

Appendix A, Form E2353COM, dated March 2014

**GENERAL AND RAW MATERIAL - COMMERCIAL**  
**PURCHASE ORDER TERMS AND CONDITIONS**

**1. DEFINITIONS**

- 1.1** The following words and expressions shall have the meaning hereby assigned to them for the purposes of this PURCHASE ORDER (P.O.) except where otherwise specifically stated or the context so requires:
- (a) "Buyer" shall mean Bath Iron Works (BIW) having its principal place of business in Bath, Maine.
  - (b) "Contracting Officer" means the Government contracting officer(s) for the Prime Contract. But see subparagraph (w) below.
  - (c) "Contractor" means Buyer in its capacity as the legal entity which contracts with the Seller by this P.O. But see subparagraph (w) below.
  - (d) "Cure Notice" refers to notification given by Buyer informing Seller of a possible default situation. Refer to Clause 6.
  - (e) "Days" means calendar days unless otherwise stated.
  - (f) "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 this P.O.
  - (g) "Delivery Order (D.O. )" refers to the ordering instrument by which Buyer procures the supplies and / or services contracted for through this Requirements Contract.
  - (h) "Dispute" refers to any situation where the Buyer and Seller disagree on an issue involving this P.O. Resolution of a Dispute is covered in Clause 8 herein.
  - (i) "FAR" means the Federal Acquisition Regulation. "DFARS" means the Defense FAR Supplement. "NAPS" means Navy Acquisition Regulation Procedure Supplement.
  - (j) "F.O.B." means F.O.B. Destination, unless otherwise stated.
  - (k) "Government" refers to the Government of the United States.
  - (l) "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).
  - (m) "National Stock Numbers" Whenever the term Federal Item Identification Number and its acronym FIIN or the term Federal Stock Number and its acronym FSN appear in the P.O. or their cited specifications and standards, the terms and acronyms shall be interpreted as National Item Identification Number (NIIN) and National Stock Number (NSN) respectively which shall be defined as follows:
    - 1. National Item Identification Number (NIIN). The number assigned to each approved Item Identification under the Federal Cataloging Program. It consists of nine numeric characters, the first two of which are the National Codification Bureau (NCB) Code. The remaining positions consist of a seven digit non-significant number.
    - 2. National Stock Number (NSN). The National Stock Number (NSN) for an item of supply consists of the applicable four position Federal Supply Class (FSC) plus the applicable nine position National Item Identification Number (NIIN) assigned to the item of supply.
  - (n) "Purchase Order (P.O.)" or "Subcontract" refers to this contractual instrument and includes changes and/or modifications hereto and is comprised of the Requirements Subcontract and all Attachments thereto.
  - (o) "P.O. Price" means the total sum of the Supplies or Services prices which individually may be called unit price(s).
  - (p) "Prime Contract" refers to the DDG Programs contract agreements between the U.S. Navy and BIW.
  - (q) "Procurement Specification (PS)" means Buyer's statement of specifications for the Supplies or Services being acquired.
  - (r) "Purchasing Representative" refers to Buyer's authorized representative.
  - (s) "Seller" or "subcontractor" means the legal entity who sells or contracts to sell Supplies or Services to Buyer by this P.O.
  - (t) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
  - (u) "Supply" or "Supplies" shall mean all or any part of the Supplies, articles, goods, or products contracted for by Buyer through this and any subsequent P.O.
  - (v) "Sellers' Prices" means the F.O.B. prices for the Supplies.
  - (w) "Supplier" means sub-tier subcontractor to the Seller.
  - (x) In the Government Flow-down and FAR, DFARS, NAVSEA and NAPS Clauses appearing at the end of these terms and conditions, and 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 terms "Contracting Officer" and "Government" or "Navy" 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, NAVSEA and NAPS Clauses incorporated herein shall be those in effect on the issuance award date of the applicable prime contract issued by the Government to the Buyer and they shall be interpreted in accordance with the definitions set forth at FAR 2.1 and DFARS 202.1. Further, any references to the FAR Disputes clause in such provisions shall instead mean and only be interpreted to mean the "Disputes" provision contained herein.

**2. ASSIGNMENT**

- 2.1** Neither this P.O. nor any interest herein, may 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.
- 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.

2.3 All rights of the Buyer with respect to this P.O. may be assigned by the Buyer to the Government, or to such other party as the Government may designate without change in the P.O. price except for any equitable adjustment that may arise due to changes in the place of delivery, or to any other party, without the Seller's consent.

### 3. **CHANGES**

3.1 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, designs 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 in the United States of the Supplies to be furnished under the P.O.;
- (d) description of Services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.);
- (f) place of performance of the Services;

3.2 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.

3.3 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.

3.4 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 the Buyer's authorized purchasing representative and received by Seller.

3.5 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.

### 4. **COMPLIANCE WITH LAWS**

Seller warrants that in the performance of this P.O., Seller shall comply with all applicable Federal, State and local laws, orders, rules and regulations of government entities, whether or not such provisions are referenced elsewhere in this P.O. Seller covenants to indemnify and hold Buyer and its assignees harmless from, any and all loss, costs, damages, expenses or liability (including reasonable attorney's fees) incurred by Buyer and its assignees, by reason of Seller's violation of this warranty, or as a result of any failure of Seller to comply with any such laws and regulations.

### 5. **CONFIDENTIALITY**

5.1 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 in law or equity.

5.2 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 Sellers or prospective Sellers 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.

5.3 The information to be held in confidence as provided in Paragraphs 5.1 and 5.2 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.

5.4 Either Party disclosing or reproducing another Party's information hereunder shall replicate in any reproductions made 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 vests in Bath Iron Works, Bath, ME. All rights reserved."

5.5 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, in writing, and cooperate to limit the disclosure to the minimum necessary to comply with the requirements of such demand or process as required by law.

## **6. DEFAULT**

**6.1** 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.; or
- (d) declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors.

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 a "Cure Notice" from Buyer specifying the failure.

**6.2** 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 to 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 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 Seller's 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 known sources in sufficient time to permit the Seller to meet the required Delivery schedule.

**6.3** 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.

**6.4** 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, or manufactured materials pending a resolution of any such dispute.

**6.5** If, after termination for 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 entitled "Termination for Convenience" of this P.O.

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

## **7. DELIVERY DATE AND EXCUSABLE DELAY**

**7.1** The Delivery Date(s) shall mean the date(s) as set forth 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 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 sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; or freight embargoes.

**7.3** If delay or failure 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 the 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 this P.O. Seller shall give such further written 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 operation.

## **8. DISPUTES**

**8.1** Disputes:

(a) "Dispute" as used herein shall mean any and all claims or disputes that in any way arise out of or relate to this P.O., the negotiation or execution thereof, its performance, or the breach or enforcement thereof. Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, unfair competition, unfair trade practices, or other tort law claims. The foregoing notwithstanding, the parties also intend and agree that, because of the nature of such matters, the following claims are not subject to the agreement to negotiate set forth herein: (1) claims regarding ownership, validity, infringement, or misappropriation of either party's intellectual property; (2) claims regarding a breach of obligations relating to the Nondisclosure Agreement(s), if any, or Confidentiality clause herein.

(b) Except for the right of either party to apply to a court of competent jurisdiction for equitable relief necessary to preserve the status quo or prevent irreparable harm as established below, the parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any dispute, controversy or claim arising out of or in connection with this P.O., including without limitation, any dispute regarding the enforceability of any provision, which cannot be

resolved through good faith negotiations within sixty (60) days or such longer period of time as may be mutually agreed between the Parties, shall be submitted to and finally resolved in accordance with Governing Law clause herein.

- (c) Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this P.O. unless otherwise directed by Buyer in writing. Each party acknowledges that the other party will suffer irreparable harm and that there is no adequate remedy at law if, pending settlement or any controversy or claim, the other party fails to diligently perform its obligations under this P.O. The non-breaching party shall be entitled to interim equitable relief or injunctive relief. In such an event, both parties hereby expressly consent to the jurisdiction of the courts in the State of Maine.
- (d) Buyer's rights under the terms and conditions of this Agreement are cumulative and in addition to any other rights available at law or equity.
- (e) This provision is not applicable to, and does not in any way limit any remedies available to a party with respect to, any dispute between either party to this P.O. and a third-party.

## **8.2 Disputes Related to Prime Contract:**

- (a) Except for changes identified as such in writing and signed by Buyer, the Seller shall notify Buyer, in accordance with the Notices provisions of this Agreement, in writing promptly, within forty-five (45) days from the date that the Seller identifies any conduct (including actions, inactions, and written or oral communications) on the part of the Buyer that Seller regards as a change to or inconsistency with the contract terms and conditions.
- (b) Notwithstanding paragraphs 8.1(b) and 8.2(a), any Dispute arising under or related to this P.O., which Buyer could include in a claim or other demand under the disputes provisions of the prime contract, shall be resolved as follows: (i) Seller shall provide Buyer with a fully supported written claim, properly certified as prescribed by FAR 33.207, within sixty (60) days after the claim accrues; (ii) Seller shall cooperate with Buyer in prosecuting Seller's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and (iii) Seller shall pay its proportional costs in pursuing the claim. If Seller fails to provide Buyer with a written claim for any Dispute within the time frame prescribed hereunder, Seller is deemed to have waived the claim.
- (c) Buyer's entire liability to Seller with respect to any matter prosecuted under the prime contract disputes clause shall be limited to the recovery obtained against the Government for Seller's claim, exclusive of Buyer's related markups. If Seller is affected by the resulting decision and Buyer elects to appeal, Seller shall pay to Buyer Seller's proportion of the appeal costs. If Buyer elects not to appeal the decision, Buyer shall notify Seller of that decision within ninety (90) days. If Seller submits a timely request to Buyer to appeal such decision, Buyer shall file and sponsor Seller's appeal, at Seller's sole cost, if Buyer may do so in good faith. Buyer has the right to review, prior to submission, any pleadings or other papers Seller may file in such appeal. Seller agrees to delete any admissions or statements in the pleadings or papers to which Buyer objects. If Buyer appeals such decision, whether or not at Seller's request, any decision regarding such appeal shall be binding on Buyer and Seller as it relates to this P.O. The choice of law specified in the prime contract shall not apply to Disputes and appeals prosecuted under the prime contract.
- (d) Seller shall indemnify and hold harmless Buyer for any loss, damage or claim, including reasonable attorneys' fees, Buyer may incur as a result of any claim of Seller sponsored by Buyer under this paragraph and finally determined by a court or administrative body of competent jurisdiction to have been fraudulent, unsupported or otherwise improper.
- (e) Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing.

## **9. ENVIRONMENTAL, SAFETY, AND OCCUPATIONAL HEALTH**

The Seller shall provide design work in accordance with the P.O. scope of work that ensures the Supplies or Services can be tested, operated, maintained, repaired, and disposed of in accordance with Environmental, Safety, and Occupational Health (ESOH) statutes, regulations, policies, and, as applicable, environmental treaties and agreements (collectively termed regulatory requirements) and the requirements of this Clause. The Seller shall conduct ESOH analyses as described below:

- 9.1 ESOH Compliance.** The Seller shall regularly review ESOH regulatory requirements and evaluate their impact on the Program's life-cycle cost, schedule, and performance.
- 9.2 Safety & Health.** The Seller shall identify and evaluate safety and health hazards, define risk levels, and establish a safety program that manages the probability and severity of all hazards associated with development, use and disposal of the Supplies or Services.
- 9.3 Hazardous Material.** The Seller shall establish a hazardous materials management program to consistently reduce or eliminate the use of hazardous materials in Supplies or Services processes and products (Executive Order 13148). The Seller shall evaluate and manage the selection, use, and disposal of hazardous materials consistent with Environmental Safety and Occupational Health (ESOH) regulatory requirements and program cost, schedule, in the Supplies or Services and performance goals. Where the Seller cannot avoid, within schedule and cost constraints, using a hazardous material, the Seller shall develop and implement plans and procedures for identifying, minimizing use of, tracking, storing, handling, packaging, transporting, and disposing of such material. As alternate technologies become available, the Seller shall replace hazardous materials in the Supplies or Services through changes in their design, manufacturing, and maintenance processes, where technically and economically practicable. If any such change will cause an increase or decrease in the price, cost and/or delivery schedule, Seller shall first seek Buyer's consent to such a change before implementing the same.
- 9.4 Pollution Prevention.** The Seller shall identify and evaluate environmental and occupational health hazards and establish a pollution prevention program.
- 9.5 Explosives Safety.** The Seller shall comply with Department of Defense (DoD) and Department of Navy (DoN) explosives safety requirements. The Seller shall ensure that munitions, explosives, and energetics are properly transported, handled, loaded, stored, and maintained.
- 9.6 Environmental Impact.** The Seller shall identify the impacts of the Supplies or Services on the environment during its life (including disposal), the types and amounts of pollution from all sources (air, water, noise, etc.) that will be released into the environment, actions needed to prevent or control the impact, ESOH risks associated with using the new Supplies or Services, and other information needed to identify source reduction, alternative technologies, and recycling opportunities. The pollution prevention program shall serve to minimize impacts on the environment and human health, as well as environmental compliance impacts on program Total Ownership Cost (TOC). A fundamental purpose of the pollution prevention program is to identify and quantify impacts, such as noise, as early as possible during system development, and to identify and implement actions needed to prevent or abate the impacts. In developing contract documents such as work statements, specifications, and other product descriptions, the Seller shall eliminate the use of virgin material requirements, as practicable. The Seller shall further consider life-cycle

costs, recyclability, the use of environmentally preferable products, waste prevention (including toxicity reduction or elimination), and disposal, as appropriate.

## **10. EXAMINATION OF RECORDS**

- 10.1** Seller agrees that Buyer, the Contracting Officer or other duly authorized Government Representative 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.
- 10.2** The periods 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 finally disposed of.

## **11. EXPORT COMPLIANCE**

Exports of Data exchanged under this P.O. may be subject to the export laws of the United States, including, but not limited to, the U.S. International Traffic in Arms Regulations (ITAR), the Export Administration Act (EAA), the Trading With the Enemy Act (TWEA), and the International Economic Emergency Powers Act (IEEPA). The Parties shall not export, disclose or transfer any such data directly or indirectly without compliance with these and any other applicable laws and regulations.

## **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, and the rights and obligations of the Parties shall be determined, according to Federal Common Law and the 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 for the P.O. issued by BIW, 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 to be fully performed within the State and without regard to the State's conflict of laws principles. The exclusive jurisdiction for any action by either Party against the other shall be any Federal district court or state court in the State of Maine, as applicable.

## **13. INSPECTION**

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

### **13.1 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 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.

### **13.2 Notice of Testing**

Seller shall inform the QAR by written notice the date of any testing required by this P.O. Such notice shall be provided at least thirty (30) days prior to the actual test date.

### **13.3 Inspection**

- (a) All Supplies shall be subject to inspection and test by the QAR (and/or the Government) at all reasonable times including the period of manufacture and 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, to require their correction, or, in the case of Services, their reperformance.
- (c) All inspections and tests by the Buyer at Seller's facilities shall be performed in such a manner as not to unduly delay the work. Should the performance of such inspection or test unduly delay the work of Seller, such delay shall be excusable within the meaning of the Clause entitled "Delivery Date and Excusable Delays," and Seller shall be entitled to an equitable adjustment in price and/or Delivery pursuant to the Clause entitled "Changes." 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 retest 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 the Buyer of any Supplies or 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 the 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.

**14. INTELLECTUAL PROPERTY RIGHTS**

**14.1 Copyright**

All specifications, drawings, 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.

**14.2 Patent Indemnity**

The Seller shall indemnify Buyer against claims by owners or licensees of patents and registered designs of the United States 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; and
- (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.

**14.3 Trade Secrets**

Seller agrees to comply with all provisions of the Uniform Trade Secrets Act, 10 M.R.S.A. §§ 1541 – 1548.

**15. INVOICES AND PAYMENTS**

**15.1 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 properly prepared and valid, an invoice must include (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 for the Supplies or Services being invoiced;
  - (4) shipment number, date of shipment and shipping point for the Supplies or Services being invoiced;
  - (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 duplicate, unless otherwise specified, and sent to the address below:

Bath Iron Works  
700 Washington Street  
Bath, ME 04530  
Attn: Invoice Audit

- (c) Invoices may not be submitted by facsimile transmission.

**15.2 Payments**

- (a) Buyer shall pay the Seller, upon the submission of properly prepared and 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.

**16. LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE**

- 16.1 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.

- 16.2** As respects policies under (i), (ii) and (iii) 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.

#### **17. 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 P.O., 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.

#### **18. MARKING, PACKING, AND PACKAGING**

- 18.1** Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping on pallets, material or equipment must be adequately secured to meet ASTM Designation D3951-98, Part 5.1.5, Unitization.

- 18.2** All shipments shall be marked with the following information:

- (a) Buyer P.O. number for the product being shipped
- (b) Buyer line item number for the product being shipped
- (c) Buyer catalog number (or NSN, if applicable) for the product being shipped
- (d) Quantity shipped for the product being shipped
- (e) MSDS # (if applicable) for the product being shipped
- (f) QPL Source (if applicable) for the product being shipped
- (g) Shelf Life (if applicable) for the product being shipped

Markings shall be on the face of each container (i.e., crates, boxes, cartons, etc.) or securely tagged to soft-sided containers.

- 18.3** All packing lists shall minimally contain the information in paragraph 18.2. The packing list shall be secured to the external surface of each container, or readily accessible upon entry to each container.

The Seller's commercial shipping document/packing list for P.O. items shall include proof that Government Source

Inspection has been performed (if required) and the following Procurement Quality Audit (PQA) statement beneath Seller's statement:

"Required PQA of listed items has been performed. \_\_\_\_\_ (Signature of Auth. Seller Rep.), \_\_\_\_\_ (date)  
\_\_\_\_\_. (Typed name) \_\_\_\_\_."

- 18.4**

- (a) Tags and labels, when required, shall be Seller's tags or labels conforming to the requirements of the Specification MIL-STD 129. Labels are authorized to be used on metal containers. Supplies requiring special certification shall be annotated on inner and outer container tags or labels indicating special certification compliance. Where the size of the shipping container allows, four address labels must be attached to the containers at the following location: (i) one (1) each on top of container, (ii) one (1) each on each side of the container, and (iii) one (1) each on front of container. For the purposes of this Clause the top, bottom, front and back of the container are not considered sides.
- (b) Within each container, each Buyer catalog number (or NSN, if applicable) shall be segregated (i.e., bagged, boxed, layered or partitioned) and readily identifiable with tags/labels reflecting information stated in paragraph 18.2 above. If multiple loose Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 18.2 above and mark all remaining Supplies as "part of" the Buyer catalog number.
- (c) Multiple orders shall not be shipped within a single container.
- (d) Multiple shipments to one (1) specified delivery location on any given day shall be consolidated under one (1) Bill of Lading.
- (e) 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.

- 18.5** MSDS Requirements

- (a) General

- (1) The Seller shall provide information for each item of Hazardous Material to be delivered pursuant to this P.O. 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 P.O. 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 an 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 in each annual submittal: 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:

Bath Iron Works  
700 Washington Street  
Bath, ME 04530  
Attn: Safety Department, Mail Stop 2240  
or  
By facsimile at 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).

#### **19. NOTICES**

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

#### **20. NOTIFICATION OF CHANGES**

**20.1** The purpose of this Clause is to provide Buyer with the prompt reporting of any conduct which the Seller considers would constitute 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, Seller shall notify Buyer of any conduct which Seller considers constitutes or requires a change to this P.O. and/or 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 the furnishing of, or the failure to furnish, any Supply 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 P.O. 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 P.O. requirements regarded as changed.

**20.2** Except as provided in Paragraph 20.5 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 20.3 below, unless the potential change was previously directed by Buyer, in which case the Seller shall conform therewith. Nothing in this Clause shall excuse the Seller from proceeding with P.O. work in accordance with directions issued by Buyer.

**20.3** Buyer shall promptly, and in any event within twenty (20) 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 20.3(b).

**20.4** Equitable adjustments for changes confirmed 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.

**20.5** Paragraph 20.2 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:

- (a) the circumstances do not allow sufficient time to notify Buyer of the facts prior to the need to proceed with the work, and;



- (b) 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. 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 twenty (20) days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 20.1 above. Buyer shall respond as set forth in Paragraph 20.3 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.

20.6 When Seller identifies any conduct, which may result in delay of delivery of the Supplies and Services, Seller shall promptly so inform Buyer thereof prior to providing the notice required by Paragraph 20.1 above.

## **21. ORDER OF PRECEDENCE, INTERPRETATION AND EXCLUSIVE AGREEMENT, AND SEVERABILITY**

21.1 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 Specifications/Buyer Material Ordering Catalog and Statement of Work); and,
- (d) Buyer Material Ordering Catalog, Specifications, and/or Statement of Work

21.2 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.

21.3 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. In such case the remainder of this P.O. shall be held in full force and effect.

## **22. OFFSETS**

Should all or part of the item(s) supplied under this P.O. be provided by sources outside the United States or its territories, Seller must inform Buyer of the country of origin and percentage of foreign content. Buyer reserves exclusive right to apply the equivalent value of foreign content in the item(s) provided by the Seller to the Offset Program of the Buyer's choice. Buyer may, at Buyer's discretion, provide written notice waiving its claim to offset credits accruing from this P.O., thereby allowing Seller use and discretionary application of such credits. Seller agrees to assist Buyer in securing Offset Credits from respective foreign government authorities in an amount equal to the value of foreign content in the item(s) provided.

## **23. 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 delivering the Supplies and Services in accordance with the requirements of this P.O.

## **24. 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 fulfill this P.O.

## **25. 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.

## **26. QUALITY ASSURANCE REQUIREMENTS**

26.1 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 this P.O., Seller shall examine the Purchase Specification for quality program requirements

26.2 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 such 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.

26.3 Government Procurement Quality Assurance (PQA) or Government Source Inspection (GSI). The Government reserves the right to inspect all Supplies. If Government Source Inspection is invoked by 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; 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..

- 26.4** When specified by the P.O., Buyer's Certification 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 under the P.O.
- 26.5** 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.
- 26.6** Non-Conforming Products. Supplies which are received by Buyer 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 material to Seller.
- 26.7** Welding and Inspection of Piping. Seller shall comply with ABS Navel Vessel Rules (NVR) 8-3-3. NVR 8-3-3 invokes NAVSEA S9074-AR-GIB-010/278 and sub-tiers to such as follows:
- (a) T9074-AS-GIB-010/271 – VT & NDT procedure and personnel qualification;
  - (b) MIL-STD-2035A – VT & NDT acceptance criteria;
  - (c) S9074-AQ-GIB-010/248 – Weld procedure and welder qualification; and
  - (d) NAVSEA 0900-LP-001-7000 – Brazing standard.
- Seller shall be responsible to meet the latest revisions of above.

## **27. RISK OF LOSS AND INSURANCE**

- 27.1** Risk of loss of or damage to Supplies shall remain with Seller until, and shall pass to the Buyer upon, Delivery of the Supplies to the F.O.B. Destination point specified in the P.O. and the Buyer's acceptance of the Supplies, regardless of whether that acceptance is conditional or final.
- 27.2** 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.
- 27.3** The Seller shall bear the risk of loss or damage to any property of the Buyer in Seller's possession or care, and shall maintain adequate insurance so as to cover any such loss or damage, and shall name the Buyer as the additional insured and beneficiary of any payments therefrom with waiver of any right of subrogation.

## **28. SAFETY AND SECURITY**

- 28.1** 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 Safety and 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 ANSI Z41 approved steel-toed safety shoes. A copy of Buyer's Environmental, Health and Safety Regulations Handbook outlining said policies and procedures can be located at GDBIW.com; select Purchasing, then Forms/Appendices, then Safety Regulations.
- 28.2** 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.
- 28.3** Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property or on a vessel in Buyer's care or custody unless specific prior approval from Buyer is obtained.
- 28.4** By accepting this P.O., the Seller acknowledges that the following is applicable to any work performed on this P.O:
- (a) Only trained authorized personnel will operate or service equipment, and then only in accordance with manufacturer's recommendations,
  - (b) Seller is responsible for properly managing hazardous waste generated by Seller in accordance with applicable Federal, State and local regulations. Disposal of hazardous waste shall be coordinated and approved through the Buyer's Environmental Operations Department, and
  - (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.

## **29. SHIPPING AND DELIVERY**

- 29.1** 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.
- 29.2** Supplies shall be delivered to the locations indicated on the P.O., F.O.B. Destination, unless otherwise specified.
- 29.3 Freight Collect**
- (a) If the P.O. indicate that Supplies 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, the Supplies shall be shipped UPS COLLECT. If a single shipment of multiple Supplies together exceeds the weight limitations or if an item exceeds the dimensional requirements, follow the procedures in subparagraph (b) above.

### **30. 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".

### **31. SURVIVABILITY**

The obligations of the Parties under this P.O., which by their nature continue beyond the expiration of this P.O., shall survive any termination or cancellation of this P.O.

### **32. TERMINATION FOR CONVENIENCE**

In addition to Buyer's termination rights set forth in the Default Clause, Buyer may also terminate performance of work under this P.O. in whole or in part, from time to time, if the Buyer determines that a termination is in the Buyer's interest, or if a termination is reasonably required to implement any Government termination, change or direction under the Prime Contract. The Buyer shall terminate by delivering to Seller the extent of termination and the effective date.

In the event of such termination, Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers and subcontractors to cease work. Seller must submit all claims within sixty (60) days after the effective date of termination. Buyer shall determine the amount due Seller on the Termination in accordance with FAR 52.249-2. In no event shall Buyer be obligated to pay Seller any amount in excess of the P.O. price. Seller shall continue work not terminated.

### **33. TITLE**

Unless otherwise stated in the Clause entitled "Progress Payments", if applicable, title to the Supplies covered by the P.O. shall pass from the Seller to the Buyer upon the Buyer's acceptance of the Supplies at the F.O.B. Destination point.

### **34. 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 SUBCONTRACT unless specifically agreed in writing.

### **35. WARRANTY**

**35.1** 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 and Services as provided in the "Inspection" clause of this P.O.

**35.2** If, within the warranty period, the 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, the 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;
- (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; or
- (d) furnish such materials or parts and installation instructions as may be required to successfully accomplish the required correction or replacement. The Seller shall also prepare and furnish to the Buyer data and reports applicable to any correction or replacement required under this Clause.

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 the Buyer. When the 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.

**35.3** 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.

**35.4** The 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 P.O. shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special warranties.

**35.5** 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 the 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 the 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.

**35.6** 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.

**35.7** Disputes arising under this Clause shall be resolved in accordance with the Clause entitled "Disputes".

36. **CONFLICT MINERAL DISCLOSURE**

- a. Supplier certifies that, regardless of whether Supplier is publicly traded or not, Supplier does not procure Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the Securities and Exchange Commission’s final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. (the “Rule”).
- b. Supplier certifies and warrants that all products that will be delivered to Bath Iron Works by Supplier under this Order are DRC Conflict Free, as defined by and consistent with the Rule.
- c. Supplier agrees that, if required by the Rule, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to Bath Iron Works pursuant to this Order originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Supplier further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to Bath Iron Works pursuant to this Order, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict Mineral. Supplier agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.
- d. Supplier agrees that it shall require its own subcontractors and suppliers (at any tier in the supply chain for a product delivered to Bath Iron Works under this Order) to furnish information to Supplier necessary to support Supplier’s obligations under this Section ##.
- e. Supplier will maintain records reviewable by Bath Iron Works to support its certifications above
- f. Supplier acknowledges that Bath Iron Works may utilize and disclose Conflict Minerals information provided by Supplier in order to satisfy its disclosure obligations under the Rule.
- g. If Bath Iron Works determines that any certification made by Supplier under this Section ## is inaccurate or incomplete in any respect, then Bath Iron Works may terminate this Order pursuant to the provision of this Order titled [“Termination for Default”]

37.0 **FEDERAL CONTRACTOR REQUIREMENTS**

“This order/contract is subject to the requirements of 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, which are incorporated into this order/contract by reference, **as applicable**. In addition, this order/contract is subject to the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which are incorporated herein by reference, **as applicable**. **The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities.**”

**GOVERNMENT “FLOW-DOWN” CLAUSES**

**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 P.O. in full text. As stated in the Definitions Clause, “Contractor shall mean “Seller”, “subcontractor” shall mean Seller’s subcontractor, “Contracting Officer” and “Government” or “Navy” shall mean Buyer and “Contract” refers to this P.O. except where context of Clause otherwise demands:

**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.

**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., unless by their express provisions they are not applicable to this particular Seller or 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 the Buyer’s prime contract under which this order is placed, 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 SUBCONTRACT. Further, any reference in any of these Clauses to any Disputes Clause or provision shall be read instead to only mean the Clause entitled Disputes, contained above in these terms and conditions.

<b><u>FAR</u></b>	<b><u>TITLE</u></b>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHCS AND CONDUCT
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS
52.222-21	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	EQUAL OPPORTUNITY
52.222-35	EQUAL OPPORTUNITY FOR, VETERANS

52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT
52.222-50	COMBATING TRAFFICKING IN PERSONS
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS
52.247-64	PREFERENCE FOR PRIVATELY OWNED US - FLAG COMMERCIAL VESSELS

**DFARS**

**TITLE**

252.203-7000	REQUIREMENTS RELATING TO COMPENSTATION OF FORMER DOD OFFICIALS
252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS
252.225-7013	DUTY-FREE ENTRY
252.237-7010	PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL
252.237-7019	TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS)
252.247-7003	PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT OT THE COST BEARER
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA (10 U.S.C. 2631)
252.247-7024	NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (10 U.S.C. 2631)