

# T-16

## NORTHROP GRUMMAN SYSTEMS CORPORATION

### PURCHASE ORDER TERMS AND CONDITIONS GOVERNMENT COST REIMBURSABLE SUPPLY/SERVICES

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#### 1. DEFINITIONS.

- A. BUYER means Northrop Grumman Systems Corporation including its subsidiaries, sectors, and business areas as identified on the face of the Purchase Order.
- B. BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer's cognizant procurement organization to administer and/or execute the Order.
- C. 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 and manufacture of Products. 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.
- D. ORDER means the instrument of contracting including this Purchase Order and all referenced documents. This Order is a "Cost-Reimbursable" contract wherein Buyer is to pay Seller's allow-

able costs incurred in the performance of the Order to the extent prescribed in the Purchase Order.

- E. PARTIES means Buyer and Seller collectively.
- F. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by the U.S. Government for the acquisition of Products.
- G. PRODUCTS means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any incidental services described in the Order.
- H. PROPRIETARY INFORMATION means all Data or other 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 or other information as proprietary to the Party disclosing the information, and includes any information marked with a restrictive legend as prescribed in Defense Federal Acquisition Regulation

Supplement (DFARS) 252.227-7013 or 252.227-7014 or in Federal Acquisition Regulation (FAR) 52.227-15.

- I. SELLER means the Party with whom Buyer is contracting.
- J. SERVICES means Seller's time and effort not incidental to sale and purchase of Products.

**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, TITLE.**

- A. The FOB point shall be as designated in the Order. Title shall pass to Buyer upon acceptance (except as otherwise specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.
- B. 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.
- C. 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.
- D. 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.

- E. 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 separate invoice for each shipment and shall include the following information taken from Buyer's Order: (a) Order number; (b) item number;

(c) part serial number (if serialized); (d) part number; (e) unit of measure; (f) unit price; and (g) unit ECCN or ITAR designation. Seller's invoice shall also include: (h) Seller's phone number and address; (i) invoice number; (j) date prepared; (k) item quantity; (l) extended item price; and (m) total invoice value. If Seller's "remit to" address is different than the address indicated on the 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 (i.e., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice. Buyer reserves the right to return invoices failing to comply with these instructions for re-submittal 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. RESERVED.**

**7. PACKING AND SHIPPING.**

Seller shall be responsible for ensuring the proper packaging and shipping of Product hereunder in accordance with Buyer's Purchase Order Terms and Conditions, T-13, "(Packaging, Packing, Marking and Bar Coding)" and Aerospace Systems Supplier Routing Instructions which is incorporated herein and available on the Buyer's Oasis Website,

<https://oasis.northgrum.com/general/acstraffic.htm>

Damage resulting from improper Product packaging will be charged to Seller.

**8. INSPECTION AND CORRECTION DEFECTS.**

- A. All Products, Services and Data under this Order shall be subject to inspection and test by Buyer and the Government, to the extent practicable at all times and places including the period of performance and in any event prior to final acceptance. Except as otherwise specifically provided in this Order and notwithstanding the FOB point or any payment or prior inspection at source, final inspection and acceptance by Buyer shall be made at destination. Final inspection shall be made within a reasonable time, but in any event not more than sixty (60) days after

receipt by Buyer at destination. Seller shall provide and maintain an inspection system acceptable to Buyer and to the Government, covering the work hereunder. Buyer and the Government, through any of its authorized representatives, may inspect the plant or plants of Seller or of any of its subcontractors engaged in the performance of this Order. If any inspection or test is made by Buyer or the Government on the premises of Seller or a subcontractor, Seller shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of Buyer and the Government inspectors in the performance of their duties. All inspections and tests by Buyer and the Government shall be performed in such a manner as will not unduly delay performance.

- B. Seller shall furnish to Buyer if requested all that information and Data as may be reasonably required by Buyer in order to perform inspection and acceptance.
- C. Inspection and Acceptance of any Products or Services by Buyer or the Government shall not be deemed to alter or affect the obligations of Seller or the rights of Buyer and its customers under the correction of defects requirements below or as may be provided by law.
- D. Buyer's failure to inspect any of the Products hereunder shall neither relieve Seller from responsibility for such Products as are not in accordance with the requirements of this Order nor impose liability on Buyer therefore.
- E. If this Order, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the Products or Data to Buyer for "First Article inspection," testing or approval, any such inspecting, testing or approval given by Buyer, prior to final acceptance, shall not relieve Seller of its responsibility for complying with the specifications and other provisions of this Order. Any such inspection, testing or approval shall not be construed as an assumption by Buyer of the responsibility that such Product or Data complies or will comply with the specification or other provisions of this Order.
- F. At any time during performance of this Order or within the times set forth below or at such other time as may be provided in this Order after final acceptance of all of the Products, Services or Data to be delivered or performed under this Order, Buyer may require Seller to remedy by correction or replacement, as directed by Buyer, any failure by Seller to comply with the requirements of this Order, including defects in material or workmanship. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified below.
- G. Except as otherwise provided below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this Order entitled "Allowable Cost,

Fee and Payment" but no additional fee shall be payable with respect thereto. Corrected Products shall not be tendered again for acceptance unless the former tender and the requirement of correction are disclosed.

- H. If Seller fails to proceed with reasonable promptness to perform such replacement or correction, Buyer (1) may by separate contract with third persons or otherwise perform such replacement or correction and charge to Seller any increased cost occasioned Buyer thereby, or may reduce any fee payable under this Order (or require repayment of any fee previously paid) in such amount as may be equitable under the circumstances, or (2) in the case of Products not delivered, may require the delivery of such Products and shall have the right to reduce any fee payable under this Order (or to require repayment of any fee previously paid) in such amount as may be equitable under the circumstances, or (3) may cancel this Order for default.
- I. Notwithstanding the provisions above, Buyer may at any time require Seller to remedy by correction or replacement, without cost to Buyer, any failure by Seller to comply with the requirements of this Order if such failure is due to fraud, lack of good faith or willful misconduct on the part of any Seller's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (1) all or substantially all of Seller's business, or (2) all or substantially all of Seller's operations at any one plant or separate location in which this Order is being performed; or (3) a separate and complete major industrial operation in connection with the performance of this Order. Buyer may at any time also require Seller to remedy by correction or replacement, without cost to Buyer, any such failure or defective Products caused by one or more individual employees selected or retained by Seller after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.
- J. The above provisions shall apply to any corrected or replacement Product or part or component thereof for a reasonable period of time after final inspection (depending on the requirements or specification and the type and durability of the ordered Product), but in any event, not less than six (6) months from the date of such final acceptance.
- K. Seller shall make its records of all inspection work available to Buyer and to the Government, during the performance of this Order and for such longer period as may be specified in this Order.
- L. Corrected or replaced Products shall be subject to the provisions of this clause in the same manner and to the same extent as Products originally delivered under this Order.
- M. The Seller shall have no obligation or liability under this Order to replace supplies that were

nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the Order.

- N. Except as otherwise provided in this Order, Seller's obligation to correct or replace Buyer or Government furnished property shall be governed by the provisions of the Northrop Grumman "Property Control," terms and conditions which are attached to and made a part of this Order.

**9. - 10. RESERVED.**

**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 estimated cost or time required to perform this Order, whether or not changed by the change order or Purchase Order Change Notice, an equitable adjustment shall be made in the (1) estimated or target cost of, and/or the time required for the performance of this Order, (2) amount of any fixed fee, and (3) other affected terms, shall be modified 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. Notwithstanding any other provisions of this clause, the estimated cost of this Order and, if this Order is incrementally funded, the funds allotted for the performance of this Order, shall not be increased or considered to be increased except by specific written modification of the Order indicating the new Order estimated or target cost and, if this Order is incrementally funded, the new amount allotted to this Order. Until this modification is made, Seller shall not be obligated to continue performance or incur costs beyond the point established in the "Limitation of Cost" or "Limitation of Funds" clauses in this Order.

**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.**

- A. Any dispute that may arise under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties up to the Senior Executive of the Materiel or Procurement organization placing the Order, and Seller's equivalent executive level.
- 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.**

Buyer may at any time terminate all or any part of this Order in accordance with the contract clause entitled "Termination (Cost-Reimbursement)" set forth at 52.249-6, as modified in 49.503(a)(4), 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 terms "Contracting Officer" and "Government" therein shall mean "Buyer", the term "Contractor" therein shall mean "Seller", paragraphs (e) and (j) thereof are deleted, the period "120 days" in paragraph (d) is changed to "60 days", the period "1 year" in paragraph (f) is changed to "3 months"; provided, however, that if this Order is a first-tier subcontract under a U.S. Government Prime Contract, the period "1 year" in paragraph (f) is changed to "180 days."

**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 determinates 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. RESERVED.**

#### **19. NOTIFICATION OF STATUS CHANGES.**

- A. 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.
- B. In addition, Seller shall promptly notify Buyer's Authorized Purchasing Representative whenever a Government Defense Contract Audit Agency (DCAA) review of Seller's Accounting System or Billing System results in a determination of "Disapproved" by the Divisional Administrative Contracting Officer (DACO) and provide Buyer a copy of the disapproval letter.

#### **20. TAXES.**

The price of this Order includes all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which 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. PROPRIETARY INFORMATION.**

- A. If a separate Proprietary Information Agreement exists between the Parties, which relates to the subject matter of this Order, then Proprietary Information furnished by one Party to the other Party shall be protected pursuant to such Proprietary Information Agreement.
- B. If no separate Proprietary Information Agreement exists between the Parties, Seller agrees to keep confidential and not to disclose to any other person any Proprietary Information received from Buyer in connection with this Order. Seller further agrees to use Proprietary Information only for purposes necessary for performing this Order, without first obtaining Buyer's written authorization.
- C. Seller may disclose Proprietary Information to its subcontractors 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 Proprietary Information.
- D. All documents and other tangible media (excluding Products) containing or conveying Proprietary Information and transferred in connection with this Order, together with any copies thereof, are and remain the property of Buyer.
- E. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information 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 Buyer or Buyer's customer, except as specifically set forth herein.

- F. Seller's obligations with respect to Proprietary 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.

- G. Unless otherwise provided herein, or authorized by Buyer in writing, Seller shall use Proprietary Information and/or data only in the performance of 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.

## **24. SELLER'S DATA.**

Excluding Data marked with an appropriate legend and protected in accordance with a separate Proprietary Information Agreement, any Data, which Seller discloses to Buyer while performing this Order, that Seller has not marked with a limited rights legend in accordance with the applicable rights in technical data and computer software clauses/provisions called out herein shall not be considered proprietary to Seller or in any way restrict Buyer's use of such Data.

## **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 negligence 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.**

- A. Seller shall comply with all applicable Federal, State and local laws, statutes, rulings, ordinances, orders, and regulations in effect on the date of this Order.
- B. Seller certifies that the Products called for by this Order have been or will be produced in full compliance with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219), as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof.

## **29. CHOICE OF LAW.**

Both Parties agree that, irrespective of the place of performance of this Order, this Order will be construed and interpreted according to the law of the state from which this Order is issued, as identified in the Order, excepting that state's laws on conflict of law.

## **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. Seller is advised that its 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 – 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 either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) that it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.
- B. Foreign Personnel/Persons. 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 Contractor/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 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.
- 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 this Clause 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 this Clause shall be a material breach of this Order.

- D. 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.

**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. COMPLIANCE WITH AND APPLICABILITY OF THE OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) ACT OF 1988 (41 USC 423).**

Seller represents that during the conduct of the procurement of which this Order forms a part, it has complied with and will continue to comply with the requirements of FAR 52.203-10 and Section 27 of the OFPP Act as implemented in FAR. Seller further agrees that it shall indemnify and hold harmless Buyer from and against any loss, cost or damage incurred by Buyer under Buyer's contract with its customers as a result of or in connection with Seller's violation of the OFPP Act.

**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.

**41. - 46. RESERVED.**

**47. RELATIONSHIP OF THE PARTIES.**

The relationship of Seller to Buyer shall be that of an independent contractor and nothing herein contained shall be construed as creating any employer/employee, agency, or other relationship of any kind. Seller's employees, agents or representatives (hereinafter "Employees") performing Services under this Order shall at all times be under Seller's direction and control. Seller shall pay all wages, salaries, and other amounts due its Employees in connection with this Order and shall be responsible for all reports and obligations for its Employees,

including, but not limited to, social security and income tax withholdings, unemployment compensation, worker's compensation, and equal employment opportunity reporting.

**48. SELLER'S EMPLOYEES.**

- A. All personnel assigned by Seller to perform the Services to be furnished hereunder shall be capable, skilled, qualified and competent to perform such Services.
- B. Buyer may require Seller to remove from its or customer's premises any employee, agent, or representative of Seller, or any of its subcontractors, Buyer deems incompetent, careless or other-wise objectionable. Seller shall remove such employee, agent or representative from the premises immediately.
- C. At all times Seller shall use suitable safety precautions, including, as a minimum, those safety precautions issued in instructions and directions by Buyer or Buyer's customer. Such safety precautions shall include, but not be limited to, the use of proper materials, tools, equipment and other safeguards, as appropriate.
- D. Seller and Seller's personnel shall also comply with all applicable rules, regulations and orders of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 29 USC 651-678), as amended, and all applicable safety laws, rules, regulations and orders of the United States and the State wherein this Order is being performed. Seller agrees to defend, hold harmless, and indemnify Buyer from and against any noncompliance by Seller with any of the above laws, rules, regulations and orders as may be applicable.
- E. If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, at times to be specified by Buyer, at Seller's expense (unless otherwise herein specified), for attendance at a training session or sessions concerning Buyer's or its customer's standards and procedures relating to on-site rules of behavior, work schedule, security procedures and any other standards and procedures adhered to by Buyer's or customer's employees.

**49. CITIZENSHIP ELIGIBILITY REQUIREMENTS.**

- A. Employees of Seller who perform Services under this Order on site at Northrop Grumman shall be citizens of the United States of America (U.S.), its possessions or territories, or lawful permanent residents as defined by 8 United States Code (U.S.C.) 1101(a)(20), or protected individuals as defined by 8 U.S.C. 1324b(a)(3).
- B. Upon the request of Buyer, Seller shall submit verification of citizenship, lawful permanent resident status, protected individual status, or employment eligibility status to Buyer for each employee who will perform Services under this Order. Examples of documents that may be considered satisfactory are state birth certificates, U.S. passports, U.S. naturalization papers, and "green" cards (I-551) issued by the U.S.

Department of Immigration and Naturalization. Consistent with IRCA, the order of presentment of such documents shall be the sole prerogative of Seller's employees. If these documents are not available, a compilation of other evidence may suffice.

- C. Employees of Seller not listed on the Certification of Employees or providing individual proof of U.S. citizenship, or other status as described in subparagraph B. above, may be denied access to Buyer's premises.

#### **50. BADGES AND PLANT SECURITY.**

If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, at times to be specified by Buyer, so that Buyer may provide said personnel with identification badges, which will permit such personnel to enter and leave the premises where the work is to be performed. Seller further agrees that said badges shall be worn by said personnel, in a conspicuous place upon the person of each of its personnel, when such personnel are in, on, or about the premises. Seller further agrees to abide by and comply with, and require its Employees to abide by and comply with, such rules and regulations pertaining to plant security as may be prescribed by Buyer and/or the Buyer's Customer.

#### **51. - 74. RESERVED.**

#### **75. ALLOWABLE COST, FEE AND PAYMENT.**

- A. For the performance of this Order, Buyer shall pay the following to Seller:
  - 1. The cost thereof determined by Buyer to be allowed in accordance with FAR 52.216-7 and the provisions of this Order (herein referred to as "Allowable Cost"), plus,
  - 2. Such fixed fee, if any, as may be provided in this Order or, if this is a cost-plus-incentive fee (CPIF) contract, a fee as determined in accordance with the provisions of the "Incentive Fee" clause herein. Fees paid to Seller's subcontractors and their lower-tier subcontractors under either CPFF, CPAF or CPIF type subcontracts which are in excess of the percentage authorized under the FAR for that type of contract, shall not be allowable hereunder. Supplemental to the foregoing and except as may be expressly provided to the contrary herein, it is agreed that such items of direct and indirect cost as are concurrently and customarily accepted by the Government as allowable direct and indirect costs under Seller's Government cost type prime and subcontracts, if any, at the plant or plants of Seller engaged in the performance of this Order for Products or Services similar to those called for by this Order, shall be allowable direct and indirect costs under this Order to the extent such costs are properly allocable to the Order.
- B. Seller shall maintain complete and accurate books, records, documents, statement of costs, and other evidence and accounting procedures and practices (hereinafter collectively called the

"Records") sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Order. Seller agrees to make available at the office of Seller at all reasonable times prior to final payment and for a period of one year thereafter any of the Records for inspection, audit or reproduction by any authorized representative of Buyer. Each payment made shall be subject to reduction for amounts included in the related invoice which are found by Buyer upon such audit not to constitute Allowable Cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices.

- C. Once each month Seller may submit to Buyer, in such form and reasonable detail as Buyer may require, an invoice supported by a statement of cost incurred by Seller in the performance of this Order and claimed to constitute Allowable Cost. For this purpose, except as provided herein with respect to pension, deferred profit sharing and employee stock ownership plan contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, interdivisional notices of payments, or other form of actual payment for Products or Services purchased directly for the Order, together with (when Seller is not delinquent in payment of costs of Order performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from Seller's stores inventory and placed in the production process for use on the Order, for direct labor, for direct travel, for other direct in-house costs, and for properly allocated and Allowable indirect Costs, as is shown by Records, plus the amount of progress payments which have been paid to Seller's subcontractors under similar cost standards.

In addition, when the aforementioned contributions are paid by Seller to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefore shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefore may be included in indirect costs for payment purposes provided that they are paid to the fund within thirty (30) days after the close of the period covered. If payments are not made to the fund within such thirty day period, these contributions shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than monthly and the requirement of prior payment for Products or Services purchased directly for the Order shall not apply where Seller is a small business concern.
- D. Promptly after receipt of each invoice and statement of cost, Buyer shall, except as otherwise

provided in this Order and subject to the provision of B. above, make payment thereon as approved by Buyer's purchasing representative. Normally, payment of fee shall be made to the Seller as specified in the Order; provided, however, after payment of eighty-five percent (85%) of the applicable fee as determined by Buyer to be appropriate, Buyer may withhold further payment of the fee until a reserve shall have been set aside in an amount which Buyer considers necessary to protect the interests of Buyer, but such reserve shall not exceed fifteen percent (15%) of the total applicable fee as determined by Buyer or One Hundred Thousand Dollars (\$100,000), whichever is less. If this is a cost-plus-incentive-fee contract (CPIF), and in the opinion of Buyer, Seller's performance or cost indicates that Seller will earn a fee less than the target fee, Buyer shall pay on the basis of such lesser fee as determined by Buyer to be appropriate; further, when Seller demonstrates that its performance and incurred costs clearly indicate that Seller will earn a fee significantly in excess of the target fee, Buyer may, in its sole discretion, pay on the basis of such higher fee as is determined by Buyer to be appropriate.

- E. On receipt and approval by Buyer of the invoice designated by Seller as the "Completion Invoice," and upon compliance by Seller with all the provisions of this Order (including, without limitation, the provisions relating to patents and the provisions of F. below), Buyer shall promptly pay to Seller any balance of Allowable Cost and any part of the fee which has been withheld pursuant to C. above or otherwise not paid to Seller. The Completion Invoice shall be submitted by Seller promptly following completion of the work under this Order but in no event later than six (6) months (or such period as Buyer may, in its discretion, approve in writing) from the date of such completion.
- F. Seller agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by Seller or any assignee under this Order shall be paid by Seller to Buyer, to the extent they are properly allocable to costs for which Seller has been reimbursed by Buyer under this Order. Reasonable expenses incurred by Seller for the purpose of securing such refunds, rebates, credits or other amounts shall be Allowable Costs hereunder when approved by Buyer. Prior to final payment under this Order, Seller and each assignee under this Order whose assignment is in effect at the time of final payment under this Order shall execute and deliver:
1. An assignment to Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which Seller has been reimbursed by Buyer under this Order; and
  2. A release discharging Buyer (and the Government, if a Government Contract

number appears on the face of this Order), its officers, agents and employees from all liabilities, obligations and claims arising out of or under this Order, subject only to the following exceptions:

3. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by Seller; provided such amounts are supportable by Seller's accounting records;
4. Claims, together with reasonable expenses incidental thereto, based upon liabilities of Seller to third parties arising out of performance of this Order; provided that such claims are not known to Seller on the date of the execution of the release, and provided further that Seller gives notice of such claims in writing to Buyer not more than three (3) years after the date of the release or the date of any notice to Seller that Buyer is prepared to make final payment, whichever is earlier; and
5. Claims for reimbursement of costs (other than expenses of Seller by reason of its indemnification of Buyer and the Government against patent liability), including reasonable expenses incidental thereto, incurred by Seller under the provisions of this Order relating to patents.

#### **76. PLACE OF PERFORMANCE.**

- A. Seller shall perform work called for herein at Seller's plants as set forth elsewhere in this Order except for work to be accomplished by subcontractors.
- B. Seller shall promptly notify Buyer of any contemplated change in location for the performance of work from the locations designated above. Prior approval of Buyer shall be obtained by Seller before making any change in location for the performance of work herein if the cost of performing such work is estimated to exceed \$100,000.

#### **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. Seller shall be fully liable for all such costs, even if such cost might be considered indirect, special or consequential damages. Seller's liability for suspect/counterfeit parts shall not expire until intentional ignition of a launch vehicle if found in product for Space application and for 60 months after delivery if product for non-space application (e.g., ground or airborne). 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 or a directive from The Aerospace Corporation 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. INTELLECTUAL PROPERTY RIGHTS**

- A. Seller warrants that the sale, use, or incorporation into manufactured products of all machines, devices, material, software, and firmware which are not of Buyer's design, composition or manufacture shall be free and clear of infringement of any valid United States patent (to the extent the Authorization and Consent clause at FAR 52.227-1 is not included in this Order), copyright, trade mark, mask works, or other proprietary rights. Seller shall hold Buyer, its customers and lessees harmless from any and all expenses, liability, and loss of any kind, including but not limited to attorney's fees, all costs, expenses, and fees growing out of claims, suits, or actions alleging such infringements, which claims, suits, or actions Seller agrees to defend.
- B. Seller as part consideration for this Order and without further cost to Buyer hereby grants and agrees to grant to Buyer an irrevocable non-exclusive, royalty-free right and 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 goods purchased by Buyer under this Order.
- C. If this Order is not placed under a U.S. Government contract or subcontract, Buyer shall have full ownership and rights, including patent rights, to all inventions, data, designs, computer software and information ("Inventions") conceived, made or developed under this Order. Seller shall disclose to Buyer in writing any such Inventions and cooperate, at Buyer's expense, in obtaining patent or other intellectual property

protection on such Inventions. Seller further agrees to execute assignments to Buyer of any associated patents or patent applications. With respect to copyrightable works developed under this Order, Buyer and Seller agree that any such works which qualify as commissioned works under the Copyright Act are considered “works made for hire” with copyright ownership in Buyer; otherwise, Seller agrees to assign copyright ownership of the works to Buyer. Except as provided by Law or as otherwise authorized in writing by Buyer, Seller shall not disclose to anyone other than Buyer any Inventions or other data developed under this Order or any data disclosed to Seller by Buyer and shall not use such Inventions or data for any purpose other than the performance of 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 such Inventions or data.

**96. - 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.
- C. FAR and DFARS clauses:

Clause	FAR Reference
Gratuities	52.203-3

Clause	FAR Reference
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.”	
Restrictions on Subcontractor Sales to the Government	52.203-6
NOTE: Applicable to any Order greater than \$100,000.	
Anti-Kickback Procedures	52.203-7
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.	
Limitation on Payments to Influence Certain Federal Transactions	52.203-12
NOTE: Applicable to any Order greater than \$100,000.	
Contractor Code of Business Ethics and Conduct	52.203-13
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.	
Display of DoD Hotline Poster	52.203-14
NOTE: Applicable to any Order greater than \$5,000,000 and period of performance greater than 120 days (commercial items exempt).	
Security Requirements	52.204-2
NOTE: Delete paragraph (c.)	
NOTE: Applicable if the Order involves access to classified information.	
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	52.215-2
NOTE: Applicable to any Order greater than \$100,000.	
Price Reduction for Defective Cost or Pricing Data	52.215-10
NOTE: Applicable to any Order when cost or pricing data are required.	
Price Reduction for Defective Cost or Pricing Data – Modifications	52.215-11

Clause	FAR Reference
NOTE: Applicable if FAR 52.215-10 is not applicable to this Order.	
Subcontractor Cost or Pricing Data	52.215-12
NOTE: Applicable to any Order when cost or pricing data are required.	
Subcontractor Cost or Pricing Data – Modifications	52.215-13
NOTE: Applicable if FAR 52.215-12 is not applicable to this Order.	
Integrity of Unit Prices	52.215-14
NOTE: Delete paragraph (b)	
NOTE: Applicable to any Order greater than \$100,000.	
Pension Adjustments and Asset Reversions	52.215-15
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.	
Facilities Capital Cost of Money	52.215-16
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.	
Waiver of Facilities Capital Cost of Money	52.215-17
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.	
Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	52.215-18
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.	
Notification of Ownership Changes	52.215-19
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.	
Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications	52.215-21
Incentive Fee	52.216-10
NOTE: Applicable to any cost-plus-incentive-fee (CPIF) Order	
Utilization of Small Business Concerns	52.219-8
Small Business Subcontracting Plan	52.219-9
NOTE: Applicable to any Order greater than \$550,000.	
Notice to the Government of Labor Disputes	52.222-1
Payment for Overtime Premiums	52.222-2

Clause	FAR Reference
Contract Work Hours and Safety Standards Act – Overtime Compensation	52.222-4
NOTE: Applicable to all subcontracts at any tier	
Walsh-Healey Public Contracts Act	52.222-20
NOTE: Applicable to any Order greater than \$10,000.	
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	52.222-35
NOTE: Applicable to any Order of \$100,000 or more.	
Affirmative Action for Workers With Disabilities	52.222-36
NOTE: Applicable to any Order greater than \$10,000.	
Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-37
NOTE: Applicable to any Order of \$100,000 or more.	
Notification of Employee Rights Concerning Payment of Union Dues or Fees	52.222-39
Combating Trafficking in Persons	52.222-50
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
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	52.227-1
NOTE: Applicable only if contained in the controlling prime contract and to any Order greater than \$100,000.	
Notice and Assistance Regarding Patent and Copyright Infringement	52.227-2
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, unless supplies are ultimately to be shipped into one of those areas.	
Refund of Royalties	52.227-9

Clause	FAR Reference
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	52.228-5
NOTE: Applicable on any Order that requires work on a Government installation.	
Interest	52.232-17
Limitation of Cost	52.232-20
Limitation of Funds	52.232-22
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
Bankruptcy	52.242-13
Stop-Work Order	52.242-15
NOTE: The 90 day period in the first and fourth sentences of paragraph (a) is changed to 120 days.	
Competition In Subcontracting	52.244-5
Subcontracts for Commercial Items	52.244-6
Government Property and Alternate I	52.245-1
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."	
Inspection of Services – Cost Reimbursement	52.246-5
Preference for U.S. Flag Air Carriers	52.247-63
NOTE: Applicable to any Order and lower-tier subcontracts that involve international air transportation.	
Preference for Privately Owned U.S.-Flag Commercial Vessels	52.247-64
Value Engineering	52.248-1
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".	

Clause	DFARS Reference
Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies	252.203-7001
NOTE: Applicable to any Order greater than \$100,000.	
Requirements for Contracts Involving Export-Controlled Items	252.204-7008
Intent to Furnish Precious Metals as Government-Furnished Material	252.208-7000
NOTE: Applicable to any Order and all lower-tier subcontracts unless it is known that the item being purchased contains no precious metals.	
Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.	252.209-7004
Acquisition Streamlining	252.211-7000
NOTE: Applicable to any Order of \$1,000,000 or more.	
Pricing Adjustments	252.215-7000
NOTE: Applicable when it is contemplated that Cost or Pricing Data will be required.	
Excessive Pass-Through Charges	252.215-7004
Small Business Subcontracting Plan (DoD Contracts)	252.219-7003
NOTE: Applicable to any Order anticipated to be valued at \$550,000 or more.	
Additional Requirements and Responsibilities Restricting the Use of Mandatory Arbitration Agreements (DEVIATION No. 2010-O0004)	252.222-7999
NOTE: Applicable to Orders exceeding \$1 million using funds appropriated by the Fiscal Year 2010 Defense Appropriations Act, except for commercial items and commercially available off-the-shelf items.	
Hazard Warning Labels	252.223-7001
NOTE: Applicable to any Order which requires delivery of hazardous materials.	
Safety Precautions for Ammunition and Explosives	252.223-7002
NOTE: Applicable to any Order involving articles furnished containing ammunition or explosives.	
Change in Place of Performance – Ammunition and Explosives	252.223-7003
NOTE: Applicable if DFARS 252.223-7002 applies to the Order.	
Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives	252.223-7007
NOTE: Applicable to any Order and all lower-tier subcontracts involving arms, ammunition and explosives.	
Buy American Act and Balance of Payments Program	252.225-7001
Qualifying Country Sources As Subcontractors	252.225-7002

Clause	DFARS Reference
Quarterly Reporting of Actual Contract Performance Outside the United States NOTE: Applicable to any Order greater than \$550,000	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, 2008.	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
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 NOTE: Applicable to any Order greater than \$100,000.	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 Carbon 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

Clause	DFARS Reference
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
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



Clause	DFARS Reference
Notification of Potential Safety Issues	252.246-7003
<p>Transportation of Supplies by Sea</p> <p>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.</p> <p>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.</p> <p>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.</p>	252.247-7023
Notification of Transportation of Supplies by Sea	252.247-7024
<p>Notification of Anticipated Contract Termination or Reduction</p> <p>NOTE: Applicable to all Orders of \$550,000 or more when Seller is first-tier subcontractor or \$100,000 or more when Seller is lower-tier subcontractor.</p>	252.249-7002