

## **Appendix A - PURCHASE ORDER TERMS AND CONDITIONS FOR PURCHASE SPECIFICATION EQUIPMENT (E-2357, 03/15)**

### **1. ASSIGNMENT**

- 1.1 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 Buyer. Any assignment or attempted assignment by the Seller without said prior written consent shall be null and void; provided, however, Seller may assign its rights to be paid amounts due as a result of performance of this P.O. to a bank, trust company, or other financing institution.
- 1.2 Nothing contained in this Clause shall prohibit any party to this P.O. from assigning any or all of its respective rights, title and interest in and to this P.O. to the assigning party's successor-in-interest by way of corporate merger, consolidation or acquisition, or assignment by operation of law. Such successor expressly assumes, agrees to be bound by, and undertakes to perform each and every one of the provisions of this P.O., and further assumes all obligations and liabilities hereunder of the original party to this P.O.
- 1.3 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.

### **2. CHANGES**

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

### **3. COMPLIANCE WITH LAWS**

Seller shall comply with all applicable Federal, State and local laws, and regulations in 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 as a result of any failure of Seller to comply with any such laws and regulations.

### **4. CONDITIONAL ACCEPTANCE OF SUPPLIES**

- 4.1 Upon Delivery to the F.O.B. Destination point, the Supplies shall be conditionally accepted by the Buyer ("Conditional Acceptance"). Thereafter, the Buyer may conduct such other inspections and tests as it deems appropriate, including trials as may be provided for in the P.O., and within sixty (60) days from completion of such trials, the Buyer shall notify Seller of the acceptability of the Supplies. If Buyer does not provide written notification to the Seller within the timeframe stated above the Supplies shall be deemed conditionally accepted.
- 4.2 Any Services rendered in support of this P.O. shall be performed in a professional and workmanlike manner in accordance with the specifications referenced in the P.O. Between Conditional Acceptance and Final Acceptance, if any Supply(s)/Services are found not to conform with the requirements of the P.O., the Buyer shall have the right to (i) reject such Supply(s) and return it at Seller's expense, or (ii) require its correction, or in the case of services, re-performance.
- 4.3 Buyer's acceptance of the Supplies or Services and its subsequent use thereof shall not constitute a waiver of any claim based upon the delivery of improper or defective materials or workmanship, or for delayed deliveries, or of Buyer's rights and remedies conferred with respect thereto. Any and all of the rights and remedies conferred upon the Buyer under the P.O. shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller's breach of contract.

### **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 suppliers or prospective suppliers or DDG 51 Program Team Members, 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 To the extent reasonably necessary for the purpose of this P.O. or the Prime Contract, a party may disclose the information of the other party to the Government provided that the disclosing party makes such disclosure subject to like conditions of confidentiality and to the restrictions set forth in Sections (b)(2) of DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA NON COMMERCIAL ITEMS or such later version as the parties may agree, as appropriate, and marks the information so disclosed with the appropriate restrictive legends as provided in the said DFARS Clauses and such other marking of an industrial property right nature as the party owning the information may require, provided that such marking is not disallowed under the provisions of the Prime Contract. Buyer may furnish to the U.S. Government form, fit and function data, manuals and instructional materials as those expressions are defined in said DFARS Clause with Unlimited Rights subject to the conditions pursuant to subdivisions (b)(l) of said DFARS Clause to the extent required under the Prime Contract.

5.5 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 rests in Bath Iron Works, Bath, Maine. All rights reserved."

5.6 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.

## **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.
- (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 "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 subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for excess costs unless the subcontracted Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Seller to meet the required Delivery schedule.
- 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, materials, parts, tools, dies, jigs, fixtures, etc. 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. DEFINITIONS**

- 7.1 The following words and expressions shall have the meaning hereby assigned to them for the purposes of this P.O. except where otherwise specifically stated or the context so requires:
- (A) "Buyer" shall mean Bath Iron Works having its principle place of business in Bath, Maine or Huntington Ingalls Industries (Hii), having its principle place of business in Pascagoula, MS.
- (B) "Contracting Officer" means the Government contracting officer(s) for the Prime Contract. But see Subparagraph (R) below.
- (C) "Contractor" means Buyer in its capacity as the legal entity which contracts with the Seller by this P.O. But see Subparagraph (R) below.
- (D) "Days" means calendar days unless otherwise stated.
- (E) "Delivery" or "Delivered" means the receipt at the F.O.B. Point of all Supplies ordered under the P.O., including all submittals, certifications, documentation and any other Supplies to be furnished under the terms of this P.O.
- (F) "FAR" means the Federal Acquisition Regulation. "DFARS" means the Defense FAR Supplement. "NAPS" means Navy Acquisition Regulation Procedure Supplement.
- (G) "F.O.B." means F.O.B. Destination, unless otherwise stated.
- (H) "Government" refers to the Government of the United States.
- (I) "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 Purchase Order. (Reference Geranco Mfg. Corp., ASBCA No. 12376, March 4, 1968, 68-1 BCA 6898 at p. 31,861).
- (J) "Purchase Order "P.O." or Subcontract refers to this contractual instrument and includes changes and/or modifications hereto.
- (K) "P.O. Price" means the total sum of the Supplies or Services prices which individually may be called unit price(s).
- (L) "Purchase Specification" means Buyer's statement of specifications for the Item(s) or Services being acquired.
- (M) "Purchasing Representative" refers to Buyer's authorized representative.
- (N) "Seller", "Subcontractor", or "Supplier" means the legal entity who sells or contracts to sell Supplies or Services to Buyer by this P.O.
- (O) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
- (P) "Supplies" means all or any part of the Supplies, articles, goods, or products contracted for by Buyer through this P.O.
- (Q) "Supplies' Prices" means the F.O.B. prices for the Supplies.
- (R) In the FAR, DFARS and NAPS Clauses incorporated herein, the cited terms shall have the following meanings: the term "Contractor" shall be deemed to refer to the Seller; the term "Subcontractor" shall be deemed to refer to the Seller's subcontractors; the "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 award 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.
- 7.2 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.

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

- 8.1 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.
- 8.2 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.

- 8.3 If the delay or failure is caused by the delay or failure of a subcontractor of the Seller and if such delay arises out of causes beyond the reasonable control of both the Seller and the Seller's subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for damages occasioned by delays in Delivery unless the Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other known sources in sufficient time to permit the Seller to meet the required Delivery schedule.
- 8.4 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.
- 8.5 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.
- 8.6 In the event Seller does not deliver acceptable items in accordance with the delivery schedules set forth in the P.O., Seller shall be liable to Buyer for all damages and liability, not otherwise excluded herein, of Buyer resulting therefrom.

## **9. DISPUTES**

- 9.1 "Dispute" as used herein shall mean any and all claims or disputes that in any way arise out of or relate to this Agreement, 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.
- 9.2 This Agreement shall be interpreted and the rights and obligations of the Parties shall be determined in accordance with the laws of the State of Maine without reference to that state's conflicts of laws. 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 Agreement, 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 by a court of competent jurisdiction in the State of Maine.
- 9.3. Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement 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 Agreement. 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.
- 9.4. 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.
- 9.5. 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 Agreement and a third-party.
- 9.6. Disputes Related to Prime Contract:  
Except for changes identified as such in writing and signed by Buyer, the Seller shall notify Buyer, in accordance with the Notices requirement, 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.
- 9.7 Notwithstanding the previous paragraph, any Dispute arising under or related to this Agreement, which Buyer could include in a claim or other demand under the disputes provisions of the prime contract, shall be resolved in accordance with Paragraph 9.6 above and 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.
- 9.8 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 Agreement. The choice of law specified in the prime contract shall not apply to Disputes and appeals prosecuted under the prime contract.

9.9 Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing.

## **10. EXAMINATION OF RECORDS**

- 10.1 Seller agrees that Buyer, the Contracting Officer or other duly authorized Government Employee shall, until the expiration of three (3) years after final payment under this P.O., have access to and the right to examine any directly pertinent books, documents, papers, and records involving transactions pertaining to this P.O.
- 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 disposed of.

## **11. FINAL ACCEPTANCE**

- 11.1 As used in this Clause, "Final Acceptance" means the act by which the Buyer assumes for itself ownership of the Supplies. In accordance with the Clause entitled "Conditional Acceptance," the Buyer shall provide written notification to the Seller of the acceptability of the Supplies. If the Buyer does not provide written notification to the Seller within the sixty (60) days following successful completion of Trial Charlie, the Supplies shall be deemed finally accepted, subject to the provisions of the Clause entitled "Warranty." Payments made under this P.O. shall not be considered as an indication of the acceptability of the Supplies.
- 11.2 Any Services rendered in support of this P.O. shall be performed in a professional and workmanlike manner, and in accordance with the specifications referenced in the P.O. If, at the time of Final Acceptance, defects are known to exist in a Supply or any Services performed, the Supply/Service may be accepted in writing by Buyer with either a reservation of the Buyer's right to have the Seller correct the known defect(s), re-perform the Service in the event services were provided, or an equitable reduction in price, or both, as may be appropriate under the circumstances. Failure to agree to such reduction in price shall be a dispute concerning a question of fact within the meaning of the Clause entitled "Disputes."

## **12. FINAL SETTLEMENT**

Upon final settlement of the work, Seller shall be entitled to receive any balance owed under this P.O. Such payment to be made within thirty (30) days after the amount of such balance is determined; provided appropriate documentation has been received and approved by Buyer. Seller and each assignee of the Seller, under an assignment in effect at the time of final settlement, shall execute and deliver at the time of and as a condition precedent to any final payment from Buyer, a release of claims and liens from Seller and Seller's subcontractors and from liabilities, obligations, and claims arising under this P.O. in form and substance satisfactory to Buyer, its officers, agents, and employees. If this P.O. shall have been terminated in whole or in part, any such release shall also contain a release of all claims against Buyer arising out of, or by virtue of, such termination.

## **13. GOVERNING LAW**

The parties agree that irrespective of the place of performance of this P.O., the P.O. shall be construed and interpreted according to Federal Common Law and 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 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. Any action by either party against the other shall be brought before any court in the State of Maine having competent jurisdiction.

## **14. GOVERNMENT PROPERTY/BUYER PROPERTY**

- 14.1 Government or Buyer Furnished Property. The Government or Buyer shall deliver to the Seller, for use in connection with and under the terms of this P.O., the property described as Government-Furnished Property (GFP) or Buyer-Furnished Property (BFP), together with such related data and information as the Seller may request and as may reasonably be required for the intended use of such property. The Delivery or performance dates for the Supplies or Services to be furnished by Seller under this P.O. are based upon the expectation that GFP or BFP suitable for use (except for such property furnished "as is") will be delivered to the Seller at the times stated in the P.O. or, if not so stated, in sufficient time to enable Seller to meet such Delivery or performance dates. In the event that GFP or BFP is not delivered to Seller by such time or times, Buyer shall, upon timely written request made by Seller, make a determination of the delay, if any, occasioned the Seller thereby, and shall equitably adjust the Delivery or performance dates or the P.O. price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the Clause of this P.O. entitled "Changes." Except for GFP or BFP furnished "as is," in the event the GFP or BFP is received by Seller in a condition not suitable for the intended use the Seller shall, upon receipt

thereof, notify Buyer of such fact and, as directed by Buyer, either (i) return such property at Buyer's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, Buyer upon written request of Seller shall equitably adjust the Delivery or performance dates or the P.O. price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification to GFP or BFP, in accordance with the procedures provided for in the Clause of this P.O. entitled "Changes." The foregoing provisions for adjustment are exclusive and Buyer shall not be liable to suit for breach of contract by reason of any delay in delivery of GFP or BFP or delivery of such property in a condition not suitable for its intended use, a decrease in or substitution of GFP or BFP, or failure to repair or replace GFP for which Government or Buyer is responsible.

14.2 Changes in GFP or BFP.

- (A) By notice in writing, Buyer may (i) decrease the property provided or to be provided by the Government or Buyer under this P.O., or (ii) substitute other Government or Buyer owned property for property to be provided by the Government or Buyer, or to be acquired by Seller for the Government or Buyer under this P.O. Seller shall promptly take such action as Buyer may direct with respect to the removal and shipping of property covered by such notice.
- (B) In the event of any decrease in or substitution of property pursuant to subparagraph (A) above, or any withdrawal of authority to use property provided under any other contract or lease, which property Buyer had agreed in the Schedule to make available for the performance of this P.O., Buyer, upon the written request of Seller (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the Clause entitled "Changes."

14.3 Title. Title to all property furnished by the Government or Buyer shall remain in the Government or Buyer respectively. In order to define the obligations of the parties under this Clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" Clause) acquired by the Seller for the Government or Buyer pursuant to this contract shall pass to and vest in the Government or Buyer, respectively, when its use in the performance of this P.O. commences, or upon payment therefor by the Government or Buyer, whichever is earlier, whether or not title previously vested. All GFP or BFP, together with all property acquired by Seller title to which vests in the Government or Buyer under this Paragraph is subject to the provisions of this Clause and is hereinafter collectively referred to as "Government or Buyer property." Title to Government or Buyer property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government or Buyer, nor shall such Government or Buyer property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

14.4 Property Administration. Seller shall comply with the provisions of Subpart 45.5 of the Federal Acquisition Regulation, as in effect on the date of the P.O., which is hereby incorporated by reference and made a part of this P.O.

If damage occurs to Government/Buyer property, the risk of which has been assumed by the Government/Buyer under this P.O., the Government/Buyer shall replace the items or the Seller shall make such repairs as the Government/Buyer directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by the Government/Buyer. The Seller represents that the contract price does not include any amount of repairs or replacement for which the Government/Buyer is responsible. Repair or replacement of property for which the Seller is responsible shall be accomplished by the Seller at its own expense.

14.5 Use of Government or Buyer Property. Government or Buyer property shall, unless otherwise provided herein or approved by the Government or Buyer, be used only for the performance of this P.O.

14.6 Utilization, Maintenance and Repair of Government or Buyer Property. Seller's subcontractors shall be required to maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Subpart 45.5 of the FAR, a program for the utilization, maintenance, repair, protection and preservation of Government or Buyer property until disposed of by the Seller in accordance with this Clause. In the event that any damage occurs to Government or Buyer property, the risk of which has been assumed by the Government or Buyer under this P.O., the Government or Buyer shall replace such Supplies or the Seller shall make such repair of the property as Buyer directs; provided, however, that if Seller cannot effect such repair within the time required, the Seller shall dispose of such property in the manner directed by Buyer. The contract price includes no compensation to Seller for the performance of any repair or replacement for which the Government or Buyer is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government or Buyer property made at the direction of Buyer, in accordance with the procedures provided for in the Clause of this P.O. entitled "Changes." Any repair or replacement for which the Seller is responsible under the provisions of this P.O. shall be accomplished by Seller at his own expense.

14.7 Risk of Loss. Unless otherwise provided in this P.O., the Seller assumes the risk of, and shall be responsible for, any loss of or damage to Government or Buyer property provided under this P.O. upon its Delivery to Seller or upon passage of title thereto to the Government or Buyer as provided in Paragraph 14.3 hereof except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this P.O.

14.8 Access. The Government or Buyer, and any persons designated by them, shall at all reasonable times have access to the premises wherein any Government or Buyer property is located, for the purposes of inspecting the Government or Buyer property.

14.9 Final Accounting and Disposition of Government or Buyer Property. Upon the completion of this P.O., or at such earlier dates as may be fixed by Buyer, the Seller shall submit, in a form acceptable to Buyer, inventory schedules covering all Supplies of Government or Buyer property not consumed in the performance of this P.O. (including any resulting scrap) or not theretofore delivered to the Government or Buyer and shall prepare for shipment, deliver F.O.B. origin, or dispose of the Government or Buyer property, as may be directed or authorized by Buyer. The net proceeds of any such disposal shall be credited to the P.O. price or shall be paid in such other manner as Buyer may direct.

14.10 Restoration of Seller's Premises and Abandonment. Unless otherwise provided herein, Buyer:

- (A) may abandon any Government or Buyer property in place, and thereupon all obligations of Buyer regarding such abandoned property shall cease;
- (B) has no obligation to Seller with regard to restoration or rehabilitation of the Seller's premises, neither in case of abandonment (Paragraph 14.10(A) above), disposition on completion of need or of the P.O. (Paragraph 14.9 above), nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under Paragraph 14.1 and 14.2 above.

14.11 Communications. All communications issued pursuant to this Clause shall be in writing.

## **15. INSPECTION**

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

### **15.1 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.
- (C) Deliverable data as required by the Purchase Specification or as otherwise specified for the Supply(s), shall be inspected and accepted by the Buyer at the Buyer's facilities.

### **15.2 Notice of Testing**

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

### **15.3 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 Final 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 the 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 test is necessitated by prior rejection.
- (D) Final acceptance or rejection of the Supplies or Services shall be made in accordance with the Final Acceptance clause contained herein. Failure by Buyer to inspect and accept or reject Supplies or Services shall not relieve the Seller of 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 the 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.

## **16. INTELLECTUAL PROPERTY RIGHTS**

### **16.1 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.

### **16.2 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.

### **16.3 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.

#### 16.4 Notice and Assistance Regarding Patent and Copyright Infringement

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

#### 16.5 Patent Indemnity

The Seller shall indemnify Buyer against claims by owners or licensees of patents and registered designs of the United States granted at the date hereof for infringement thereof by use of sale of the Supplies or Services, PROVIDED:

- (A) this Indemnity shall not extend to infringements resulting from use by the Seller of Buyer's parts, designs or specific instructions or from use or sale in combination with other 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 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.

### 17. INVOICES AND PAYMENTS

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

#### 17.2 Payments

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

### 18. LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE

18.1 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.

18.2 As respects policies under (i) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide 30 days advanced written notice of any coverage suspension or material changes, must be written by carriers with A.M. Bests rating of "A-, VII", and licensed to do business in the state where services are to be performed, and shall be primary as respects any coverage which Buyer may carry.



**19. LIMITATION OF LIABILITY**

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

**20. LOGISTIC SUPPORT REQUIREMENTS**

- 20.1 This Clause applies whenever the Specifications, by reference to a military specification or otherwise, specify repair parts or stock components (hereinafter called "repair parts") for a component or item of equipment. The acquisition of such parts or components shall be subject to the terms and conditions of this PurchaseOrder. (P.O.).
- 20.2 With respect to components or equipment manufactured other than in the United States or Canada, the Seller agrees that, in addition to any other data required by this P.O., it will furnish under this P.O. sufficient data so that the repair parts can be reproduced in the United States or Canada unless the suppliers of the components or equipment shall have made arrangements satisfactory to Buyer and approved by the Government for the manufacturing of repair parts in the United States or Canada. For the purpose of this Clause, "sufficient data" shall mean detail drawings and other technical information sufficiently extensive in detail to show design, construction, dimensions and operation or function, manufacturing methods or processes, treatment or chemical composition of materials, plant layout, and tooling. All data shall be in the English language and according to the United States system of weights and measures, and drawings for components, assemblies, subassemblies, and parts protected by U.S. patents shall contain a prominent notation to that effect fully identifying the patent or patents involved, and bearing the number of this P.O.
- 20.3 With respect to all data required to be furnished under this Clause, there shall be granted to the Government, its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all the aforesaid data. Nothing contained in this Clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or the right otherwise granted to the Government under any patent.

**21. MARKING. PACKING. AND PACKAGING**

21.1 All packing and packaging shall be in accordance with the Specifications. Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping on pallets, material or equipment must be adequately secured to meet ASTM Designation D3951-98, Part 5.1.5, Unitization.

21.2 All shipments shall be marked with the following information:

- (A) Buyer contract number, Buyer P.O. number, or the Delivery Order number
- (B) Buyer line item number
- (C) Buyer catalog number OR NSN (if applicable)
- (D) Quantity shipped
- (E) MSDS # (if applicable)
- (F) QPL Source (if applicable)
- (G) Shelf Life (if applicable)

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

21.3 All packing lists shall minimally contain the information in paragraph 21.2. The packing list shall be secured to the external surface of each container, or readily accessible upon entry to each container.

The company'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 PQA statement beneath Seller's statement:

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

21.4 Tags and labels, when required, shall be Seller's tags or labels conforming to the requirements of the Specification. Seller's forms which indicate serviceable condition shall not be any shade of green or red. 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.

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 21.2 above. If multiple loose 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 respective individuals 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 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 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 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 contract work in accordance with directions issued by Buyer.

23.3 Buyer shall promptly, and in any event within twenty-one (21) calendar days after receipt of notice, respond thereto in writing. In such response, Buyer shall either:

- (A) confirm that the conduct of which the Seller gave notice would constitute a change, and when necessary, direct the mode of further performance, or;
- (B) countermand any conduct regarded by Seller as a change, or;
- (C) deny that the conduct of which Seller gave notice would constitute a change and, when necessary, direct the mode of further performance, or;
- (D) in the event Seller's notice information is inadequate to make a decision under (A), (B), and (C) above, advise Seller what additional information is required.

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

23.4 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.

23.5 Paragraph 23.2 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. 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 twenty (20) 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 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 Supplies and Services, 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 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

24.2 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.

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 full 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 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 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.

## **28. PRODUCT ORIENTED SURVEY**

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

## **29. QUALITY ASSURANCE REQUIREMENTS**

- 29.1 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 Material Ordering Catalog page is invoked, Seller shall examine the page for quality program requirements
- 29.2 Seller shall establish and maintain, subject to Buyer's right to audit, a system of material identification that ensures the use of specified materials and components. Items shipped shall be in such a manner as to permit verification of the use of 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.
- 29.3 Government Procurement Quality Assurance (PQA) or Government Source Inspection. 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; 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.
- 29.4 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 under the P.O.
- 29.5 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.
- 29.6 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.

## **30. RISK OF LOSS**

- 30.1 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 initial acceptance of the Supplies, regardless of whether that acceptance is conditional or final.
- 30.2 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.
- 30.3 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 there from with waiver of any right of subrogation.

## **31. SAFETY AND SECURITY**

- 31.1 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, Forms/Appendices, Safety Regulations.

- 31.2 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.
- 31.3 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.
- 31.4 By accepting this Subcontract/Delivery Order, the Seller acknowledges that the following is applicable to any work performed on this Subcontract/Delivery Order:
- 31.4.1 Only trained authorized personnel will operate or service equipment, and then only in accordance with manufacturer's recommendations.
- 31.4.2 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
- 31.4.3 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.

### **32. SHIPPING AND DELIVERY**

- 32.1 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.
- 32.2 Items shall be delivered to the locations indicated on the P.O., F.O.B. Destination, unless otherwise specified.
- 32.3 Freight Collect
- (A) If the P.O. indicates that items are to be shipped "Freight Collect", Buyer will pay all freight charges and no amount covering these charges shall be included in the selling price for an item.
- (B) At least five days prior to the time an item(s) is ready for shipment under this P.O., the Seller shall notify Buyer's Traffic Manager as to when the item(s) will be ready for shipment. The Seller will then be given instructions concerning the shipment.
- (C) For shipments of 70 pounds or less that meet United Parcel Service ("UPS") dimensional requirements, ship the item(s) UPS COLLECT. If a single shipment of multiple items together exceed the weight limitations or if an item exceeds the dimensional requirements, follow the procedures in Subparagraph (B) above.

### **33. 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".

### **34. STORAGE**

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

### **35 TERMINATION FOR CONVENIENCE**

Buyer may terminate performance of work under this P.O. in whole or in part, from time to time, if a termination is reasonably required to implement any Government termination, change of direction under the Prime Contract. The Buyer shall terminate by delivering to Seller the extent of termination and the effective date. The provisions of the Clause contained in TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) FAR 52.249-2 are hereby incorporated by reference with the following changes: The words "Contracting Officer" shall mean Buyer; the word "Contractor" shall mean Seller; the word "Government" shall mean Buyer except in Paragraphs (b)(4), (b)(6), (b)(8)(c) and (d); and the words "1 year" are changed to "eleven (11) months" in Paragraph (e).

### **36. TITLE**

Unless otherwise stated in the Clause entitled "Progress Payments," title to the Supplies covered by the P.O. shall pass from the Seller to the Buyer upon the Buyer's initial acceptance of the Supplies, regardless of whether the acceptance is conditional or final, at the F.O.B. Destination point.

### **37. TIME LIMIT FOR SUBMISSION OF CLAIMS**

37.1 Pursuant to 5252.243.9001 (NOV 1991) (Deviation) REQUIREMENT FOR ADEQUATE SUPPORTING DATA AND CERTIFICATION OF ANY CLAIM, REQUEST FOR EQUITABLE ADJUSTMENT, OR DEMAND FOR PAYMENT, Buyer is required to assert a claim, request for equitable adjustment, or demand for payment under a ship construction contract within six (6) years from the time the events arose which gave rise to the claim, request or demand. Accordingly, the Buyer shall not be responsible or liable to the Seller for any claim, request for equitable adjustment or demand for payment under this P.O. arising out of events occurring more than seventy (70) months before the submission of the claim, request, or demand if such events would also require a change to the Prime Contract or otherwise be subject to a Final Decision of the Government Contracting Officer under the Clause entitled "Disputes." "Events" shall be defined as any Buyer action, inaction or conduct which the Seller considers would give rise to a claim, request for equitable adjustment, demand for payment, or would constitute or would require a change to this P.O., the Prime Contract, or any other contract concerning the Government, thereby requiring the issuance of a notice pursuant to the Clause entitled "Notification of Changes."

37.2 A claim, request or demand shall be considered to have been "submitted" only when the Seller has provided the Buyer with (i) the certification, by a senior company official, required by Paragraph 37.3 below and (ii) adequate supporting data for the claim, request or demand. "Adequate supporting data" and "certification" shall be defined to include those corresponding requirements identified in FAR Part 15, Subpart 400.

37.3 The certification required in Paragraph 37.2 above shall be in the following format:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that the amount requested accurately reflects the purchase order adjustment for which the Seller believes Buyer is liable.

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(Senior Company Official)"

### **38. TRIALS**

38.1 Following installation by the Buyer or performance by the Seller, Supplies and Services will be subjected to trials as provided in the Specification; however, such trials will not exceed the Specification requirements of the purchase order unless specifically approved by a duly authorized representative of the Seller. During installation and trials, any defects in such Supplies or Services for which the Seller is responsible shall be corrected in accordance with the Conditional Acceptance, Final Acceptance, and Warranty provisions of this purchase order as directed by the Buyer.

38.2 Sea Trial Sequence shall occur as follows:

(A) Preliminary Trials (Trial ALPHA)

Shipbuilder operates ship at sea for preliminary demonstration of machinery and for limited combat system demonstration.

(B) Builder's Trials (Trial BRAVO)

Shipbuilder operates ship at sea, verifies operability of ship subsystem equipment and components as prerequisite to acceptance trials. Phase One will constitute firing all ship's armament, including missiles. Phase Two will be Mock INSURV trial.

(C) Acceptance Trials (Trial CHARLIE)

Completion verifies operability and performance of ship subsystems and components and signifies readiness for Delivery.

### **39. WAIVER**

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

### **40. WARRANTY**

40.1 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.

40.2 If, within the warranty period, the Buyer finds that the warranted Supplies or Services need to be repaired or changed 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
- (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; and

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.

- 40.3 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 or until expiration of the original warranty period, whichever is longer.
- 40.4 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.
- 40.5 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.
- 40.6 Any limitations to Seller's warranty obligations expressed in this Clause shall not apply when the defects or deficiencies in such Supplies or Services or the Buyer's final acceptance of such Supplies resulted from the willful misconduct or lack of good faith on the part of the Seller's QA representatives, or its officers, directors, managers or other equivalent representatives who had supervision or direction of production and/or inspection of such Supplies or Services.
- 40.7 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.
- 40.8 Disputes arising under this Clause shall be resolved in accordance with the Clause entitled "Disputes."

#### **41.0 CONFLICT MINERALS 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"]

42. **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.**"

43. **EXPORT COMPLIANCE**

Exports of Data exchanged under this Subcontract and/or Delivery Order 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 regulations issued by the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA) as codified at 15. U.S.C. §78m & §78dd(1) et seq., 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.

44. **OFFSETS**

Should all or part of the item(s) supplied under this Subcontract/Delivery Order 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 Subcontract/Delivery Order, 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.

45. **LIABILITY**

Seller shall save harmless and indemnify Buyer and the Government from and against all claims, suits (including counsel fees and other expenses of suits, whether groundless or not), judgments and awards on account of any damage to property; or injury (including death) to persons (including any damage or injury to the property or person of any employee of Seller or of buyer) which may occur or be alleged to have occurred due to the negligence or other fault of Seller however arising out of or in connection with the performance of this P.O. on part of Seller. Seller shall also save harmless and indemnify Buyer from and against any and all costs, damages, fines, penalties and liabilities incurred by Buyer (including counsel fees and other expenses) as a result of Seller's or any of Seller's subcontractors failure to comply with the provisions of this P.O. and with all applicable laws or regulations as set forth in this P.O.

**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 CFR. The FAR/DFARS/NAPS clauses incorporated herein are those in effect as of the effective date of this P.O., unless a date notation appears in the clause title. When the date is so indicated, the clause in effect on that date is incorporated into the P.O.

In the event additional or revised "Flow-Down" clauses are invoked into Buyer's Prime Contract upon Award, they shall be flowed down as applicable to Seller, and deemed acceptable by both Parties.

<b><u>FAR Reference</u></b>	<b><u>Clause Title</u></b>
52.203-3	GRATUITIES
52.203-5	COVENANT AGAINST CONTINGENT FEES
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	ANTI-KICKBACK PROCEDURES
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APPLIES IF THIS CONTRACT EXCEEDS \$100,000.)
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT
52.203-14	DISPLAY OF HOTLINE POSTERS (S)



52.204-2 SECURITY REQUIREMENTS

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

52.204-7 CENTRAL CONTRACTOR REGISTRATION

52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

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

52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS

52.211-5 MATERIAL REQUIREMENTS

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

52.215-2 AUDIT AND RECORDS - NEGOTIATION

52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

52.215-12 SUBCONTRACTOR COST OR PRICING DATA

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

52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST AND PRICING DATA – MODIFICATIONS, AND ALT 11 AND ALT III

52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES

52.219-8 UTILIZATION OF SMALLBUSINESS CONCERNS

52.219-9 SMALLBUSINESS SUBCONTRACTING PLAN AND ALTERNATE II

52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM –DISADVANTAGED STATUS AND REPORTING

52.219-28 POST AWARD SMALL BUSINESS PROGRAM REPRESENTATION

52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

52.222-3 CONVICT LABOR

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

52.222-19 CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES

52.222-20 WALSH - HEALEY PUBLIC CONTRACTS ACT

52.222-21 PROHIBITION OF SEGREGATED FACILITIES

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

52.222.39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

52.222-50 COMBATING TRAFFICKING IN PERSONS

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION

52.223-6 DRUG FREE WORKPLACE

52.223-11 OZONE-DEPLETING SUBSTANCES

52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS

52.223-18 CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING

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

52.229-6 TAXES –FOREIGN FIXED PRICE CONTRACTS

52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX

52.230-2 COST ACCOUNTING STANDARDS

52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS

52.232-11 EXTRAS

52.232-17 INTEREST

52.232.23 ASSIGNMENT OF CLAIMS ALT I

52.233-1 DISPUTES AND ALTERNATE I

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

52.242.3 PENALTIES FOR UNALLOWABLE COSTS

52.242-13	BANKRUPTCY
52.242-15	STOP - WORK ORDER
52.243-1	CHANGES - FIXED PRICE AND ALTERNATE II
52.244-5	COMPETITION IN SUBCONTRACTING
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS
52.245-1	GOVERNMENT PROPERTY
52.245-9	USE AND CHARGES
52.246-24	LIMITATION OF LIABILITY –HIGH VALUE ITEMS
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)
52.252-2	CLAUSES INCORPORATED BY REFERENCE

**DFAR Reference Clause Title**

252.203-7001	SPECIAL PROHIBITION ON EMPLOYMENT
252.203-7002	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS
252.204-7000	DISCLOSURE OF INFORMATION
252.204-7008	EXPORT CONTROLLED ITEMS
252.211-7000	ACQUISITION STREAMLINING
252.211-7003	ITEM IDENTIFICATION AND VALUATION
252.215-7000	PRICING ADJUSTMENTS
252.215-7002	COST ESTIMATING SYSTEM REQUIREMENTS
252.219-7003	SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)
252.222-7006	RESTRICTIONS OF THE USE OF MANDATORY ARBITRATION AGREEMENTS
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
252.223-7008	PROHIBITION OF HEXAVALENT CHROMIUM
252.225-7001	BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM
252.225-7002	QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS
252.225-7004	REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANDATA – SUBMISSION AFTER AWARD
252.225-7006	QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES
252.225-7007	PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHIENSE MILITARY COMPANIES
252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES
252.225-7013	DUTY-FREE ENTRY
252.225-7015	RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS
252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS
252.225-7019	RESTRICTION ON ACQUISITION OF FOREIGN ANCHOR AND MOORING CHAIN
252,225-7021	TRADE AGREEMENTS
252.225-7025	RESTRICTION ON ACQUISITION OF FORGINGS
252.225-7030	RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL
252.225-7033	WAIVER OF UNITED KINGDOM LEVIES
252.225-7036	BUY AMERICAN –FREE TRADE AGREEMENT—BALANCE OF PAYMENTS PROGRAM
252.225-7038	RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS
252.225-7041	CORRESPONDENCE IN ENGLISH
252.225-7042	AUTHORIZATION TO PERFORM
252.226-7001	UTILIZATION OF INDIAN ORGANIZATION AND INDIAN OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS
252.227-7013	RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS
252.227-7014	RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL SOFTWARE DOCUMENTATION
252.227-7015	RIGHTS IN TECHNICAL DATA-COMMERCIAL ITEMS
252.227-7016	RIGHTS IN BID OR PROPOSAL INFORMATION
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE
252.227-7025	LIMITATION ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION

	MARKED WITH RESTRICTIVE LEGENDS
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
252.227-7030	TECHNICAL DATA-WITHHOLDING OF PAYMENT
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA
252.229-7006	VALUE ADDED TAX EXCLUSION (UNITED KINGDOM)
252.231-7000	SUPPLEMENTAL COST PRINCIPLES
252.232-7004	DOD PROGRESS PAYMENTS RATES
252.234-7004	COST AND SOFTWARE DATA REPORTING SYSTEM
252.235-7003	FREQUENCY AUTHORIZATION
252.239-7000	PROTECTION AGAINST COMPROMISING EMANATIONS
252.243-7001	PRICING OF CONTRACT MODIFICATIONS
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS)
252.245-7001	REPORTS OF GOVERNMENT PROPERTY
252.246-7001	WARRANTY OF DATA AND ALTERNATE I
252.246.7003	NOTIFICATION OF POTENTIAL SAFETY ISSUES
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA
252.247-7024	NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA
252.249-7002	NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION
5252.227-9113	GOVERNMENT –INDUSTRY DATA EXCHANGE PROGRAM

#### 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 SUBCONTRACT and/or DELIVERY ORDER 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 SUBCONTRACT and/or DELIVERY ORDER except where context of Clause otherwise demands and any reference to “Disputes” in these clauses shall be construed to only mean the clause 9 of this document entitled “Disputes”

#### *USE OF NAVY SUPPORT CONTRACTORS FOR OFFICIAL CONTRACT FILES*

(a) NAVSEA may use a file room management support contractor, hereinafter referred to as “the support contractor”, to manage its file room in which all official contract files, including the official file supporting this procurement, are retained. These official files may contain information that is considered a trade secret, proprietary, business sensitive or otherwise protected pursuant to law or regulation, hereinafter referred to as “protected information”. File room management services consist of any of the following: secretarial or clerical support; data entry; document reproduction, scanning imaging, or destruction; operation, management or maintenance of paper-based or electronic mail rooms, file rooms, or libraries; and supervision in connection with functions listed herein.

(b) The cognizant Contracting Officer will ensure that any NAVSEA contract under which these file room management services are acquired will contain a requirement that:

(1) The support contractor not disclose any information;

(2) Individual employees are to be instructed by the support contractor regarding the sensitivity of the official contract files;

(3) The support contractor performing these services be barred from providing any other supplies and/or services, or competing to do so, to NAVSEA for the period of performance of its contract and for an additional three years thereafter unless otherwise provided by law or regulation; and,

(4) In addition to any other rights the contractor may have, it is a third party beneficiary who has the right of direct action against the support contractor, or any person to whom the support contractor has released or disclosed protected information, for the unauthorized duplication, release, or disclosure of such protected information.

(c) Execution of this contract by the contractor is considered consent to NAVSEA’s permitting access to any information, irrespective of restrictive markings or the nature of the information submitted, by its file room management support contractor for the limited purpose of executing its file room support contract responsibilities.

(d) NAVSEA may, without further notice, enter into contracts with other contractors for these services. Contractors are free to enter into separate non-disclosure agreements with the file room contractor. (Please contact Director, E Business Division for contractor specifics.) However, any such agreement will not be considered a prerequisite before information submitted is stored in the file room or otherwise encumber the government.

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

- (a) Performance under this contract may require that the Contractor have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, the Contractor shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this contract, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or software. A copy of the executed agreement shall be provided to the Contracting Officer. The Government may unilaterally modify the contract to list those third parties with which the Contractor has agreement(s).
- (b) The Contractor agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Contractor personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint ventures, affiliate, successor, or assign of the Contractor; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.
- (c) The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which the Contractor has access in the performance of this contract that contains proprietary or other restrictive markings.
- (d) The Contractor agrees that it will promptly notify the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this contract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.
- (e) The Contractor shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a), substituting "subcontractor" for "Contractor" where appropriate.
- (f) Compliance with this requirement is a material requirement of this contract.

**EXCLUSION OF MERCURY (NAVSEA) (MAY 1998)**

Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with hardware or supplies furnished under this contract.