applicable on any Order that requires work on a Government installation.	52.228-5
Interest	52.232-17
Industrial Resources Developed Under Defense Production Act Title III	52.234-1
Accident Prevention	52.236-13
Protection of Government Buildings, Equipment, and Vegetation	52.237-2

Clause	FAR Reference
Bankruptcy	52.242-13
Stop-Work Order NOTE: The 90 day period in the first and fourth sentences of paragraph (a) is changed to 120 days.	52.242-15
Competition In Subcontracting	52.244-5
Subcontracts for Commercial Items	52.244-6
Government Property and Alternate I	52.245-1
Government Property (Fixed-Price Contracts) NOTE: Applicable to any Order if Government property is furnished to Seller. NOTE: In the phrases "Government Property", "Government-furnished property", and in references to title to property, "Government" shall not mean "Buyer". The following is added as paragraph (n): "Contractor shall provide Buyer immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system."	52.245-2
Inspection of Supplies – Fixed-Price	52.246-2
Inspection of Services – Fixed-Price	52.246-4
Preference for U.S. Flag Air Carriers NOTE: Applicable to any Order and lower-tier subcontracts that involve international air transportation.	52.247-63
Preference for Privately Owned U.S.-Flag Commercial Vessels	52.247-64
Value Engineering NOTE: Applicable to any Order of \$100,000 or more except as specified in FAR 48.201(a). NOTE: Substitute "Buyer" for "Contracting Officer" and "Government" throughout, except where used in the term "Government costs" and in paragraph (m) where "Government" shall mean "Government and/or Buyer".	52.248-1

Clause	DFARS Reference
Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies NOTE: Applicable to any Order greater than \$100,000.	252.203-7001
Export-Controlled Items	252.204-7008
Intent to Furnish Precious Metals as Government-Furnished Material NOTE: Applicable to any Order and all lower-tier subcontracts unless it is known that the item being purchased contains no precious metals.	252.208-7000
Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.	252.209-7004
Acquisition Streamlining NOTE: Applicable to any Order of \$1,000,000 or more.	252.211-7000

Clause	DFARS Reference
Pricing Adjustments NOTE: Applicable when it is contemplated that Cost or Pricing Data will be required.	252.215-7000
Small Business Subcontracting Plan (DoD Contracts) NOTE: Applicable to any Order anticipated to be valued at \$650,000 or lower threshold if effective under older higher-tier contract.	252.219-7003
Hazard Warning Labels NOTE: Applicable to any Order which requires delivery of hazardous materials.	252.223-7001
Safety Precautions for Ammunition and Explosives NOTE: Applicable to any Order involving articles furnished containing ammunition or explosives.	252.223-7002
Change in Place of Performance – Ammunition and Explosives NOTE: Applicable if DFARS 252.223-7002 applies to the Order.	252.223-7003
Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives NOTE: Applicable to any Order and all lower-tier subcontracts involving arms, ammunition and explosives.	252.223-7007
Prohibition of Hexavalent Chromium NOTE: Applicable to any Order for supplies, maintenance and repair services, or construction unless the exceptions listed in DFARS 223.7304 apply.	252.223-7008
Buy American Act and Balance of Payments Program	252.225-7001
Qualifying Country Sources As Subcontractors	252.225-7002
Quarterly Reporting of Actual Contract Performance Outside the United States NOTE: Applicable to any Order greater than \$650,000 or lower threshold if effective under older higher-tier contract.	252.225-7006
Restriction on Acquisition of Certain Articles Containing Specialty Metals NOTE: Applicable to Orders issued under prime contracts awarded on or after July 29, 2009.	252.225-7009
Preference for Certain Domestic Commodities NOTE: Applicable to any Order greater than \$100,000.	252.225-7012
Duty – Free Entry	252.225-7013
Preference for Domestic Specialty Metals and Alternate I NOTE: Applicable to Orders issued under prime contracts awarded before January 28, 2008.	252.225-7014

Clause	DFARS Reference
Preference for Domestic Specialty Metals (DEVIATION No. 2008-O0002) and Alternate I (DEVIATION No. 2008-O0002) NOTE: Applicable to Orders issued under prime contracts awarded on or after January 28, 2008 and before July 29, 2009.	252.225-7014
Restriction on Acquisition of Hand or Measuring Tools	252.225-7015
Restriction on Acquisition of Ball and Roller Bearings NOTE: Applicable to any Order and all lower-tier subcontracts if Product supplied contains ball or roller bearings.	252.225-7016
Trade Agreements	252.225-7021
Restriction on Acquisition of Forgings	252.225-7025
Exclusionary Policies and Practices of Foreign Governments	252.225-7028
Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate	252.225-7030
Waiver of United Kingdom Levies	252.225-7033
Buy American Act – Free Trade Agreements – Balance of Payments Program	252.225-7036
Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States	252.225-7040
Antiterrorism/Force Protection for Defense Contractors Outside the United States	252.225-7043
Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	252.226-7001
Rights in Technical Data – Noncommercial Items	252.227-7013
Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	252.227-7014
Technical Data – Commercial Items	252.227-7015
Rights in Bid or Proposal Information	252.227-7016
Validation of Asserted Restriction – Computer Software	252.227-7019
Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	252.227-7025
Deferred Delivery of Technical Data or Computer Software	252.227-7026
Deferred Ordering of Technical Data or Computer Software	252.227-7027
Technical Data – Withholding of Payment	252.227-7030



Clause	DFARS Reference
Validation of Restrictive Markings on Technical Data	252.227-7037
Patent Rights--Ownership by the Contractor (Large Business)	252.227-7038
Patents – Reporting of Subject Inventions	252.227-7039
Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	252.228-7005
Supplemental Cost Principles	252.231-7000
Frequency Authorization and Alternate I	252.235-7003
Protection Against Compromising Emanations	252.239-7000
Telecommunication Security Equipment, Devices, Techniques and Services	252.239-7016
Pricing of Contract Modifications	252.243-7001
Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	252.244-7000
Warranty of Data	252.246-7001
Notification of Potential Safety Issues	252.246-7003
Transportation of Supplies by Sea NOTE: Applicable in any Order and all lower-tier subcontracts for ocean transportation of supplies. Paragraphs (f) and (g) shall not apply if this Order or any lower-tier subcontract is at or below \$100,000. NOTE: Paragraph (c), first sentence has been modified as to read “The Seller and its subcontractors may request that the Buyer obtain Government authorization for shipment...” “45” is changed to “60” days in paragraph (d) and “30” to “20” in paragraph (e). In paragraph (e), delete “and the division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.” In paragraph (g) “for the purposes of the Prompt Payment clause of this contract” is deleted. NOTE: Seller shall complete Buyer’s form P0-F126 and submit to Buyer’s Authorized Purchasing Representative at time of final invoice. Seller agrees to indemnify and hold the Buyer harmless against any loss, damage or expense suffered by the Buyer as a result of Seller’s failure to comply with the requirements of this clause.	252.247-7023
Notification of Transportation of Supplies by Sea	252.247-7024
Notification of Anticipated Contract Termination or Reduction	252.249-7002

**APPLICABILITY OF ARTICLES AND CLAUSES.**  
**The following articles and clauses are not applicable to suppliers (Sellers) not based in the United States of America. However, suppliers not based in the United States of America must include these articles and clauses in any subtier purchase order or contract issued to subtier suppliers based in the United States of America.**

Clause	FAR Reference
Contractor Code of Business Ethics and Conduct NOTE: Applicable to any Order greater than \$5,000,000 and period of performance greater than 120 days (commercial items exempt). NOTE: 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 under which this subcontract is being issued, with a copy to the Contracting Officer of the prime contract.	52.203-13
Display of DoD Hotline Poster NOTE: Applicable to any Order greater than \$5,000,000 and period of performance greater than 120 days (commercial items exempt).	52.203-14
Utilization of Small Business Concerns	52.219-8
Small Business Subcontracting Plan NOTE: Applicable to any Order greater than \$650,000 or lower threshold if effective under older higher-tier contract...	52.219-9
Contract Work Hours and Safety Standards Act – Overtime Compensation NOTE: Applicable to any Order and lower-tier subcontracts greater than \$100,000.	52.222-4
Walsh-Healey Public Contracts Act NOTE: Applicable to any Order greater than \$15,000.	52.222-20
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Equal Opportunity for Special Disabled Veterans.-Veterans of the Vietnam Era, and Other Eligible Veterans NOTE: Applicable to any Order of \$25,000 or more.	52.222-35
Affirmative Action for Workers with Disabilities NOTE: Applicable to any Order greater than \$15,000.	52.222-36

<b>Clause</b>	<b>FAR Reference</b>
Employment Reports on Special Disabled Veterans,-Veterans of the Vietnam Era, and Other Eligible Veterans NOTE: Applicable to any Order of \$25,000 or more.	52.222-37
Notification of Employee Rights Under the National Labor Relations Act	52.222-40
Employment Eligibility Verification NOTE: Applicable to any Order greater than \$3,000 with a period of performance of 120 days or greater.	52.222-54
Buy American Act – Supplies	52.225-1
Utilization of Indian Organizations and Indian-Owned Economic Enterprises	52.226-1
Insurance – Work on a Government Installation NOTE: Applicable to any Order that requires work on a Government installation.	52.228-5
Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies NOTE: Applicable to any Order greater than \$100,000.	252.203-7001
Small Business Subcontracting Plan (DoD Contracts) NOTE: Applicable to any Order anticipated to be valued at \$650,000 or lower threshold if effective under older higher-tier contract.	252.219-7003
Safety Precautions for Ammunition and Explosives NOTE: Applicable to any Order involving articles furnished containing ammunition or explosives.	252.223-7002
Buy American Act and Balance of Payments Program	252.225-7001
Quarterly Reporting of Actual Contract Performance Outside the United States NOTE: Applicable to any Order greater than \$650,000 or lower threshold if effective under older higher-tier contract.	252.225-7006
Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	252.228-7005
Supplemental Cost Principles	252.231-7000
Warranty of Data	252.246-7001