

APPENDIX A - PURCHASE ORDER TERMS AND CONDITIONS FOR GENERAL AND RAW MATERIAL (E-2353LCS, 7/2009)

1. ASSIGNMENT

- 1.1 This Purchase Order (P.O.), nor any interest herein, may not be assigned in whole or in part by the Seller without the prior written consent of Buyer. Any assignment or attempted assignment by the Seller without said prior written consent shall be null and void; provided, however, Seller may assign its rights to be paid amounts due as a result of performance of this P.O. to a bank, trust company, or other financing institution.
- 1.2 Nothing contained in this Clause shall prohibit any party to this P.O. from assigning any or all of its respective rights, title and interest in and to this P.O. to the assigning party's successor-in-interest by way of corporate merger, consolidation or acquisition, or assignment by operation of law. Such successor expressly assumes, agrees to be bound by, and undertakes to perform each and every one of the provisions of this P.O., and further assumes all obligations and liabilities hereunder of the original party to this P.O.

2. CHANGES

- 2.1 Buyer may make changes within the general scope of this P.O. in any one or more of the following (at any time by written order):
 - (A) drawings, design or Specifications where the Supplies to be furnished are to be specifically manufactured for Buyer in accordance with the drawings, designs or Specifications;
 - (B) method of shipment or packaging;
 - (C) place or time of Delivery of the Supplies to be furnished under the P.O.;
 - (D) description of Supplies to be provided;
 - (E) time of performance (i.e., hours of the day, days of the week, etc.);
 - (F) place of performance or description of the Services;
- 2.2 If any such change causes an increase or decrease in the cost of performance, or the time required for performance of the work under this P.O., an equitable adjustment shall be made in the P.O. price or Delivery schedule, or both, and this P.O. shall be modified in writing accordingly. The Seller must submit any proposal for adjustment to the P.O. price or Delivery schedule or both as provided under this Clause within forty-five (45) days from the date of receipt by Seller of the change from Buyer.
- 2.3 Where the cost of property made obsolete or excess as a result of the change is included in the settlement of Seller's proposal for adjustment, Buyer shall have the right to prescribe the manner of disposal of such property.
- 2.4 Buyer's engineering and technical representatives may from time to time render assistance to Seller concerning the Supplies or Services to be furnished pursuant to this P.O. Such representatives are not authorized to initiate a change as herein provided. No change will be binding unless issued in writing by Buyer's authorized purchasing representative and received by Seller.
- 2.5 Upon Seller's receipt of the written change order, nothing contained in this Clause shall relieve Seller from proceeding without delay in the performance of this P.O. as changed.

3. COMPLIANCE WITH LAWS

Seller shall comply with all applicable Federal, State and local laws, and regulations in executing and performing this P.O. Seller covenants to hold Buyer and its assignees harmless from, any and all costs, damages and expenses (including reasonable attorney's fees) incurred by Buyer and its assignees arising out of or as a result of any failure of Seller to comply with any such laws and regulations.

4. CONFIDENTIALITY

- 4.1 The Seller and Buyer recognize that information disclosed to and/or acquired by each other hereunder may be confidential and/or proprietary to the disclosing party, the disclosure of which to third parties could result in irreparable harm to the party furnishing such information. The parties agree that each party has the right to seek and obtain temporary, preliminary and permanent injunctive relief to restrain any unauthorized use or disclosure of its proprietary information in addition to all other remedies available to that party at law or in equity.
- 4.2 All information of a proprietary nature disclosed by one party to the other party hereto in connection with this P.O. and designated by the disclosing party by an appropriate stamp, marking, or legend as being proprietary to the disclosing party, shall be held in strict confidence by the receiving party and shall not be duplicated, used or disclosed in whole or in part for any purpose except by the Seller under equivalent conditions of confidentiality, and to the extent strictly necessary to obtain Supplies or Services in the normal course of trade for the performance of this P.O., and to comply with other terms of this P.O., and except by Buyer to the extent strictly necessary for its intended use as required by the Government under the Prime Contract. Buyer may disclose such information subject to equivalent conditions of confidentiality to their suppliers or prospective suppliers to the extent necessary for defining interface characteristics of Supplies to be delivered hereunder provided that they make such disclosure and restrictions on use as contained in this Clause.
- 4.3 The information to be held in confidence as provided in Paragraphs 4.1 and 4.2 hereof shall not include:

- (A) any information that is in the public domain at the time of disclosure to the receiving party or thereafter comes into the public domain other than by breach by the receiving party of this P.O.; or
- (B) any information in the possession of the receiving party prior to its receipt from the disclosing party (except through prior disclosures in confidence), or which is independently developed by the receiving party without resort to the disclosed proprietary information; or
- (C) any information which the receiving party rightfully obtains from a third party without restriction; or
- (D) any information for which the disclosing party by written agreement authorizes restricted use or disclosure.

If any portion of the party's information falls within any one of the above exceptions, the remainder shall continue to be subject to the restrictions of this Clause.

4.4 To the extent reasonably necessary for the purpose of this P.O. or the Prime Contract, a party may disclose the information of the other party to the Government, provided that the disclosing party makes such disclosure subject to like conditions of confidentiality and to the restrictions set forth in Sections (b)(2) of DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS or such later version as the parties may agree, as appropriate, and marks the information so disclosed with the appropriate restrictive legends as provided in the said DFARS clauses and such other marking of an industrial property right nature as the party owning the information may require, provided that such marking is not disallowed under the provisions of the Prime Contract. Buyer may furnish to the U.S. Government form, fit and function data, manuals and instructional materials as those expressions are defined in said DFARS clause with Unlimited Rights subject to the conditions pursuant to subdivisions (b)(1) of said DFARS clause to the extent required under the Prime Contract.

4.5 Either party disclosing or reproducing the other party's information hereunder shall replicate in any reproductions made any copyright and other intellectual or industrial property right markings and legends as appear on and/or in such information. Notwithstanding anything to the contrary in the foregoing sentence, in the case of a composite work created by Buyer containing any of the said information the copyright for which vests in the Seller, the Seller hereby agrees to waive the said replication requirement if such composite work is marked with the legend:

"This is an unpublished work, the copyright for which rests in Bath Iron Works, Bath, Maine. All rights reserved."

4.6 Nothing contained herein shall be construed to prevent either party from complying with the requirement of a court or other regulatory body acting within its jurisdiction to compel disclosure, provided that in the event that either party receives a demand or any other form of compulsory process from any such court or other regulatory body requiring the disclosure of the other party's information, it shall promptly so advise the other party and cooperate to limit the disclosure to the minimum necessary to comply with the requirements of such demand or process as required by law.

5. **DEFAULT**

5.1 Buyer may, by written notice, terminate this P.O. in whole or in part, if the Seller:

- (A) fails to deliver the Supplies or to perform the Services within the time specified in the P.O. or any extension thereof; or
- (B) fails to make progress so as to endanger performance of this P.O.; or
- (C) fails to perform any of the other provisions of this P.O.

Buyer's right to terminate this P.O. under Subparagraphs (B) and (C) above may be exercised if the Seller does not cure such failure within ten (10) days after receipt of "Cure Notice" from Buyer specifying the failure.

5.2 If Buyer terminates this P.O. in whole or in part by reason of Seller's default, Buyer may acquire (reprocure) under the terms and conditions and in the manner Buyer considers reasonable and appropriate such similar Supplies or Services as those terminated. The Seller shall be liable to Buyer for any excess costs for Supplies or Services so acquired, it being understood that the Seller shall continue to work on that portion of the work not terminated. With regard to the Seller's liability for excess costs:

- (A) Except for defaults by Seller's subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform under the P.O. arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include acts or omissions on the part of Buyer; acts of God; civil strife; labor strikes; actions of the Government or any sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; freight embargoes.
- (B) If the delay or failure is caused by the delay or failure of a subcontractor of the Seller, and if such delay or failure arises out of causes beyond the reasonable control of both the Seller and the subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for excess costs, unless the subcontracted Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Seller to meet the required Delivery schedule.

5.3 If the P.O. is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer or to the Government, any (i) completed Supplies and (ii) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this Clause), that the Seller has specifically produced or acquired for the terminated portion of the P.O. Seller shall also protect and preserve property in its possession in which Buyer has an interest.

- 5.4 Buyer shall pay the P.O. price for completed Supplies and Services previously delivered and accepted. The parties shall agree on the amount of payment for manufacturing material delivered and accepted, and for the production and preservation of the property. Failure to agree shall be deemed a dispute under the "Disputes" Clause of this P.O. The Seller may not withhold Supplies, or partially completed Supplies, materials, parts, tools, dies, jigs, fixtures, etc. pending a resolution of any such dispute.
- 5.5 If, after termination for a Seller's default, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been for the convenience of Buyer under the Clause of this P.O. entitled "Termination for Convenience."
- 5.6 The rights and remedies of Buyer in this Clause are in addition to any other rights and remedies provided at law or under this P.O.

6. DEFINITIONS

- 6.1 The following words and expressions shall have the meaning hereby assigned to them for the purposes of this P.O. except where otherwise specifically stated or the context so requires:
- (A) "Buyer" shall mean Bath Iron Works having its principle place of business in Bath, Maine.
- (B) "Contractor" means Buyer in its capacity as the legal entity which contracts with the Seller by this P.O. But see Subparagraph (R) below.
- (C) "Contracting Officer" means the Government Contracting Officer(s) for the Prime Contract. But see Subparagraph (R) below.
- (D) "Days" means calendar days unless otherwise stated.
- (E) "Delivery" or "Delivered" means the receipt at the F.O.B. Point of all Supplies ordered under the P.O., including all submittals, certifications, documentation, and any other Supplies to be furnished under the terms of the P.O.
- (F) "Purchasing Representative" refers to Buyer's authorized representative.
- (G) "FAR" means the Federal Acquisition Regulation. "DFARS" means the Department of Defense FAR Supplement. "NAPS" means Navy Acquisition Regulation Procedure Supplement.
- (H) "F.O.B." means F.O.B. Destination, unless otherwise stated.
- (I) "Government" refers to the Government of the United States.
- (J) "Latent Defect" means a defect which is hidden from the knowledge as well as from the sight of the inspector and which could not be discovered by ordinary and reasonable care or by the inspection under the test procedures of this P.O. (Reference Geranco Mfg. Corp., ASBCA No. 12376, March 4, 1968, 68-1 BCA 6898 at P. 31,861).
- (K) "Material Ordering Catalog" or "Specifications" means Buyer's statement of Specifications for the Supply(s) or Service(s) being acquired.
- (L) "Purchase Order", "P.O.", or "Subcontract" refers to this instrument and includes changes and/or modifications hereto.
- (M) "P.O. Price" means the total sum of the Supplies' or Services' prices which individually may be called unit price(s).
- (N) "Seller", "Subcontractor", or "Supplier" means the legal entity who sells or contracts to sell Supplies or Services to Buyer by this P.O.
- (O) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
- (P) "Supplies" means all or any part of the Supplies, articles, goods, or products contracted for by Buyer through this P.O.
- (Q) "Suppliers' Prices" means the F.O.B. prices for the Supplies.
- (R) In the FAR, DFARS and NAPS clauses incorporated herein, the cited terms shall have the following meanings: The term "Contractor" shall be deemed to refer to the Seller; the term "Subcontractor" shall be deemed to refer to the Seller's subcontractors; the term "Contracting Officer" shall be deemed to refer to Buyer; and the term "Contract" refers to this P.O., except where the context of such clauses demand otherwise. Unless otherwise stated the FAR, DFARS and NAPS clauses incorporated herein shall be those in effect on the issuance date of this P.O., and they shall be interpreted in accordance with the definitions set forth at FAR 2.1 and DFARS 202.1.
- 6.2 Clause headings are for purposes of reference only and shall in no way affect the interpretation of any of the terms of this P.O.

7. DELIVERY DATE AND EXCUSABLE DELAY

- 7.1 The Delivery Date(s) shall mean the date(s) as set out in the P.O., or any modification thereto for the Delivery of the Supplies or performance of the Services specified in the P.O.
- 7.2 Notwithstanding any other provision in this P.O. to the contrary, the Seller shall not be liable for failure to perform any of its obligations under this P.O. arising out of causes beyond its reasonable control and without Seller's fault or negligence, including, but not limited to, acts or omissions on the part of Buyer; acts of God; civil strife; labor strikes; actions on the part of the Government or any sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; or freight embargoes.
- 7.3 If the delay or failure is caused by the delay or failure of a subcontractor of the Seller and if such delay arises out of causes beyond the reasonable control of both the Seller and the Seller's subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for damages occasioned by delays in Delivery unless the Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other known sources in sufficient time to permit the Seller to meet the required Delivery schedule.
- 7.4 In the event of an excusable delay under this Clause the time of performance shall be extended by such period as may be deemed reasonable by Buyer.
- 7.5 If and whenever it becomes apparent that progress in the furnishing of Supplies and Services is being or is likely to be delayed (whether or not such delay is excusable), the Seller shall within ten (10) working days of becoming aware of such delay give written notice to Buyer of the material circumstances including the cause or causes of the delay and shall give particulars of the expected effects thereof and estimate the extent of the expected delay in Delivery of the Supplies and Services beyond the Delivery date or dates set out in the P.O. Seller shall give such further notices to Buyer as may be necessary or as Buyer may reasonably require to maintain awareness on the status of the delay in order to mitigate impact of the delay to Buyer's operations.

8. DISPUTES

- 8.1 It is the intent of the parties to settle amicably all disputes by conference and negotiations. In the event that the parties are unable to agree on any dispute, claim, disagreement or difference of opinion arising under or related to this P.O., the matter shall be disposed of as set forth in this Clause.
- 8.2 For the purposes of this Clause:
- (A) "Claim" shall mean a written demand or assertion seeking the payment of money, adjustment, or interpretation of contract terms, specifically arising under or related to this P.O.; provided, however, a written demand by Seller seeking payment of money which exceeds \$100,000 shall not be considered a claim until certified in accordance with this Clause, it being understood that a routine voucher, invoice or other request for payment shall not be construed as a claim for the purposes of this Clause;
 - (B) Any and all claims must be asserted by the Seller in writing to Buyer;
 - (C) Seller shall submit to Buyer a certification signed by a person duly authorized to bind the Seller with respect to the claim that such claim is made in good faith, that the supporting data are accurate and complete to the best knowledge and belief of the Seller, and that the amount requested accurately reflects the P.O. adjustment for which the Seller believes Buyer is liable.
 - (D) The term "supporting data" refers to both entitlement data and quantifiable data that the Seller perceives as supporting the validity of its claim, and includes but is not limited to, invoices and vouchers, formula to quantify damages, overhead rates and G&A rates and supporting calculations, cost performance reports, analysis on the impact of changes and defects in technical data, and like studies. The Seller shall submit sufficient supporting data with its claim to enable Buyer to make a meaningful evaluation of the claim.
- 8.3 If the Government Contracting Officer makes a written decision ("Final Decision") on a question of fact under the Prime Contract and such question of fact, in turn, relates to or affects this P.O., such Final Decision if binding upon Buyer to the extent that it affects this P.O., shall in turn be binding upon the Seller unless and to the extent that the Seller appeals the Final Decision and/or any decision of a judicial or administrative tribunal as provided in Paragraph 8.4 below.
- 8.4 Buyer shall notify Seller of the Final Decision within fourteen (14) days after Buyer's receipt of said Decision. If Buyer elects not to appeal the Final Decision nor bring a civil action in a court of competent jurisdiction pursuant to the "Disputes" Clause of the Prime Contract, Buyer shall send written notification to Seller of its election not to challenge the Final Decision within sixty (60) days of Buyer's receipt of the Final Decision. If Seller thereafter requests Buyer within twenty (20) days of receipt of such notification from Buyer to appeal the Final Decision in the forum provided for in the "Disputes" Clause of the Prime Contract, Buyer shall do so or if Seller thereafter requests Buyer, within eleven (11) months of receipt of such notification from Buyer, to bring a civil action against the Government as provided for in the "Disputes" Clause of the Prime Contract, Buyer shall do so. Any decision upon such an appeal or civil action shall be binding upon Buyer and Seller; PROVIDED that:
- (A) If any such appeal or civil action is taken by Buyer, Seller shall assist Buyer in the prosecution thereof in a reasonable manner;
 - (B) Seller shall be afforded reasonable opportunity to participate in the prosecution thereof;

- (C) Buyer agrees that it will not enter into a Settlement Agreement to the extent it affects Seller's interest without Seller's written consent;
 - (D) Seller shall be permitted to prosecute in the name of Buyer, and in such event, Buyer shall assist Seller in the prosecution thereof in a reasonable manner, including certification by a senior company official of Seller's claim if and as necessary for jurisdiction under the Contract Disputes Act, provided that Buyer is reasonably satisfied that the Seller's claim is made in good faith, that the supporting data are accurate and complete to the best of Buyer's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which Buyer believes the Government is liable.
 - (E) All costs and expenses, including attorneys' fees, incurred by Seller and Buyer in prosecuting any appeal or civil action taken solely for or brought by Seller hereunder shall be paid by Seller.
- 8.5 Any claim, dispute, disagreement or difference of opinion arising under or relating to this P.O. which is not settled by agreement between Buyer and the Seller, and which does not result in a Final Decision by the Government Contracting Officer under the Prime Contract as described above, may be litigated before any court in the State of Maine having competent jurisdiction.
- 8.6 Pending resolution of any claim, dispute, disagreement or difference of opinion arising under or relating to this P.O. by way of decision, appeal, judgment, settlement or otherwise, Seller shall proceed diligently with the performance of this P.O. in accordance with the decision of Buyer.
- 8.7 Seller shall indemnify and hold harmless Buyer against any liability incurred as a result of acting at Seller's request, or for any misrepresentation of fact, fraud, or breach of Seller's claim certification.
- 8.8 Interest on any amount found to be due and owing in connection with a claim shall be paid from the date on which the claim is received by the party ultimately liable for payment thereof, or from the date on which payment otherwise would be due, if such date is later, until the date on which payment of such a claim is made by such party at a rate or rates fixed by the Secretary of the Treasury of the United States pursuant to the Renegotiation Act, Public Law 92-41 or applicable successor legislation.

9. EXAMINATION OF RECORDS

- 9.1 Seller agrees that the Buyer, the Contracting Officer, or other duly authorized Government Employee shall, until the expiration of three (3) years after final payment under this P.O., have access to and the right to examine any directly pertinent books, documents, papers, and records involving transactions pertaining to this P.O.
- 9.2 The period of access to and right of examination of records which relate to (i) Buyer's appeals under the "Disputes" Clause of the Prime Contract, (ii) litigation or settlement of claims arising out of the Prime Contract or (iii) cost and expenses of the Prime Contract or this P.O. shall continue until such appeals, litigation, or claims have been disposed of.

10. GOVERNING LAW

The parties agree that irrespective of the place of performance of this P.O., the P.O shall be construed and interpreted according to Federal Common Law and Federal Contract Law as enunciated and applied by the Federal courts, boards of contract appeals and other administrative and quasi-judicial bodies of the Federal Government. To the extent the Federal Common Law and Federal Contract Law is not determinative, the laws (both substantive and procedural) of the State of Maine in effect at the time of the execution of this P.O. shall apply as the same would be applied to transactions between residents of the State of Maine to be fully performed within the State of Maine and without regard to the State's conflict of laws principles. Any action by either party against the other shall be brought before any court in the State of Maine having competent jurisdiction.

11. INSPECTION

For the purposes of this Clause the term "Supplies and Services" includes without limitation raw materials, components, intermediate assemblies, and end products.

11.1 Inspection Authority

- (A) Buyer may designate an individual as the Quality Assurance Representative (QAR) to whom all matters concerning Buyer's quality requirements on each P.O. shall be referred by the Seller. The designated QAR and his QAR staff shall possess the necessary Governmental and Company security clearances to be admitted to Seller's facilities and to inspect and test Supplies and Services and review related quality assurance documentation.
- (B) If required, deliverable Supplies will be tested and approved for shipment at the location specified in the P.O.

11.2 Notice of Testing

Seller shall inform the QAR by written notice (e.g., telex, telefax, etc.) the date of any hardware testing authorized in this Clause. Such notice shall be provided at least twenty-one (21) days prior to the actual test date.

11.3 Inspection

- (A) All Supplies and Services shall be subject to inspection and test by the QAR (and/or the Government) at all reasonable times and places including the period of manufacture or performance, and in any event prior to acceptance.
- (B) In case any Supplies and Services, or lots of Supplies or Services, are defective in material or workmanship or otherwise not in conformity with the requirements of this P.O., the QAR shall have the right to reject them and to require their correction, or, in the case of Services, their reperformance.
- (C) All inspections and tests by Buyer at Seller's facilities shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to the Seller any additional cost to Buyer for inspection and testing when Supplies and Services are not ready at the time stipulated for such inspection or test by Seller's aforementioned notice or if reinspection or test is necessitated by prior rejection.
- (D) Final acceptance or rejection of the Supplies or Services shall be made as promptly as practicable, but no later than sixty (60) days after Delivery of the Supplies or Services to the F.O.B. Destination point; or performance and inspection of the Services as applicable. Failure by Buyer to inspect and accept or reject Supplies or Services shall not relieve the Seller of responsibility for supply of such Supplies or Services in strict accordance with the P.O. requirements.
- (E) The inspection or test by Buyer of any Supplies and Services or lots thereof does not relieve the Seller from any responsibility regarding defects or other failures to meet the requirements of this P.O. which may be discovered prior to final acceptance. Except as otherwise provided in this P.O., final acceptance shall be conclusive except in regard to Latent Defects, fraud, or such gross mistakes as amount to fraud or negligence.
- (F) The Seller shall provide and maintain an inspection system in accordance with the Specifications covering the Supplies and Services hereunder. Records of all inspection work by the Seller shall be kept complete and available to the designated QAR during the performance of this P.O. and for such longer period as may be specified elsewhere in this P.O.
- (G) Notwithstanding the requirements for any inspection and test contained in Specifications applicable to this P.O., except where inspections or tests are specified for performance solely by Buyer, the Seller shall perform or have performed the inspection and test required to substantiate that the Supplies and Services provided under this P.O. conform to the drawings, Specifications and P.O. requirements listed herein.

12. **INTELLECTUAL PROPERTY RIGHTS**

12.1 Copyright

All Specifications, drawings and technical descriptions and other Data ("Data") acquired from the Seller in connection with this P.O. are the copyright of the Seller, except where expressly stated otherwise on such Data, and shall be treated as unpublished works.

12.2 Use

Nothing contained in this P.O. shall be construed as having granted to, or conferred upon, Buyer any express or implied rights, by license, estoppel or otherwise, to any Data or information or to any invention or discovery or patent which is made or acquired prior to or after the date of this P.O. based on information disclosed under this P.O.

12.3 Registration

The recipient of information acquired hereunder shall not, without the disclosing party's prior written consent, apply for any patent or design registration in respect to information furnished by the disclosing party or any invention or design contained therein or based thereon, or submit or apply to the U.S. Copyright Office or any other national copyright office for copyright registration on any proprietary information furnished by the disclosing party.

12.4 Notice and Assistance Regarding Patent and Copyright Infringement

The Clause NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT, FAR 52.227-2 is incorporated herein by reference and forms a part of this P.O.

12.5 Patent Indemnity

The Seller shall indemnify Buyer against any and all claims (including the costs thereof) by owners or licensees of patents and registered designs of the United States granted at the date hereof for infringement thereof by use of sale of the supplies or services, PROVIDED:

- (A) this Indemnity shall not extend to infringements resulting from use by the Seller of Buyer's parts, designs or specific instructions or from use or sale in combination with other items where infringements would not have otherwise occurred;
- (B) Buyer shall immediately inform the Seller of claims, shall make no settlement or admission and shall permit the Seller alone (and at the Seller's expense) to deal with claims;
- (C) the Seller's liability under this condition is limited to the amount of royalties or payments in lieu thereof ordered by a court of competent jurisdiction or agreed to by Seller with the owner of such rights be paid to the owner and/or licensee of the patent or design in settlement of any alleged or actual infringement.

13. INVOICES AND PAYMENTS

13.1 Invoices

- (A) An invoice is a written request for payment under this P.O. for Supplies or Services provided by the Seller. In order to be valid, an invoice must include the following (as applicable):
 - (1) invoice date and Seller's invoice number;
 - (2) name of Seller;
 - (3) the P.O. number, line item number, description of Supplies and Services, quantity, unit of measure, unit price, and extended total;
 - (4) shipment number, date of shipment and shipping point;
 - (5) name and address to which payment is to be sent in accordance with the terms specified in this P.O.;
 - (6) name, title, phone number and address of person to be notified in the event of a defective invoice;
 - (7) any other information or documentation required by other provisions of the P.O.;
 - (8) any prompt payment discounts available; and
 - (9) the invoice amounts for individual Supplies shall be shown separately on any invoice.
- (B) Invoices shall be prepared and submitted in triplicate unless otherwise specified, and sent to the Invoice Audit Section of Buyer. Invoices may not be submitted by facsimile transmission.
- (C) Buyer shall promptly notify the Seller of any discrepancy or alleged discrepancy in the Seller's invoice, with full details thereof and in any event within five (5) working days of receipt of such invoice.

13.2 Payments

- (A) Buyer shall pay the Seller, upon the submission of valid invoices, the prices stipulated in this P.O. as may be adjusted.
- (B) Seller's valid invoices are payable by Buyer no later than thirty (30) days after receipt thereof. The invoice will be deemed to have been received five (5) days after the invoice date.
- (C) Payment shall be considered to have been made on the date which appears on the payment check.
- (D) Payment shall not be considered as an indication of the acceptability of the Supplies or Services for which payment is made.

14. LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE

- 14.1 When Seller is performing any of its obligations on Buyer's premises or on a vessel in which the Seller's Supplies and Services are being used, Seller shall purchase and maintain such insurance as will protect Buyer from claims which may arise out of or as a result from Seller's operations under this P.O., whether such operations be by Seller or by any of Seller's subcontractors or by anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable. Said coverage shall include, but not be limited to any insurance required by State, Federal, and local laws, and contractual coverage and completed operations coverage and: (i) Statutory Workers' Compensation as may be required by the locality where the work is being performed, including Longshoremen's and Harbor Worker's Compensation Act; (ii) Employers' Liability - \$1,000,000 per occurrence; (iii) Commercial General Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Personal & Bodily Injury and Property Damage combined single limit per occurrence; and (iv) Automobile Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Bodily Injury and Property Damage combined single limit per occurrence.
- 14.2 As respects policies under (i) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide 30 days advanced written notice of any coverage suspension or material changes, must be written by carriers with A.M. Bests rating of "A-, VII", and licensed to do business in the state where services are to be performed, and shall be primary as respects any coverage which Buyer may carry.

15. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING FROM ANY PROVISION OF THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, INCOME OR PROFITS, OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOSS OF DATA OR SYSTEM USE.

16. MARKING. PACKING. AND PACKAGING

- 16.1 All packing and packaging shall be in accordance with the Specifications. Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping

- (3) Notification is also required within 30 days of the following events if the Supplier; (1) changes a mixture or trade name product by adding, removing, or changing the percentage by weight of a listed toxic chemical; or (2) discovers that previous notification did not properly identify the toxic chemicals in the mixture or correctly indicate the percentage by weight.
- (4) The reports shall be forwarded to:

Attn: Safety Department, Mail Stop 2240
Bath Iron Works Corporation
700 Washington Street
Bath, ME 04530
or
Facsimile 207-442-3356
Attn: Safety Department

- (5) The shipment of all material or equipment to Buyer or another Buyer designated destination must comply with the Hazardous Materials Transportation Act (Title CFR 49 Parts 170-178).

17. **NOTICES**

Whenever any notice is required or authorized to be given hereunder, such notice shall be sent by registered mail, confirmed receipt of a facsimile transmission, or telegraph to the respective individuals identified in the P.O.

18. **NOTIFICATION OF CHANGES**

- 18.1 The purpose of this Clause is to provide Buyer with the early and prompt reporting of any conduct which the Seller considers would constitute or would require a change to this P.O. and/or Buyer's Prime Contract. The parties acknowledge potential changes are to be identified and resolved as they arise. Therefore, except for written change orders issued by Buyer, the Seller shall notify Buyer of any conduct which the Seller considers would constitute or would require a change to this P.O. and/or to Buyer's Prime Contract. Such notice shall be provided promptly, and in any event within twenty (20) calendar days from the date the Seller identifies any such conduct. As used in this Clause, the term "conduct" includes both actions and failures to act, and includes the furnishing of, or the failure to furnish, any item under any provision of this P.O. The notice shall be written and shall state, on the basis of the most accurate information available to the Contractor:
 - (A) the date, nature and circumstances of the conduct regarded as a change;
 - (B) the name, function and activity of the individuals directly involved in or knowledgeable about such conduct;
 - (C) the identification of any documents and the substance of any oral communication involved in such conduct;
 - (D) the particular elements of contract performance for which the Seller might seek an equitable adjustment under this Clause, including:
 - (1) what Supplies and Services have been or might be affected by the potential change;
 - (2) to the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
 - (3) to the extent practicable, the Seller's preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
 - (4) what and in what manner are the particular technical requirements or contract requirements regarded as changed.
- 18.2 **Continued Performance** - Except as provided in Paragraph 18.5 below, following submission of notice the Seller shall take no action to implement a potential change until advised by Buyer in writing as provided in Paragraph 18.3 below, unless the potential change was previously directed by Buyer, in which case the Seller shall conform therewith. Nothing in this Paragraph shall excuse the Seller from proceeding with contract work other than implementation of the potential change or from proceeding in accordance with directions issued by Buyer.
- 18.3 **BIW Response** - Buyer shall promptly, and in any event within twenty-one (21) calendar days after receipt of notice, respond thereto in writing. In such response, Buyer shall either:
 - (A) confirm that the conduct of which the Seller gave notice would constitute a change, and when necessary, direct the mode of further performance, or;
 - (B) countermand any conduct regarded by Seller as a change, or;
 - (C) deny that the conduct of which Seller gave notice would constitute a change and, when necessary, direct the mode of further performance, or;

(D) in the event Seller's notice information is inadequate to make a decision under (A), (B), and (C) above, advise Seller what additional information is required.

Failure of Buyer to respond within the time required above shall be deemed a countermand under Paragraph 17.3(B).

18.4 Equitable Adjustments - Equitable adjustments for changes confirmed or countermanded by Buyer shall be made in accordance with the Clause entitled "Changes", or any other provision of this P.O. which provides for an equitable adjustment.

18.5 Special Procedures - Paragraph 18.2 above provides that Seller is to take no action to implement a potential change pending Buyer's response to Seller's notice of the potential change, except where specifically directed by Buyer. In special situations, however, where:

- (i) the circumstances do not allow sufficient time to notify Buyer of the facts prior to the need to proceed with the work, and;
- (ii) the work must proceed to avoid hazards to personnel or property or to avoid additional cost to Buyer, Seller may proceed with work in accordance with the potential change. In such special situations, Seller shall advise Buyer in writing within ten (10) days of the conduct giving rise to the potential change that Seller has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within twenty (20) calendar days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 18.1 above. Buyer shall respond as set forth in Paragraph 18.3 above. If Buyer determines that the conduct constitutes a change and countermands it, Seller shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.

18.6 When Seller identifies any conduct which may result in delay to delivery of the ship(s), Seller shall promptly so inform Buyer thereof prior to providing the notice required by Paragraph 18.1 above.

19. ORDER OF PRECEDENCE, INTERPRETATION AND EXCLUSIVE AGREEMENT, AND SEVERABILITY

19.1 In the event of any inconsistency between provisions of this P.O., the inconsistency shall be resolved by giving precedence in the following order:

- (A) any special provisions of this P.O.
- (B) Standard terms and conditions of this P.O.
- (C) Attachments (excluding the Buyer Material Ordering Catalog, Specifications, and Statement of Work); and,
- (D) Buyer Material Ordering Catalog, Specifications, and / or Statement of Work.

19.2 This P.O. contains and constitutes the entire understanding and agreement between Buyer and the Seller, and supersedes all previous understandings and agreements relative to the subject matter contained herein.

19.3 If any provision of this P.O. is declared or found to be illegal, unenforceable or void, then the parties shall be relieved of all obligations under that provision. The remainder of this P.O. shall be held in full force and effect.

20. PERFORMANCE

The parties acknowledge that Seller has special skills, knowledge and ability in the work to be performed under this P.O., and that Buyer is relying on Seller's skills, knowledge and ability in all matters related to Seller's Delivery of the Supplies and Services ordered under this P.O. Seller will use such skills, specific knowledge, ability, best efforts, ingenuity, and due diligence in performing the work and Services in accordance with the requirements of this P.O.

21. PRIORITY RATINGS

The U.S. Government priority rating for the Supplies and Services to be delivered under this P.O. is DO-A3. This priority rating is applicable to this P.O. with respect to all work of the Seller performed in the United States. Seller shall follow the provisions of Defense Materials System Regulation 1 or Defense Priority System Regulation 1 (see 15 C.F.R. Part 700) and all other applicable regulations and orders of the Office of Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fill this P.O.

22. PROBLEM IDENTIFICATION REPORTS

Problem Identification Reports (PIR) shall be used by Seller to alert Buyer to actual or potential problems, and to establish an early dialogue between Seller and Buyer with regard thereto. As used in this Clause, a problem is a fact or circumstance of which Seller is aware that does, will, or may (1) have an impact on the Delivery Schedule, completion or performance for the cost of this P.O. (increase or decrease), or (2) require a modification of this P.O. Seller shall provide Buyer with a written report of each problem within ten (10) days after Seller identifies such problem. Each PIR shall be dated, reference this P.O., and describe the nature of the problem; the date the problem arose; and, anticipated effects of the problem including, but not limited to, Delivery, and cost of performance, and Seller's recommended resolution of the problem.

23. PRODUCT ORIENTED SURVEY

In accordance with DFARS Subpart 246.103, the Government shall have the right to conduct a product-oriented survey(s) of Seller to determine compliance with the requirements of this P.O., and Seller shall insert a substantially similar clause in all of its subcontracts awarded pursuant to this P.O.

24. QUALITY ASSURANCE REQUIREMENTS

- 24.1 Seller shall establish and maintain a Quality Assurance Program which is subject to audit and approval of Buyer. All Supplies provided under this P.O. shall be inspected by Seller as part of such Program prior to submission for Government inspection and/or prior to shipment to verify conformance with all requirements and specifications. Seller shall comply with Quality Program Requirements of MIL-Q-9858A or the Inspection System Requirements of MIL-I-45208A when such requirements are invoked by the Specification applicable to the Supplies being purchased. If a Purchase Specification is invoked on the P.O., Seller shall examine the Purchase Specification for quality program requirements.
- 24.2 Seller shall establish and maintain subject to Buyer's right to audit a system of material identification that ensures the use of specified materials and components. Items shipped shall be in such a manner as to permit verification of the use of specified materials and components upon receipt by Buyer. Raw materials used by Seller in the fabrication or processing of the Supplies shall conform to the physical, chemical and other technical requirements of the applicable material specification and Seller shall employ laboratory testing as necessary to confirm the identity of raw materials.
- 24.3 Government Procurement Quality Assurance (PQA) or Government Source Inspection. The Government reserves the right to inspect all Supplies and Services. If Government Source Inspection is invoked on the P.O., Government inspection is required prior to shipment of the Supplies by Seller. Upon receipt of this notification, Seller must promptly notify and furnish a copy of the P.O. to the Government Representative who normally services Seller's plant. If Seller's plant does not have a Government Representative, Seller must notify the nearest Army, Navy, Air Force or Defense Supply Agency Inspection Office. In the event the representative or office cannot be located, Buyer should be notified immediately. When the P.O. invokes Government Procurement Quality Assurance, it is by authority of the Supervisor of Shipbuilding, Conversion and Repair, USN Bath, Maine; and Seller is required to furnish to the Government Representative at Seller's facility any subsequent modifications to the P.O. and to make available all referenced data applicable to the P.O.
- 24.4 When specified by the P.O., Buyer's Certificate of Compliance (Form E99) must be completed and attached to the packing slip. When the Certificate is required, inspectors at the Supplies' destination cannot release material for use until the Certificate of Compliance is received and payment of invoices will be withheld pending receipt of the certificate. When specified by the P.O., Seller shall furnish verifiable test data, including the names of witnessing inspectors and present any other verifiable quality data required by the P.O. or at any time up to and after final payment on the P.O.
- 24.5 Documentation and Other Verifiable Data. Quantitative, semi-quantitative or functional test results must be forwarded to Buyer when specified by the P.O. and/or invoked by Military or Purchase Specifications. Documentation must reflect actual test results and not merely that the minimum requirements of the P.O. or Military Specification have been met. Seller must retain a copy of such documentation for a minimum period of three (3) years after final acceptance of the Supplies.
- 24.6 Non-Conforming Products. Supplies which are received and are found to be nonconforming by virtue of the fact that they are not in accordance with this P.O. or that the documentation or verifiable data are missing, incomplete or incorrect, may be returned to Seller at Seller's expense. Prior to returning the non-conforming Supplies, Buyer will notify Seller of the nature of the discrepancy such that, if possible, the discrepancy may be rectified at Seller's expense without returning the supplies to Seller.
- 24.7 Non-Destructive Testing. When nondestructive testing is required (radiography, magnetic particles, liquid penetrant, and ultrasonic) procedure, and personnel qualifications shall be in accordance with MIL-STD-271F.
- 24.8 Inspection of Welding Casting and Allied Processes Fabrication welding and inspection, and casting inspection and repair for machinery, piping and pressure vessels shall be in accordance with all requirements of MIL-STD-278F. Inspection of brazed piping including equipment, procedure and personnel qualifications shall be in accordance with the requirements of NAVSEA 0900-LP-01-7000, Change 1.
- 24.9 Internal-type plastic plugs or blanks shall not be used to seal openings in equipment or piping unless the configuration and rigidity precludes the possibility of entering into equipment or piping internals.

25. RISK OF LOSS

- 25.1 Risk of loss of or damage to Supplies shall remain with Seller until Delivery of the Supplies to the F.O.B. destination point specified in the P.O. and the Buyer's initial acceptance of the Supplies, regardless of whether that acceptance is conditional or final. Upon Delivery and initial acceptance of the Supplies as provided herein, risk of loss shall transfer to the Buyer.
- 25.2 The Seller shall not be liable for loss of or damage to Supplies caused by the negligence of officers, agents, or employees of the Buyer acting within the scope of their employment.

26. SAFETY AND SECURITY

- 26.1 When the Seller is performing any of its obligations on Buyer's premises or on a vessel in Buyer's care or custody, the Seller and its subcontractors shall comply with all Buyer plant rules and regulations and Buyer security policies and

procedures including, but not limited to, the use of personal protective equipment as required. At a minimum, the Seller and its subcontractors shall have in their possession a suitable hardhat, safety glasses with side shields, hearing protectors, and safety shoes. A copy of Buyer's Environmental, Health and Safety Regulations Handbook outlining said policies and procedures can be located at GDBIW.com, purchasing, forms/appendices, safety regulations.

- 26.2 If Seller's personnel are to have access to classified material or classified vessel compartments, such personnel will be required to obtain all necessary security clearances prior to their access to such material or compartments.
- 26.3 Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property unless specific prior approval from Buyer is obtained.
- 26.4 Seller acknowledges, that by accepting this purchase order/contract the following is applicable to any work performed hereunder:
 - A. Only trained authorized personnel will operate or service equipment, and in accordance with manufacturer's recommendations.
 - B. Seller is responsible for properly managing hazardous waste generated by Seller in accordance with applicable regulations. Disposal of hazardous waste shall be coordinated and approved through the Buyer's Environmental Operations Department.
 - C. Seller has reviewed the Environmental, Health and Safety Regulations Handbook referenced above, and has duly disseminated it to any applicable personnel performing work on Buyer's property or vessels.

27. SHIPPING AND DELIVERY

- 27.1 Delivery of each item or group of items ordered shall be made no later than the last day of the Delivery time(s) set forth in the P.O. No deliveries shall be made earlier than the designated Delivery time(s) unless authorized in writing by the Buyer's Purchasing Representative.
- 27.2 Items shall be delivered to the locations indicated on the P.O., F.O.B. Destination, unless otherwise specified.
- 27.3 Freight Collect
 - (A) If the P.O. indicates that items are to be shipped "Freight Collect", Buyer will pay all freight charges and no amount covering these charges shall be included in the selling price for an item.
 - (B) At least five days prior to the time an item(s) is ready for shipment under this P.O., the Seller shall notify Buyer's Traffic Manager as to when the item(s) will be ready for shipment. The Seller will then be given instructions concerning the shipment.
 - (C) For shipments of 70 pounds or less that meet United Parcel Service ("UPS") dimensional requirements, ship the item(s) UPS COLLECT. If a single shipment of multiple items together exceed the weight limitations or if an item exceeds the dimensional requirements, follow the procedures in Subparagraph (B) above.

28. STOP WORK

The provisions of the Clause contained in STOP-WORK ORDER FAR 52.242-15 are hereby incorporated by reference with the following change: The words "Contracting Officer" and "Government" shall mean Buyer; the word "Contractor" shall mean Seller; the words "ninety (90) days" are hereby changed to "one hundred (100) days"; and the words "thirty (30) days" are hereby changed to "twenty (20) days" wherever they appear; and the reference to the "Termination for Convenience" shall be deemed to refer to the Clause entitled herein "Termination for Convenience". In subdivision (2) of Paragraph (B), the expression "asserts a claim for the adjustment within twenty (20) days after the end of the period of work stoppage" shall be understood to mean "shall, within twenty (20) days after the end of the work stoppage, state its intention to make a claim for adjustment".

29. STORAGE

- 29.1 Buyer shall not be responsible for any storage charges incurred by the Seller for items completed prior to the Delivery date. Buyer may require the Seller to store Supplies furnished under this P.O. beyond the Delivery date specified. Any additional storage and local transportation costs incurred by the Seller to store Supplies at Buyer's direction shall be the subject of an equitable adjustment to the P.O. price.
- 29.2 Supplies stored under this Clause shall be placed in a secure location, separate from the Seller's other inventory, identified as Buyer's property and adequately protected. The Seller shall provide insurance in an amount to cover the full value of the Supplies in the event of a loss, with Buyer designated to receive all proceeds in case of a loss. A certificate issued by the insurer shall be provided to Buyer as evidence of coverage.
- 29.3 Upon receipt by Buyer of Seller-furnished information (e.g., SDRLs and other deliverables), Government source inspection reports (if required), and evidence of insurance, Seller may invoice Buyer for payment in accordance with the terms of this P.O.
- 29.4 At the direction of the Purchasing Representative, Seller shall remove the Supplies from storage and effect Delivery pursuant to the shipping instructions of this P.O. and, upon receipt by Buyer at the F.O.B. point, the Supplies shall be accepted pursuant to the "Inspection" Clause of this P.O.

30. TERMINATION FOR CONVENIENCE

The provisions of the Clause contained in TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) FAR 52.249-2 are hereby incorporated by reference with the following changes: The words "Contracting Officer" shall mean Buyer; the word "Contractor" shall mean Seller; the word "Government" shall mean Buyer except in Paragraphs (b)(4), (b)(6), (b)(8)(c) and (d); and the words "1 year" are changed to "eleven (11) months" in Paragraph (e).

31. TITLE

Unless otherwise stated in this P.O., title to Supplies covered by this P.O. shall pass from the Seller to Buyer at the F.O.B. point.

32. WAIVER

No waiver by either Buyer or the Seller, whether written or oral, expressed or implied, of any rights under or arising from this P.O. shall be binding on any subsequent occasion and no concession by either Buyer or the Seller shall be treated as a variation of this P.O. unless specifically agreed in writing.

33. WARRANTY

33.1 The Seller warrants that all Supplies and Services furnished under this P.O. will be in accordance with all contract requirements and free from defects or inferior materials, equipment, and workmanship for twelve (12) months after final acceptance of the Supplies or Services as provided in the "Inspection" clause of this P.O.

33.2 If, within the warranty period, Buyer finds that the warranted Supplies or Services need to be repaired, changed or reperfomed because of the use of materials, equipment or workmanship which, in its opinion, are inferior, defective or not in accordance with the terms of the P.O., insofar as it is practicable, Buyer shall so inform the Seller in writing and the Seller, if so directed, shall promptly and without additional expense to Buyer:

- (A) place in satisfactory condition the warranted work;
- (B) satisfactorily correct direct damage to equipment, the site, the compartment or contents thereof, which is the result of such unsatisfactory warranted work; and
- (C) satisfactorily correct the work, materials and equipment that are disturbed in fulfilling the warranty, including the disturbed work, materials and equipment that may have been warranted under another contract.

The decision as to whether the Seller or Buyer will perform the warranty work shall be at the discretion of Buyer provided, however, that insofar as is practicable, the Seller shall be afforded a reasonable opportunity to inspect and correct the questioned materials, equipment or workmanship prior to the performance of the warranty work by Buyer. When Buyer directs the Seller to perform the warranty work, if the Seller fails to proceed promptly in accordance with the warranty, Buyer may have such work performed at the expense of the Seller.

33.3 Any Supplies, Services or parts thereof corrected, repaired, replaced or otherwise placed in a satisfactory condition shall also be subject to the conditions of this Clause to the same extent as the Supplies or Services initially accepted. The warranties for such Supplies, Services or parts thereof shall be for twelve (12) months to run from the date of Buyer's final acceptance of such corrected, repaired or replaced Supplies or Services.

33.4 Buyer and/or the Government shall have the right to purchase parts, for installation either from the Seller, or directly from the Actual Parts Manufacturer (APM) without voiding this warranty. Any special warranty that may be required under this Subcontract shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special warranties.

33.5 Seller shall obtain each transferable guaranty or warranty of equipment, material or installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's or installer's business or trade. In addition, the Seller shall obtain and furnish to Buyer all information which is required in order to make any such guaranty or warranty legally binding and effective, and shall submit both the information and the guaranty or warranty to Buyer to meet any time limit requirements specified in the guaranty or warranty, or if no time limit is specified in the guaranty or warranty, prior to completion and acceptance of all work under the P.O.

33.6 The Seller shall have no liability to Buyer under this undertaking whether in contract or in tort, for any consequential, special and incidental damages resulting from defects or deficiencies in the Supplies or Services delivered under this P.O.

33.7 No commercial warranty is given hereunder. All implied warranties of "merchantability" and "fitness for a particular purpose" are excluded from any obligation contained in this P.O.

33.8 Disputes arising under this Clause shall be resolved in accordance with the clause entitled "Disputes".

GOVERNMENT "FLOW-DOWN" CLAUSES

A. FULL TEXT CLAUSES

Pursuant to Buyer's Prime Contract with the U.S. Government and Buyer's acquisition policies, the following clauses are included in this SUBCONTRACT/DELIVERY ORDER in full text. As stated in the definitions clause, "contractor" shall mean Seller "Subcontractor" shall mean

Seller's Subcontractor, "Contracting Officer" shall mean Buyer and "Contract" refers to this SUBCONTRACT/DELIVERY ORDER except where context of clause otherwise demands:

ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE (NAVSEA) (JUN 1994)

(a) Performance under this contract may require that the Contractor have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, the Contractor shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this contract, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or software. A copy of the executed agreement shall be provided to the Contracting Officer. The Government may unilaterally modify the contract to list those third parties with which the Contractor has agreement(s).

(b) The Contractor agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Contractor personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venturer, affiliate, successor, or assign of the Contractor; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.

(c) The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which the Contractor has access in the performance of this contract that contains proprietary or other restrictive markings.

(d) The Contractor agrees that it will promptly notify the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this contract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.

(e) The Contractor shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a), substituting "subcontractor" for "Contractor" where appropriate.

(f) Compliance with this requirement is a material requirement of this contract.

ACCESS TO THE VESSEL(S) (AT) (NAVSEA) (JAN 1983)

Officers, employees and associates of other prime Contractors with the Government and their subcontractors, shall, as authorized by the Supervisor, have, at all reasonable times, admission to the plant, access to the vessel(s) where and as required, and be permitted, within the plant and on the vessel(s) required, and be permitted, within the plant and on the vessel(s) to perform and fulfill their respective obligations to the Government. The Contractor shall make reasonable arrangements with the Government or Contractors of the Government, as shall have been identified and authorized by the Supervisor to be given admission to the plant and access to the vessel(s) for office space, work areas, storage or shop areas, or other facilities and services, necessary for the performance of the respective responsibilities involved, and reasonable to their performance.

ACCESS TO VESSELS BY NON-U.S. CITIZENS (NAVSEA) (DEC 2005)

(a) No person not known to be a U.S. citizen shall be eligible for access to naval vessels, work sites and adjacent areas when said vessels are under construction, conversion, overhaul, or repair, except upon a finding by COMNAVSEA or his designated representative that such access should be permitted in the best interest of the United States. The Contractor shall establish procedures to comply with this requirement and NAVSEAINST 5500.3 (series) in effect on the date of this contract or agreement.

(b) If the Contractor desires to employ non-U.S. citizens in the performance of work under this contract or agreement that requires access as specified in paragraph (a) of this requirement, approval must be obtained prior to access for each contract or agreement where such access is required. To request such approval for non-U.S. citizens of friendly countries, the Contractor shall submit to the cognizant Contract Administration Office (CAO), an Access Control Plan (ACP) which shall contain as a minimum, the following information:

(1) Badge or Pass oriented identification, access, and movement control system for non-U.S. citizen employees with the badge or pass to be worn or displayed on outer garments at all times while on the Contractor's facilities and when performing work aboard ship.

(i) Badges must be of such design and appearance that permits easy recognition to facilitate quick and positive identification.

(ii) Access authorization and limitations for the bearer must be clearly established and in accordance with applicable security regulations and instructions.

(iii) A control system, which provides rigid accountability procedures for handling lost, damaged, forgotten or no longer required badges, must be established.

(iv) A badge or pass check must be performed at all points of entry to the Contractor's facilities or by a site supervisor for work performed on vessels outside the Contractor's plant.

(2) Contractor's plan for ascertaining citizenship and for screening employees for security risk.

(3) Data reflecting the number, nationality, and positions held by non-U.S. citizen employees, including procedures to update data as non-U.S. citizen employee data changes, and pass to cognizant CAO.

(4) Contractor's plan for ensuring subcontractor compliance with the provisions of the Contractor's ACP.

(5) These conditions and controls are intended to serve as guidelines representing the minimum requirements of an acceptable ACP. They are not meant to restrict the Contractor in any way from imposing additional controls necessary to tailor these requirements to a specific facility.

(c) To request approval for non-U.S. citizens of hostile and/or communist-controlled countries (listed in Department of Defense Industrial Security Manual, DOD 5220.22-M or available from cognizant CAO), Contractor shall include in the ACP the following employee data: name, place of birth, citizenship (if different from place of birth), date of entry to U.S., extenuating circumstances (if any) concerning immigration to U.S., number of years employed by Contractor, position, and stated intent concerning U.S. citizenship. COMNAVSEA or his designated representative will make individual determinations for desirability of access for above group. Approval of ACP's for access of non-U.S. citizens of friendly countries will not be delayed for approval of non-U.S. citizens of hostile communist-controlled countries. Until approval is received, Contractor must deny access to vessels for employees who are non-U.S. citizens of hostile and/or communist-controlled countries.

(d) The Contractor shall fully comply with approved ACPs. Noncompliance by the Contractor or subcontractor serves to cancel any authorization previously granted, in which case the Contractor shall be precluded from the continued use of non-U.S. citizens on this contract or agreement until such time as the compliance with an approved ACP is demonstrated and upon a determination by the CAO that the Government's interests are protected. Further, the Government reserves the right to cancel previously granted authority when such cancellation is determined to be in the Government's best interest. Use of non-U.S. citizens, without an approved ACP or when a previous authorization has been canceled, will be considered a violation of security regulations. Upon confirmation by the CAO of such violation, this contract, agreement or any job order issued under this agreement may be terminated or default in accordance with the clause entitled "DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)" (FAR 52.249-8), "DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT)" (FAR 52.249-9) or "TERMINATION (COST REIMBURSEMENT)" (FAR 52.249-6), as applicable.

(e) Prime Contractors have full responsibility for the proper administration of the approved ACP for all work performed under this contract or agreement, regardless of the location of the vessel, and must ensure compliance by all subcontractors, technical representatives and other persons granted access to U.S. Navy vessels, adjacent areas, and work sites.

(f) In the event the Contractor does not intend to employ non-U.S. citizens in the performance of the work under this contract, but has non-U.S. citizen employees, such employees must be precluded from access to the vessel and its work site and those shops where work on the vessel's equipment is being performed. The ACP must spell out how non-U.S. citizens are excluded from access to contract work areas.

(g) The same restriction as in paragraph (g) above applies to other non-U.S. citizens who have access to the Contractor's facilities (e.g., for accomplishing facility improvements, from foreign crewed vessels within its facility, etc.).

ASSIGNMENT AND USE OF NATIONAL STOCK NUMBERS (NAVSEA) (MAY 1993)

To the extent that National Stock Numbers (NSNs) or preliminary NSNs are assigned by the Government for the identification of parts, pieces, items, subassemblies or assemblies to be furnished under this contract, the Contractor shall use such NSNs or preliminary NSNs in the preparation of provisioning lists, package labels, packing lists, shipping containers and shipping documents as required by applicable specifications, standards or Data item Descriptions of the contract or as required by orders for spare and repair parts. The cognizant Government Contract Administration Office shall be responsible for providing the Contractor such NSNs or preliminary NSNs which may be assigned and which are not already in possession of the Contractor.

COMPUTER SOFTWARE AND/OR COMPUTER DATABASE(S) DELIVERED TO AND/OR RECEIVED FROM THE GOVERNMENT (NAVSEA) (APR 2004)

(a) The Contractor agrees to test for viruses all computer software and/or computer databases, as defined in the clause entitled "RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION" (DFARS 252.227-7014), before delivery of that computer software or computer database in whatever media and on whatever system the software is delivered. The Contractor warrants that any such computer software and/or computer database will be free of viruses when delivered.

(b) The Contractor agrees to test any computer software and/or computer database(s) received from the Government for viruses prior to use under this contract.

(c) Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this contract must be paid-up and perpetual, or so nearly perpetual as to allow the use of the computer software or computer data base with the equipment for which it is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise the computer software or computer database does not meet the minimum functional requirements of this contract. In the event that there is any routine to disable the computer software or computer database after the software is developed for or delivered to the Government, that routine shall not disable the computer software or computer database until at least twenty-five calendar years after the delivery date of the affected computer software or computer database to the Government.

(d) No copy protection devices or systems shall be used in any computer software or computer database delivered under this contract to restrict or limit the Government from making copies. This does not prohibit license agreements from specifying the maximum amount of copies that can be made.

(e) Delivery by the Contractor to the Government of certain technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery may cause confusion between data rights and computer software rights. In the event that there is any routine to disable the computer software or computer database after the software is developed for or delivered to the Government, that routine shall not disable the computer software or computer database until at least twenty-five calendar years after the delivery date of the affected computer software or computer database to the Government.

(f) Any limited rights legends or other allowed legends placed by a Contractor on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human-readable form on a visible surface of the media carrying the digital-form data as delivered, to the extent possible.

GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (OCT 2006)

(a) The Contractor shall participate in the appropriate interchange of the Government-Industry Data Exchange Program (GIDEP) in accordance with NAVSEA S0300-BU-GYD-010 dated November 1994. Data entered is retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve the Contractor from complying with any other requirement of the contract.

(b) The Contractor agrees to insert paragraph (a) of this requirement in any subcontract hereunder exceeding \$500,000.00. When so inserted, the word "Contractor" shall be changed to "Subcontractor".

(c) GIDEP materials, software and information are available without charge from:

GIDEP Operations Center
P.O. Box 8000
Corona, CA 92878-8000

Phone: (951) 898-3207
FAX: (951) 898-3250
Internet: <http://www.gidep.org>

B. REFERENCED CLAUSES

Pursuant to Buyer's Prime Contract with the U.S. Government and Buyer's acquisition policies, the following clauses are included in this P.O. "FAR" refers to the clauses in Part 52 of the Federal Acquisition Regulation (FAR), Chapter 1, Title 48 of the Code of Federal Regulations (CFR). "DFARS" refers to the clauses at Part 252 of the DOD FAR Supplement (DFARS), Chapter 2, Title 48 of the CFR. "NAPS" refers to the clauses at Part 5252 of the Navy Acquisition Procedure Supplement (NAPS), Chapter 52, Title 48 of the CFR. The FAR/DFARS/NAPS clauses incorporated herein are those in effect as of the effective date of this P.O., unless a date notation appears in the clause title. When the date is so indicated, the clause in effect on that date is incorporated into the P.O.

<u>FAR Reference</u>	<u>Clause Title</u>
52.202-1	DEFINITIONS
52.203-3	GRATUITIES
52.203-5	COVENANT AGAINST CONTINGENT FEES
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	ANTI-KICKBACK PROCEDURES
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY

52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-13	Contractor Code of Business Ethics and Conduct
52.204-2	SECURITY REQUIREMENTS
52.204-4	PRINTING / COPYING DOUBLE-SIDED ON RECYCLED PAPER
52.204-10	Reporting of Subcontract Awards
52.209-6	PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.211-5	MATERIAL REQUIREMENTS
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENT
52.215-2	AUDIT AND RECORDS – NEGOTIATION
52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS
52.215-12	SUBCONTRACTOR COST OR PRICING DATA
52.215-14 Alt I	Integrity of Unit Prices – Alternate I
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications
52.215-21 Alt II	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS
52.216-7	ALLOWABLE COST AND PAYMENT
52.216-8	FIXED FEE
52.219-4	NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN
52.219-9 Alt II	Patent Rights – Ownership by the Contractor – Alternate II
52.219-16	LIQUIDATED DAMAGES – SUBCONTRACTING PLAN
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
52.222-3	CONVICT LABOR
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION
52.222-19	CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES
52.222-20	WALSH – HEALEY PUBLIC CONTRACTS ACT
52.222-21	PROHIBITION ON SEGREGATED FACILITIES
52.222-26	EQUAL OPPORTUNITY
52.222-35	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA
52.222-38	COMPLIANCE WITH VETERANS EMPLOYMENT REPORTING REQUIREMENTS
52.223-6	DRUG-FREE WORKPLACE
52.223-11	OZONE-DEPLETING SUBSTANCES
52.223-12	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS
52.223-14	TOXIC CHEMICAL RELEASE REPORTING
52.225-8	DUTY - FREE ENTRY
52.227-1	AUTHORIZATION AND CONSENT AND ALTERNATE I
and ALT I	
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.227-10	FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER
52.227-11	PATENT RIGHTS – RETENTION BY THE CONTRACTOR (SHORT FORM)
52.227-11 Alt II	PATENT RIGHTS – OWNERSHIP BY THE CONTRACTOR – ALTERNATE II
52.227-12	PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LONG FORM)
52.227-13	PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT
52.228-7	INSURANCE – LIABILITY TO THIRD PERSONS
52.229-3	FEDERAL, STATE, AND LOCAL TAXES
52.230-2	COST ACCOUNTING STANDARDS
52.230-3	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS
52.232-9	LIMITATION ON WITHHOLDING OF PAYMENTS
52.232-17	INTEREST
52.232-20	LIMITATION OF COST (APPLIES IF THIS CONTRACT CONTAINS FULLY FUNDED LINE ITEMS)
52.232-22	LIMITATION OF FUNDS (APPLIES IF THIS CONTRACT CONTAINS INCREMENTALLY FUNDED LINE ITEMS)
52.232-23	ASSIGNMENT OF CLAIMS AND ALTERNATE I

and ALT I	
52.232-25	PROMPT PAYMENT
52.232-25 Alt I	PROMPT PAYMENT - ALTERNATE I
52.232-33	PAYMENTS BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION
52.233-1	DISPUTES AND ALTERNATE I
and ALT I	
52.233-3	PROTEST AFTER AWARD AND ALTERNATE I
and Alt I	
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM
52.237-3	CONTINUITY OF SERVICES
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS
52.242-3	PENALTIES FOR UNALLOWABLE COSTS
52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS
52.242-10	F.O.B. ORIGIN – GOVERNMENT BILLS OF LADING OR PREPAID POSTAGE
52.242-11	F.O.B. ORIGIN – GOVERNMENT BILLS OF LADING OR INDICIA MAIL
52.242-12	REPORT OF SHIPMENT (RESHIP)
52.242-13	BANKRUPTCY
52.243-1	CHANGES—FIXED PRICE
52.243-1 Alt II	CHANGES—FIXED-PRICE – ALTERNATE II
52.243-2	CHANGES – COST REIMBURSEMENT AND ALTERNATE V
and Alt V	
52.243-6	CHANGE ORDER ACCOUNTING
52.244-5	COMPETITION IN SUBCONTRACTING
52.244-6	Subcontracts for Commercial Items
52.246-23	LIMITATION OF LIABILITY
52.246-24	LIMITATION OF LIABILITY – HIGH VALUE ITEMS
52.246-25	LIMITATION OF LIABILITY – SERVICES
52.247-1	COMMERCIAL BILL OF LADING NOTATIONS
52.248-1	VALUE ENGINEERING (APPLIES IF THIS CONTRACT EQUALS OR EXCEEDS \$100,000)
52.249-6	TERMINATION (COST REIMBURSEMENT)
52.249-14	EXCUSABLE DELAYS
52.253-1	COMPUTER GENERATED FORMS

DFAR Reference Clause Title

252.201-7000	Contracting Officer’s Representative**
252.203-7000	Requirements Relating to Compensation of Former DoD Officials
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
252.203-7002	Requirement to Inform Employees of Whistleblower Rights
252.204-7000	Disclosure of Information
252.204-7003	Control Of Government Personnel Work Product
252.204-7004	Alternate A
252.204-7005	Oral Attestation of Security Responsibilities
252.205-7000	Provision of Information to Cooperative Agreement Holders (Applies if this contract exceeds \$1,000,000.)
252.209-7004	Subcontracting With Firms that are Owned or Controlled by the Government of a Terrorist Country
252.211-7000	Acquisition Streamlining
252.215-7000	Pricing Adjustments
252.215-7002	Cost Estimating System Requirements
252.215-7004	Excessive Pass-Through Charges
252.219-7003	Small Business Subcontracting Plan (DOD Contracts)
252.223-7004	Drug-Free Work Force
252.225-7001	Buy American Act and Balance of Payments Program
252.225-7002	Qualifying Country Sources as Subcontractors
252.225-7004	Report of Intended Performance Outside the United States and Canada-Submission of Award
252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies
252.225-7012	Preference For Certain Domestic Commodities
252.225-7013	Duty-Free Entry
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools

- 252.225-7016 Restriction on Acquisition of Ball or Roller Bearings
- 252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain
- 252.225-7031 Secondary Arab Boycott of Israel
- 252.225-7033 Waiver of United Kingdom Levies
- 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns
- 252.227-7013 Rights in Technical Data--Noncommercial Items
- 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
- 252.227-7015 Rights in Technical Data – Commercial Items
- 252.227-7016 Rights in Bid or Proposal Information
- 252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions
- 252.227-7019 Validation of Asserted Restrictions--Computer Software
- 252.227-7025 Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends
- 252.227-7026 Deferred Delivery of Technical Data or Computer Software
- 252.227-7027 Deferred Ordering of Technical Data or Computer Software
- 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government
- 252.227-7030 Technical Data—Withholding of Payment
- 252.227-7037 Validation of Restrictive Markings on Technical Data
- 252.227-7038 Patent Rights—Ownership by the Contractor (Large Business)
- 252.227-7039 Patents—Reporting of Subject Inventions
- 252.231-7000 Supplemental Cost Principles
- 252.232-7010 Levies on Contract Payments
- 252.242-7003 Application for U.S. Government Shipping Documentation/Instructions
- 252.242-7004 Material Management and Accounting System
(Applies if this contract provides progress payments, unless it is set aside exclusively for a small, disadvantaged or women-owned business concern.)
- 252.243-7001 Pricing Of Contract Modifications
- 252.243-7002 Requests for Equitable Adjustment
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts)
- 252.246-7003 Notification of Potential Safety Issues
- 252.249-7002 Notification of Anticipated Contract Termination or Reduction

– ADDITIONAL CONTRACT CLAUSES

52.203-14 DISPLAY OF HOTLINE POSTER(S)

52.215-19 NOTIFICATION OF OWNERSHIP CHANGES

52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III

52.245-1 GOVERNMENT PROPERTY (JUN 2007) (DEVIATION) - ALTERNATE I (JUN 2007)

**252.225-7014 PREFERENCE FOR DOMESTIC SPECIALTY METALS (JUN 2005) -
ALTERNATE I (APR 2003) (DEVIATION 2008-O0002)**

(a) Definitions. As used in this clause--

(1) “Assembly” means an item forming a portion of a system or subsystem that can be provisioned and replaced as an entity and which incorporates multiple, replaceable parts.

(2) “Commercial derivative military article” means an item procured by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

(3) “Commercially available off-the-shelf item” –

(i) Means any item of supply, that is –

(A) A commercial item;

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

(4) “Component” means any item supplied to the Government as part of an end item or another component.

(5) “Electronic component” means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electronic devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

(6) “End item” means the final production product when assembled or completed, and ready for issue, delivery, or deployment

(7) “Produce” means the application of forces or processes to a specialty metal to create desired physical properties through quenching or tempering of steel plate, or gas atomization or sputtering titanium.

(8) “Qualifying country” means any country listed in subsection 225.872-1(a) or (b) of the Defense Federal Acquisition Regulation Supplement (DFARS).

(9) “Required form” means in the form of mill product, such as bar, billet, wire, slab, plate or sheet, and in the grade appropriate for the production of—

(i) A finished end item delivered to the Department of Defense; or

(ii) A finished component assembled into an end item delivered to the Department of Defense.

(10) “Specialty metal” means--

(i) Steel--

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium.

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys.

(iv) Zirconium and zirconium alloys.

(11) “Subsystem” means a functional grouping items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(b) Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country, except for—

(1) Electronic components;

(2)

(i) Commercially available off-the-shelf (COTS) items; other than—

(A) COTS fasteners, unless such fasteners are incorporated into COTS end items, subsystems, assemblies, or components.

(B) Forgings or castings of specialty metals, unless such forgings or castings are incorporated into COTS end items, subsystems, or assemblies.

(C) Commercially available high performance magnets, unless such high performance magnets are incorporated into COTS end items or subsystems;

(ii) A COTS item is considered to be “offered without modification” as long as it is not modified prior to contractual acceptance by the next higher tier in the supply chain.

(A) Specialty metals contained in a COTS items that was accepted without modification by the next higher tier are excepted and remain excepted even if a piece of the

COTS items subsequently is removed (e.g., the end is removed from a COTS screw or an extra hole is drilled in a COTS bracket).

(B) For specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, the added specialty metals are subject to the restrictions (e.g., a special reinforced handle made of specialty metal that is added to a COTS item).

(C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restrictions (e.g., a COTS aircraft is outfitted with the a COTS engine, but not the COTS engine normally provided with that aircraft).

(D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is offered to the Government with an option that is not normally offered in the commercial marketplace, that option is subject to the specialty metals restrictions. (e.g., an aircraft is normally sold to the public with an option for several different radios. DoD requests a military-unique radio. The aircraft is still a COTS item, but the military-unique radio is not a COTS item, and must comply with the specialty metals restrictions, unless another exception applies.

(3) Fasteners that are commercial items that are purchased under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50% of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(4) Items manufactured in a qualifying country;

(5) Items for which the Government has determined in accordance with 225.700X-3 of Class Deviation 2008-O0002 that specialty metal melted or produced in the United States cannot be acquired as and when needed in—

(i) A satisfactory quality;

(ii) A sufficient quantity; and

(iii) The required form.

(6) Specialty metals, other than specialty metals in high performance magnets, that do not meet any of the exceptions in paragraphs (b)(1) through (5) of this clause, if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of specialty metals in the item, as estimated in good faith by the Contractor.

(c) NOTE: PARAGRAPH (c) IS NOT FLOWED DOWN TO SUBCONTRACTORS – THIS SECTION IS UNUSED

(d) Unless the Contractor has certified in accordance with paragraph (c), the Contractor shall insert the substance of this clause, excluding paragraph (c) but including this paragraph (d), in all subcontracts for articles containing specialty metals.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA