

PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR ENVIRONMENTAL SERVICES (E-2386, HAZ09/04)

1. **ACCOUNTABILITY**

The Seller shall account for and report to the Buyer the amounts of Hazardous Material or waste received hereunder and the amounts utilized in the treatment, storage and disposal process for each lot delivered. Any difference between the amount delivered and the amount treated, stored, and/or disposed of shall be accounted for and disposition instructions obtained from the Buyer. Under no circumstances may any of the delivered material be disposed of in any manner other than that specifically authorized by the Buyer.

2. **ASSIGNMENT**

- 2.1 This Purchase Order (P.O.), nor any interest herein, may be assigned, in whole or in part, by the Seller without the prior written consent of the 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.
- 2.2 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.

3. **AUDIT AND SURVEILLANCE**

Seller agrees that the Buyer shall have the right to observe all aspects of performance of work hereunder. Buyer agrees to comply with reasonable precautions and procedures relative to observing Seller's safety regulations and avoid interference with the orderly process of Seller's normal business operations. Buyer or the Government has the right to audit Seller's records and facilities, and observe any performance under this order.

4. **CHANGES**

- 4.1 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 the 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 and description of the Services.
- 4.2 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 the Buyer.
- 4.3 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.
- 4.4 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.
- 4.5 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.

5. **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 law, regulation or order. Finally, it is understood and agreed that all performance under this P. O. is subject to all applicable waste regulations of the Environmental Protection Agency, Department of Transportation, the applicable state Department of Water Resources, OSHA, and / or other governmental agencies having jurisdiction over the operations of the Buyer and Seller with respect to the Services specified herein.

6. **CONFIDENTIALITY**

- 6.1 The Seller and the 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 injunction relief to restrain any unauthorized use or disclosure of its proprietary information in addition to all other remedies available to that party in law or equity.

- 6.2 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 the Buyer to the extent strictly necessary for its intended use. 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.
- 6.3 The information to be held in confidence as provided in Paragraphs 6.1 and 6.2 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 its 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.
- 6.4 To the extent reasonably necessary for the purpose of this P.O., a party may disclose the information of the other party, provided that the disclosing party makes such disclosure subject to like conditions of confidentiality or such other condition as the parties may agree, as appropriate, and marks the information so disclosed with the appropriate restrictive legends 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 Federal, State or local laws or regulations.
- 6.5 Either party disclosing or reproducing another party's information hereunder shall replicate in any reproductions any copyright and other intellectual or industrial property right marks 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 in 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 in which rests in
Bath Iron Works , Bath, Maine. All rights reserved."
- 6.6 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.
7. DEFAULT
- 7.1 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 shall be exercised if the Seller does not cure such failure within ten (10) days after receipt of "Cure Notice" from the Buyer specifying the failure.
- 7.2 If Buyer terminates this P.O. in whole or in part by reason of Seller's default, the 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 the Buyer for any excess costs for Supplies or Services so acquired, it being understood that the Seller shall continue to work on that portion 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; or, 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 the Buyer for excess costs, unless the subcontracted 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.
- 7.3 If the P.O. is terminated for default, Buyer may require the Seller to transfer title and deliver to the Buyer 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 the Buyer has an interest.
- 7.4 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 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 the dispute.

7.5 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 the Buyer under the Clause entitled "Termination for Convenience."

7.6 The rights and remedies of the Buyer in this Clause are in addition to any other rights and remedies provided by law or under this P.O.

8. DEFINITIONS

8.1 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" means Bath Iron Works having its principle place of business in Bath, Maine.

(B) "Days" means calendar days unless otherwise stated.

(C) "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.

(D) "Disposal" means discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. [40 CFR Part 260]

(E) "Facility" means all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing, or disposing of hazardous waste. [CFR Part 260]

(F) "F.O.B." means F.O.B. ORIGIN, unless otherwise stated.

(G) "Government" refers to the Government of the United States.

(H) "Hazardous Material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated (CFR Title 40 Protection of Environment - EPA). Additionally, Hazardous Material is that so defined by any Federal, State, local or other government agency.

(I) "Hazardous Waste" means any waste or combination of waste which poses a substantial risk of potential hazard to human health or living organisms because such wastes are nondegradable or persistent in nature, or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects (CFR Title 49 Transportation). Additionally, Hazardous Material is that so defined by any Federal, State, local or other government agency.

(J) "Land Treatment Facility" means a facility or part of a facility where hazardous waste is placed or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure. [40 CFR 260.10]

(K) "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).

(L) "P.O. Price" means the total sum of the Supplies' or Services' prices which individually may be called unit price(s).

(M) "Purchasing Representative" refers to Buyer's authorized representative.

(N) "Purchase Order", "P.O.", or "Subcontract" refers to this instrument and includes changes and/or modifications hereto.

(O) "Seller", "Subcontractor", or "Supplier" means the legal entity who sells or contracts to sell Supplies or Services to the Buyer by this P.O.

(P) "Services" means all or any part of the services described in this P.O. and includes any incidental Supplies therein.

(Q) "Statement of Work" or "Specifications" means the Buyer's statement of Specifications for the Supplies or Services being acquired.

(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.

(S) "Supplies" means all or any part of the Supplies, articles, goods, or products contracted for by Buyer through this P.O.

(T) "Supplies' Prices" means the F.O.B. prices for the Supplies.

(U) "Storage" means holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. [40 CFR Part 260]

(V) "Transportation" means the movement of hazardous waste by air, rail, highway, or water. [40 CFR Part 260.10]

(W) "Treatment" means any method, technique, process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous or less hazardous; safer to transport, store or dispose of; or amenable for recovery, or amenable for storage or reduced in volume. [40 CFR Part 260]

8.2 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.

9. DELIVERY DATE AND EXCUSABLE DELAY

9.1 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.

9.2 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 without Seller's fault or negligence, including,

but not limited to, acts or omissions on the part of the 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.

- 9.3 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 the 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.
- 9.4 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.
- 9.5 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 the 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. whether or not concurrently with delay resulting from other cause. Seller shall give such further written notices to the Buyer as may be necessary or as the Buyer may reasonably require to maintain awareness on the status of the delay in order to mitigate impact of the delay to Buyer's operation.

10. DISPUTES

- 10.1 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.
- 10.2 For the purposes of this Clause:
- (A) "Claim" shall mean a written demand or assertion seeking the payment of money or 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 the Buyer;
 - (C) Seller shall submit to the 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 is 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 it includes, but is not limited to, invoices and vouchers, formula to quantify damages, overhead rates and G&A 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 the Buyer to make a meaningful evaluation of the claim.
- 10.3 Any claim, dispute, disagreement or difference of opinion arising under or relating to this P.O. which is not settled by agreement between the Buyer and the Seller may be litigated before any court in the State of Maine having competent jurisdiction.
- 10.4 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.
- 10.5 Seller shall indemnify and hold harmless the 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.
- 10.6 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.

11. EXAMINATION OF RECORDS

Seller agrees that the Buyer 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.

12. 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 the laws (both substantive and procedural) of the State of Maine in effect at the time of the execution of this P.O. and 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.

13. INDEMNIFICATION

The Seller shall indemnify and hold harmless the Buyer against any and all liability, loss, damages, cost or expenses (including reasonable attorneys' fees) for personal injury or damage to real or tangible personal property which the Buyer may

sustain, incur or be required to pay, arising out of or in connection with this P.O. provided Seller is notified of any claim within a reasonable time after the Buyer becomes aware of it and is afforded an opportunity to participate in the defense of such claim. No limitation of liability provision of this P.O. shall apply to the indemnification provided by this Clause.

Seller agrees to indemnify, defend and save the Buyer harmless from and assumes any liability, payment, expense (including reasonable attorneys' fees) or loss resulting from the failure by Seller, its agents or subcontractors to comply fully with every Federal, State, or local law, statute, regulation, rule, ordinance or government directive which directly or indirectly regulates or affects the collection, handling, storage, transportation or disposal of the materials to be disposed of by Seller, hereunder and from any and all claims, suits, liabilities, directly or indirectly, based upon damage to, or destruction of, any property (including the property of Seller), or injury (including death) to any person or property arising out of or attributable to any negligence or willful act or omission to act, of or by Seller, its agents or subcontractors in performing the disposal services hereunder. Such indemnification liability shall be binding upon successors in interest of the Seller.

14. INSPECTION

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

14.1 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.

14.2 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.

14.3 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.

15. INTELLECTUAL PROPERTY RIGHTS

Buyer shall have the right to inspect and obtain copies of all written licenses, permits, or approvals, issued by any governmental entity or agency to Seller which are applicable to the performance of this P.O. and to inspect and test, at its own expense, transportation vehicles (or vessels), containers, treatment or disposal facilities provided and operated by Seller in the performance of this P.O.

15.1 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.

15.2 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.

15.3 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 of 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 or any proprietary information furnished by the disclosing party.

15.4 Patent Indemnity

The Seller shall indemnify Buyer against claims by owners or licensees of patents and registered designs of the United States granted to 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 Supplies 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 be paid by Seller with the owner of such rights to be paid to the owner and/or licensee of the patent or design in settlement of any alleged or actual infringement.

16. INVOICES AND PAYMENTS

16.1 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 and 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 the 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) days after the invoice date.

16.2 Payments

- (A) Buyer shall pay the Seller, upon the submission of valid invoices, the prices stipulated in this P.O. as may be adjusted for prompt payment discounts, or by agreement of Buyer and Seller, or as may be provided elsewhere in this P.O.
- (B) Seller's valid invoices are payable by the 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.

17. LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE

When Seller is performing any of its obligations on the 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 the 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 Federal, State and local laws and contractual coverage and completed operations coverage and:

- (i) Workmen's Compensation as may be required by the locality where the work is being performed, including Longshoremen's and Harbor Worker's Compensation Act;
- (ii) Commercial General Liability the minimum limits shall be \$1,000,000/\$2,000,000 Bodily Injury and Property Damage, combined single limit per occurrence.;
- (iii) Automobile Public Liability and Property Damage Insurance in the minimum amount of \$1,000,000 combined single limit, or the amount required by State or Federal regulations, whichever is greater. If a vehicle will be operated within the scope of this Contract, Comprehensive Automobile Liability Policy including an Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980's (Form MCS-90) in the minimum amount of \$1,000,000 combined single limit, or the amount required by State or Federal regulations, whichever is greater, and
- (iv) Umbrella Liability in the minimum amount of \$4,000,000, or its equivalent, to bring the total limits to \$5,000,000 for the coverages above.
- (v) In addition, the Seller shall maintain Pollution Liability coverage for sudden and accidental occurrences with regard to all sites upon which work will be performed and with limits of \$1,000,000 per occurrence / \$2,000,000 annual aggregate. If Seller utilizes a facility which is a surface impoundment, landfill, or land treatment facility, the Seller must also evidence Pollution Liability coverage for non-sudden and accidental occurrences with limits of \$3,000,000 per occurrence /

Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 21.2 above and mark all remaining Supplies as part of the Buyer catalog number.

Multiple orders shall not be shipped within a single container.

Multiple shipments to one (1) specified Delivery location on any given day shall be consolidated under one (1) Bill of Lading.

Where different Delivery locations are specified by the Buyer, each container shall include only material for one Delivery location. Multiple Delivery locations require separate Bills of Lading.

21.5 MSDS Requirements

(A) General

- (1) The Seller shall provide information for each item of Hazardous Material delivered pursuant to this contract in the form of a current, updated Material Safety Data Sheet (MSDS) in accordance with 29 CFR 1910.1200 Hazard Communication Standard, to the Buyer prior to contract award and in advance of any shipment. The MSDS Sheet shall include a statement (if applicable) that the product contains a toxic chemical or chemicals, by name, subject to the reporting requirements of EPCRA Section 313 (40CFR372).
- (2) In addition, each Material Safety Data Sheet provided by the Seller must contain specific disposal procedures for hazardous waste pursuant to and in accordance with all Resource Conservation Recovery Act (RCRA) Laws and Environmental Protection Agency/Department of Environmental Protection (EPA/DEP) Regulations.
- (3) Buyer will then provide Seller with a MSDS number. The MSDS Number must appear on all packing slips, containers and packing containers and must be written as:

MSDS Number #####

- (4) The use of Buyer provided MSDS Labels (Fluorescent Orange) is mandatory. Labels shall be applied directly to the product.
- (B) Changes: For any change in the product the Seller shall submit a revised/updated MSDS Sheet to Buyer in advance of any shipment.
- (C) Reporting Requirements for 313 Chemicals

- (1) On an annual basis (not later than 30 September of each calendar year) the Seller must provide either an updated MSDS Sheet with any changes or a Certification Statement that the current MSDS Sheet is accurate and complete.
- (2) At a minimum the following must be included: Name of each chemical substance, the Chemical Abstracts Service Registry Number (CAS#); and the percentage of weight of each hazardous substance or chemical in the mixture or trade name product.
- (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
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).

22. 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 authorized representative identified in the P.O.

23. NOTIFICATION OF CHANGES

23.1 The purpose of this Clause is to provide Buyer with the prompt reporting of any conduct which the Seller considers constitutes a change to this P.O. 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 constitutes or requires a change to this P.O. Such notice shall be provided promptly, and in any event within ten (10) 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 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 Seller:

- (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.

23.2 Continued Performance - Except as provided in Paragraph 23.5 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 23.3 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 the work in accordance with directions issued by Buyer.

23.3 Buyer 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, the 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 the Buyer to respond within the time required above shall be deemed a countermand under Paragraph 23.3(B).

23.4 Equitable Adjustments - Equitable adjustments for changes confirmed by the Buyer shall be made in accordance with the Clause of this P.O. entitled "Changes."

23.5 Special Procedures - Paragraph 23.2 above provides that Seller is to take no action to implement a potential change pending the Buyer's response to Seller's notice of the potential change, except where specifically directed by the 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 the Buyer, Seller may proceed with work in accordance with the potential change. In such special situations, Seller shall advise Buyer in writing within five (5) 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 ten (10) days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 23.1 above. Buyer shall respond as set forth in Paragraph 23.3 above. If the 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.

23.6 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 23.1 above.

24. ORDER OF PRECEDENCE. INTERPRETATION AND EXCLUSIVE AGREEMENT. AND SEVERABILITY

24.1 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 included on the face of the P.O.
- (B) Standard terms and conditions of this P.O.;
- (C) Attachments (excluding the Specifications, and Statement of Work); and,
- (D) Specifications, and/ or Statement of Work.

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

24.3 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 force and effect.

25. PERFORMANCE

The parties acknowledge that Seller has special skills, knowledge and ability in the work to be performed under this P.O., and that the 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.

26. 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.

27. PROBLEM IDENTIFICATION REPORTS

Problem Identification Reports (PIR) shall be used by Seller to alert the 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; anticipated effects of the problem including, but not limited to, Delivery schedule and cost of performance, and Seller's recommended resolution of the problem.

28. QUALITY ASSURANCE REQUIREMENTS

28.1 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 requirements 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.

28.2 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. Supplies 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.

28.3 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.

28.4 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.

28.5 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.

28.6 Non-Conforming Products. Supplies which are received and are found to be non-conforming 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.

29. RISK OF LOSS

29.1 Risk of loss of or damage to Supplies shall remain with Seller until Delivery of the Supplies to the F.O.B. origin point specified in the P.O. and 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.

29.2 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.

30. SAFETY AND SECURITY

30.1 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.

30.2 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.

30.3 Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property unless specific prior approval from Buyer is obtained.

30.4 Seller acknowledges, that by accepting this purchase order/contract the following is applicable to any work performed hereunder:

Only trained authorized personnel will operate or service equipment, and in accordance with manufacturer's recommendations.

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.

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.

31. SELLER REPRESENTATIONS

Seller acknowledges that it understands the hazards which are presented to persons, property and the environment in performance of the treatment, storage, and disposal services hereunder, it will perform such Services in full compliance with all applicable governmental laws, regulations and orders; the designated treatment, storage and / or disposal facilities are now licensed and permitted to perform the Services for the waste materials described in the P.O., and in the event the treatment, storage, or disposal facility loses its permitted status, hereafter, Seller shall promptly notify the Buyer of such loss. Seller also acknowledges that it is licensed and is permitted to perform the treatment, storage and / or disposal services for the waste materials designated in this P. O. in accordance with the applicable laws and regulations.

32. SITE CONDITION ACKNOWLEDGMENT

Seller acknowledges by acceptance of this P. O. that it is qualified and certified in compliance with all applicable law and regulations, and that it may perform the tasks described in this P.O. Copies of all certificates showing evidence of certification will be provided upon request by the Buyer.

33. STOP WORK

33.1 Buyer may, at any time, by written order to the Seller, require the Seller to stop, all or any part of the work called for by this P.O., for a period of ninety (90) days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a "Stop Work Order" issued under this Clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after the Stop Work Order is delivered to the Seller, or within any extension of that period to which the parties shall agree, the Buyer shall either (i) cancel the Stop Work Order, or (ii) terminate the work covered by the order as provided for in the "Default" or the "Termination for Convenience" clauses of this P.O.

33.2 If a Stop Work Order issued under this Clause is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. Buyer shall make an equitable adjustment in the Delivery Schedule or P.O. price, or both, and the P.O. shall be modified, in writing, accordingly, if (i) the Stop Work Order results in an increase in the time required for, or in the Seller's cost properly allocable to the performance of any part of this contract; and (ii) the Seller asserts a right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the Buyer decides the facts justify the action, the Buyer may receive and act upon a proposal submitted at any time before final payment under this P.O.

33.3 If the Stop Work Order is not canceled and the work covered by the order is terminated for convenience, Buyer shall allow reasonable costs resulting **from** the Stop Work Order in arriving at the termination settlement.

33.4 If a Stop Work Order is not canceled and the work covered by the order is terminated for default, Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.

34. TERMINATION FOR CONVENIENCE

34.1 Buyer may terminate performance of work under this P.O. in whole or, from time to time, in part if the Buyer determines that termination is in the Buyer's interests. Buyer shall terminate by delivering to the Seller a Notice of Termination specifying the extent of the termination and the effective date.

34.2 After receipt of the Notice of Termination, and except as directed by the Buyer, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Clause: (i) stop work as specified in the notice; (ii) place no further subcontracts or orders (referred to as subcontracts in this Clause) for materials, services or facilities, except as necessary to complete the continued portion of the subcontract; (iii) terminate all subcontracts to the extent they relate to the work terminated; (iv) assign to the Buyer, as directed by the Buyer, all right, title and interest of the Seller under the subcontract terminated, in which the Buyer shall have the right to settle or to pay any termination settlement proposal arising out of this termination; (v) with approval or ratification to the extent required by the Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval and ratification will be final for the purposes of this Clause; (vi) as directed by the Buyer, transfer title and deliver to the Buyer (a) the fabricated or unfabricated parts, work in process, completed work, Supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information and other property that, if the P.O. had been completed, would be required to be furnished to the Buyer; (vii) complete performance of the work not terminated; (viii) take any action that may be necessary, or that the Buyer may direct, for the protection and preservation of the property related to this P.O. that is in the possession of the Seller in which the Buyer has or may acquire an interest; (ix) use best efforts to sell, as directed or authorized by the Buyer, any property of the types referred to in Paragraph (vi) above, provided, however, that the Seller (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Buyer under this P.O., credited to the price or cost of the work, or paid in any other manner as directed by the Buyer. Seller shall submit complete termination inventory schedules no later than 120 days from

- the effective date of termination. Unless extended in writing by Buyer upon written request of the Seller within this 120 day period.
- 34.3 After expiration of the plant's clearance period as defined by the Buyer, the Seller may submit to Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding Supplies authorized for disposition by the Buyer. The Seller may request Buyer to remove those Supplies or enter into an agreement for their storage. Within fifteen (15) days, Buyer will accept title to those Supplies and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the Supplies, or if stored, within forty-five (45) days from submission of the list and shall correct the list, as necessary, before final settlement.
- 34.4 After termination, the Seller shall submit a final termination settlement proposal to the Buyer in the form and with the certification prescribed by the Buyer. The Seller shall submit the proposal promptly, but no later than one (1) year from the effective date of the termination, unless extended in writing by the Buyer upon written request of the Seller within this one (1) year period. However, if the Buyer determines the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Seller fails to submit the proposal within the time allowed, the Buyer may determine, upon the basis of information available, the amount, if any, due to Seller because of the termination, and shall pay the amount determined.
- 34.5 Subject to Subparagraph 34.4 above, the Seller and the Buyer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this Subparagraph 34.5 or Subparagraph 34.6 below, exclusive of costs shown in Subparagraph 34.6(C) below, may not exceed the total P.O. price as reduced by (i) the amount of payments previously made and (ii) the P.O. price of work not terminated. The P.O. shall be amended, and the Seller paid the agreed amount. Subparagraph 34.6 below shall not limit, restrict or affect the amount that may be agreed upon to be paid under this Subparagraph.
- 34.6 If the Seller and the Buyer fail to agree on the whole amount to be paid because of the termination of work, the Buyer shall pay to the Seller the amounts determined by the Buyer as follows, but without duplication of any amounts agreed on in Subparagraph 34.5 above:
- (A) The P.O. price of the completed Services or Supplies accepted by the Buyer (or sold or acquired under Subparagraph 34.2(ix) above) not previously paid for, adjusted for any saving of freight and other charges.
 - (B) The total of (i) the cost incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any cost attributable to Services or Supplies paid or to be paid under Subparagraph (A) above; (ii) the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the P.O. and not included in subdivision (i) above; and (iii) a sum or profit on subdivision (i) above, determined by the Buyer to be fair and reasonable; however, if it appears that Seller would have sustained a loss on the entire P.O. had it been completed, then the Buyer shall allow no profit under subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (C) The reasonable cost of settlement of the work terminated, including (i) accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; (ii) the termination settlement of subcontracts (excluding the amounts of such settlements); and (iii) storage, transportation and other costs incurred, reasonably necessary for the preservation, protection or disposition of the termination inventory.
- 34.7 Except for normal spoilage, and except to the extent Buyer expressly assumes the risk of loss, Buyer shall exclude from the amounts payable to Seller under Subparagraph 34.6 above, the fair value, as determined by the Buyer of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the Buyer.
- 34.8 Generally accepted accounting principles shall govern all cost claims agreed to or determined under this Clause.
- 34.9 The Seller shall have the right of claim, under the "Disputes" Clause, for any determination made by the Buyer in Subparagraphs 34.4, 34.6 or 34.11, except that if the Seller failed to submit termination settlement proposal within the time provided under Subparagraphs 34.4 or 34.11, and failed to request a time extension, there is no right of claim. If Buyer has made a determination of the amount due under Subparagraphs 34.4, 34.6 or 34.11, Buyer shall pay to the Seller (i) the amount determined by the Buyer if there is no right of appeal or if no timely appeal has been taken, or (ii) the amount finally determined on an appeal.
- 34.10 In arriving at the amount due the Seller under this Clause, there shall be deducted (i) all unliquidated advance or other payments to the Seller under the terminated portion of this P.O. (ii) any claim which Buyer has against the Seller under this P.O.; and (iii) the agreed price for, or the proceeds of sales of, materials, Supplies or other things acquired by the Seller or sold under the provisions of this Clause and not recovered by or credited to the Buyer.
- 34.11 If the termination is partial, the Seller may file a proposal with the Buyer for equitable adjustment of the price(s) of the continued portion of the P.O. Buyer shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this Clause shall be requested within ninety (90) days of the effective date of termination unless extended in writing by the Buyer.
- 34.12 Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the P.O., if Buyer believes the total of these payments will not exceed the amount of which the Seller will be entitled. If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. Appendix 1215(b)(2). Interest shall be computed for the period from the date ~~(of)~~ the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention disposition, or later date determined by the Buyer because of the circumstances.
- 34.13 Unless otherwise provided in this P.O., the Seller shall maintain all records and documents relating to the terminated portion of this P.O. for three (3) years after final settlement. This includes all books and other evidence bearing the Seller's costs and expenses under this P.O.. The Seller shall make these records and documents available to the Buyer, at the Seller's

office, at all reasonable times, without any direct charge. If approved by the Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

35. TITLE

Unless otherwise stated in this P.O., title to Supplies covered by this P.O. shall pass from the Buyer to SELLER at the Delivery location specified in the P.O.

36. WAIVER

No waiver by either the 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 the Buyer or the Seller shall be treated as a variation of this P.O. unless specifically agreed in writing.

37. WARRANTY

37.1 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.

37.2 If, within the warranty period, Buyer finds that the warranted Supplies or Services need to be repaired, changed or reperformed because of the use of materials, equipment or workmanship which 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 the 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 the Buyer will perform the warranty work shall be at the discretion of the 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 the 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.

37.3 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 Supplies or Services.

37.4 Buyer 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.

37.5 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.

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

37.7 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.

37.8 Disputes arising under this Clause shall be resolved in accordance with the clause of this P.O. entitled "Disputes".

GOVERNMENT "FLOW DOWN" 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 C.F.R. 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>
52.203-3	GRATUITIES
52.203-5	COVENANT AGAINST CONTINGENT FEES
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	ANTI-KICKBACK PROCEDURES
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APPLIES IF THIS CONTRACT EXCEEDS \$100,000.)

52.204-2 SECURITY REQUIREMENTS

52.204-4 PRINTING / COPYING DOUBLE-SIDED ON RECYCLED PAPER

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

52.211-5 MATERIAL REQUIREMENTS

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

52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS

52.215-14 INTEGRITY OF UNIT PRICES AND ALTERNATE 1

52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS

52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (PRB)

52.215-19 NOTIFICATION OF OWNERSHIP CHANGES

52.219-8 UTILIZATION OF SMALLBUSINESS CONCERNS

52.219-9 SMALLBUSINESS SUBCONTRACTING PLAN AND ALTERNATE II

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

52.222-20 WALSH - HEALEY PUBLIC CONTRACTS ACT

52.222-26 EQUAL OPPORTUNITY

52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS

52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

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

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

52.227-1 AUTHORIZATION AND CONSENT

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

52.227-10 FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER

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

52.232-11 EXTRAS

52.232-23 ASSIGNMENT OF CLAIMS AND ALTERNATE I

52.233-1 DISPUTES AND ALTERNATE I

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

52.242-13 BANKRUPTCY

52.242-15 STOP - WORK ORDER

52.243-1 CHANGES - FIXED PRICE AND ALTERNATE II

52.244-1 SUBCONTRACTS (FIXED-PRICE CONTRACTS)

52.244-5 COMPETITION IN SUBCONTRACTING

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (DEVIATION)

52.245-9 USE AND CHARGES

52.245-17 SPECIAL TOOLING (DEVIATION 95-00007)

52.245-18 SPECIAL TEST EQUIPMENT

52.246-4 INSPECTION OF SERVICES - FIXED PRICE

52.247-58 LOADING, BLOCKING AND BRACING OF FREIGHT CAR SHIPMENTS

52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS

52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS AND ALTERNATE 1

52.248-1 VALUE ENGINEERING

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT)FIXED PRICE)

DFAR Reference	Clause Title
252.203-7001	SPECIAL PROHIBITION ON EMPLOYMENT
252.203-7002	DISPLAY OF DOD HOTLINE POSTER
252.204-7000	DISCLOSURE OF INFORMATION
252.209-7000	ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY
252.211-7000	ACQUISITION STREAMLINING
252.215-7000	PRICING ADJUSTMENTS
252.219-7003	SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)
252.223-7001	HAZARD WARNING LABELS
252.223-7002	SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES
252.223-7003	CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES
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
252.225-7009	DUTY-FREE ENTRY - QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES
252.225-7010	DUTY-FREE ENTRY - ADDITIONAL PROVISIONS
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES
252.225-7014	PREFERENCE FOR DOMESTIC SPECIALTY METALS AND ALTERNATE I
252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS
252.225-7019	RESTRICTION ON ACQUISITION OF FOREIGN ANCHOR AND MOORING CHAIN
252.225-7022	RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) BASED CARBON FIBER
252.225-7025	FOREIGN SOURCE RESTRICTIONS
252.225-7026	REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES
252.225-7029	PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS
252.225-7031	SECONDARY ARAB BOYCOTT OF ISRAEL
252.225-7041	CORRESPONDENCE IN ENGLISH
252.225-7042	AUTHORIZATION TO PERFORM
252.227-7013	RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS
252.227-7014	RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL SOFTWARE DOCUMENTATION
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
252.227-7020	RIGHTS IN SPECIAL WORKS
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
252.227-7030	TECHNICAL DATA-WITHHOLDING OF PAYMENT
252.227-7036	DECLARATION OF TECHNICAL DATA CONFORMITY
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA
252.229-7003	TAX EXEMPTIONS (ITALY)
252.229-7005	TAX EXEMPTIONS (SPAIN)
252.229-7006	VALUE ADDED TAX EXCLUSION (UNITED KINGDOM)
252.232-7004	DOD PROGRESS PAYMENTS RATES
252.235-7003	FREQUENCY AUTHORIZATION
252.239-7000	PROTECTION AGAINST COMPROMISING EMANATIONS
252.243-7000	ENGINEERING CHANGE PROPOSALS ALTERNATE I
252.243-7001	PRICING OF CONTRACT MODIFICATIONS
252.245-7001	REPORTS OF GOVERNMENT PROPERTY
252.246-7001	WARRANTY OF DATA AND ALTERNATE I
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA
252.247-7024	NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA
252.251-7000	ORDERING FROM GOVERNMENT SUPPLY SOURCES
5252.227-9112	LOGISTIC SUPPORT REQUIREMENT (DEVIATION)
5252.227-9113	GOVERNMENT - INDUSTRY DATA EXCHANGE PROGRAM
5252.233-9103	DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT - ALTERNATE I (MODIFIED)
5252.233-9107	EQUITABLE ADJUSTMENTS: WAIVER AND RELEASE OF CLAIMS (MODIFIED)
5252.243-9113	OTHER CHANGE PROPOSALS - ALTERNATE I

