

## **Appendix A - PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR CAPITAL ACQUISITIONS (E-2386, 9/23)**

### **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.

### **2. CHANGES**

- 2.1 Buyer may make changes within the general scope of this P.O. in any one or more of the following (at any time by written order):
  - (A) drawings, design or Specifications where the Supplies to be furnished are to be specifically manufactured for Buyer in accordance with the drawings, designs or Specifications;
  - (B) method of shipment or packaging;
  - (C) place or time of Delivery 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 Buyer's authorized Purchasing representative and received by Seller.
- 2.5 Upon Seller's receipt of the written change order, nothing contained in this Clause shall relieve Seller from proceeding without delay in the performance of this P.O. as changed.

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

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

### **4. CONFIDENTIALITY**

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

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

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

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

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

## **5. DEFAULT**

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

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

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

- 5.2 If Buyer terminates this P.O. in whole or in part by reason of Seller's default Buyer may acquire (reprocure) under the terms and conditions and in the manner Buyer considers reasonable and appropriate such similar Supplies or Services as those terminated. The Seller shall be liable to Buyer for any excess costs for Supplies or Services so acquired, it being understood that the Seller shall continue to work on that portion 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.

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

- 5.4 Buyer shall pay the P.O. price for completed Supplies and Services 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 the dispute.

- 5.5 If, after termination for a Seller's default, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been for the convenience of Buyer under the Clause entitled "Termination for Convenience"

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

## **6. DEFINITIONS**

- 6.1 The following words and expressions shall have the meaning hereby assigned to them for the purposes of this P.O. except where otherwise specifically stated or the context so requires:
- (A) "Buyer" means Bath Iron Works having its principle place of business in Bath, Maine.
  - (B) "Days" means calendar days unless otherwise stated.
  - (C) "Delivery" or "Delivered" means the receipt at the F.O.B. Point of all Supplies ordered under the Purchase Order (P.O.), including all submittals, certifications, documentation and any other Supplies to be furnished under the terms of the P.O.
  - (D) "F.O.B." means F.O.B. Destination, unless otherwise stated.
  - (E) "Government" refers to the Government of the United States.
  - (F) "Latent Defect" means a defect which is hidden from the knowledge as well as from the sight of the inspector and which could not be discovered by ordinary and reasonable care or by the inspection under the test procedures of this P.O. (Reference Geranco Mfg. Corp., ASBCA No. 12376, March 4, 1968, 68-1 BCA 6898 at P. 31,861).
  - (G) "P.O. Price" means the total sum of the Supplies' or Services' prices which individually may be called unit price(s).
  - (H) "P.O.", or "Subcontract" refers to this instrument and includes changes and/or modifications hereto.
  - (I) "Purchasing Representative" refers to Buyer's authorized representative.
  - (J) "Seller", "Subcontractor", or "Supplier" means the legal entity who sells or contracts to sell Supplies or Services to Buyer by this P.O.
  - (K) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
  - (L) "Statement of Work" or "Specifications" means Buyer's statement of Specifications for the Supplies or Services being acquired.
  - (M) "Supplies," means all or any part of the items, articles, goods, or products contracted for by Buyer through this P.O.
  - (N) "Supplies' Prices" means the F.O.B. prices for the Supplies.
- 6.2 Clause headings are for purposes of reference only and shall in no way affect the interpretation of any of the terms of this P.O.

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

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

## **8. DISPUTES**

- 8.1 It is the intent of the parties to settle amicably all disputes by conference and negotiations. In the event that the parties are unable to agree on any dispute, claim, disagreement or difference of opinion arising under or related to this P.O., the matter shall be disposed of as set forth in this Clause.
- 8.2 For the purposes of this Clause:
- (A) "Claim" shall mean a written demand or assertion seeking the payment of money, adjustment or interpretation of contract terms, specifically arising under or related to this P.O.; provided, however, a written demand by Seller seeking payment of money which exceeds \$100,000 shall not be considered a claim until certified in accordance with this Clause, it being understood that a routine voucher, invoice or other request for payment shall not be construed as a claim for the purposes of this Clause;

- (B) any and all claims must be asserted by the Seller in writing to Buyer;
  - (C) Seller shall submit to Buyer a certification signed by a person duly authorized to bind the Seller with respect to the claim that such claim is made in good faith, that the supporting data are accurate and complete to the best knowledge and belief of the Seller, and that the amount requested accurately reflects the P.O. adjustment for which the Seller believes Buyer is liable.
  - (D) the term "supporting data" refers to both entitlement data and quantifiable data that the seller perceives as supporting the validity of its claim, and it includes but is not limited to, invoices and vouchers, formula to quantify damages, overhead rates and G&A and supporting calculations, cost performance reports, analysis on the impact of changes and defects in technical data, and like studies. The Seller shall submit sufficient supporting data with its claim to enable Buyer to make a meaningful evaluation of the claim.
- 8.3 Any claim, dispute, disagreement or difference of opinion arising under or relating to this P.O. which is not settled by agreement between Buyer and the Seller may be litigated before any court in the State of Maine having competent jurisdiction.
- 8.4 Pending resolution of any claim, dispute, disagreement or difference of opinion arising under or relating to this P.O. by way of decision, appeal, judgment, settlement or otherwise, Seller shall proceed diligently with the performance of this P.O. in accordance with the decision of Buyer.
- 8.5 Seller shall indemnify and hold harmless Buyer against any liability incurred as a result of acting at Seller's request, or for any misrepresentation of fact, fraud, or breach of Seller's claim certification.
- 8.6 Interest on any amount found to be due and owing in connection with a claim shall be paid from the date on which the claim is received by the party ultimately liable for payment thereof, or from the date on which payment otherwise would be due, if such date is later, until the date on which payment of such a claim is made by such party at a rate or rates fixed by the Secretary of the Treasury of the United States pursuant to the Renegotiation Act, Public Law 92-41 or applicable successor legislation.

## **9. EXAMINATION OF RECORDS**

- 9.1 Seller agrees that Buyer shall, until the expiration of three (3) years after final payment under this P.O., have access to and the right to examine any directly pertinent books, documents, papers, and records involving transactions pertaining to this P.O.

## **10. GOVERNING LAW**

The parties agree that, irrespective of the place of performance of this P.O., the P.O. shall be construed and interpreted according to the laws (both substantive and procedural) of the State of Maine in effect at the time of the execution of this P.O. shall apply as the same would be applied to transactions between residents of the State of Maine to be fully performed within the State of Maine and without regard to the State's conflict of laws principles. Any action by either party against the other shall be brought before any court in the State of Maine having competent jurisdiction.

## **11. INSPECTION**

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

### **11.1 Inspection Authority**

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

### **11.2 Notice of Testing**

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

### **11.3 Inspection**

- (A) All Supplies and Services shall be subject to inspection and test by the QAR (and / or the Government) at all reasonable times and places, including the period of manufacture or performance, and in any event prior to acceptance.
- (B) In case any Supplies or Services, or lots of Supplies or Services, are defective in material or workmanship or otherwise not in conformity with the requirements of this P.O., the QAR shall have the right to reject them and to require their correction, or, in the case of Services, their reperformance.
- (C) All inspections and tests by Buyer at Seller's facilities shall be performed in such a manner as not to unduly delay the work. 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 the Seller's aforementioned notice or if reinspection or test is necessitated by prior rejection.

- (D) Final acceptance or rejection of the Supplies or Services shall be made as promptly as practicable, but no later than sixty (60) days after Delivery of the Supplies or Services to the F.O.B. Destination point or performance and inspection of the Services, but failure by Buyer to inspect and accept or reject Supplies or Services shall neither relieve the Seller from responsibility for such Supplies or Services that are not in accordance with the P.O. requirements nor impose liability on Buyer therefore, except as otherwise provided in this P.O..
- (E) The inspection or test by Buyer of any Supplies and Services or lots thereof does not relieve the Seller from any responsibility regarding defects or other failures to meet the requirements of this P.O. which may be discovered prior to final acceptance. Except as otherwise provided in this P.O., final acceptance shall be conclusive except in regard to Latent Defects, fraud, or such gross mistakes as amount to fraud or negligence.
- (F) The Seller shall provide and maintain an inspection system in accordance with the Specifications covering the Supplies and Services hereunder. Records of all inspection work by the Seller shall be kept complete and available to the designated QAR during the performance of this P.O. and for such longer period as may be specified elsewhere in this P.O.
- (G) Notwithstanding the requirements for any inspection and test contained in Specifications applicable to this P.O., except where inspections or tests are specified for performance solely by Buyer, the Seller shall perform or have performed the inspection and test required to substantiate that the Supplies and Services provided under this P.O. conform to the drawings, Specifications and P.O. requirements listed herein.

## **12. INTELLECTUAL PROPERTY RIGHTS**

### **12.1 Copyright**

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

### **12.2 Use**

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

### **12.3 Registration**

The recipient of information acquired hereunder shall not, without the disclosing party's prior written consent, apply for any patent or design registration in respect 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.

### **12.4 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 to be paid by Seller with the owner of such rights to be paid to the owner and / or licensee of that patent or design in settlement of any alleged or actual.

## **13. INVOICES AND PAYMENTS**

### **13.1 Invoices**

- (A) An invoice is a written request for payment under this P.O. for Supplies or Services provided by the Seller. In order to be valid, an invoice must include the following (as applicable):
  - (1) invoice date and Seller's invoice number;
  - (2) name of Seller;
  - (3) the P.O. number, line item number, description of Supplies and Services, quantity, unit of measure and unit price, and extended total;
  - (4) shipment number, date of shipment and shipping point;

- (5) name and address to which payment is to be sent in accordance with the terms specified in this P.O.;
  - (6) name, title, phone number and address of person to be notified in the event of a defective invoice;
  - (7) any other information or documentation required by other provisions of the P.O.;
  - (8) any prompt payment discounts available; and
  - (9) the invoice amounts for individual Supplies and Services 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) days of receipt of such invoice.

### 13.2 Payments

- (A) Buyer shall pay the Seller, upon the submission of valid invoices, the prices stipulated in this P.O. as may be adjusted
- (B) Seller's valid invoices are payable by Buyer no later than sixty (60) days after receipt thereof. The invoice will be deemed to have been received five (5) days after the invoice date.
- (C) Payment shall be considered to have been made on the date which appears on the payment check.
- (D) Payment shall not be considered as an indication of the acceptability of the Supplies or Services for which payment is made.

## 14. LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE

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

## 15. LIMITATION OF LIABILITY

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

## 16. MARKING. PACKING. PACKAGING AND PRESERVATION

- 16.1 All packing and packaging shall be in accordance with the Specifications. Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping on pallets, material or equipment must be adequately secured to meet ASTM Designation D3951-98, Part 5.1.5, Unitization.
- 16.2 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.

- 16.3 All packing lists shall minimally contain the information in paragraph 16.2. 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) \_\_\_\_\_."

- 16.4 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 16.2 above. If multiple loose Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 16.2 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.

#### 16.5 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

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

**17. NOTICES**

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

**18. NOTIFICATION OF CHANGES**

- 18.1 The purpose of this Clause is to provide Buyer with the prompt reporting of any conduct which the Seller considers constitutes a change to this P.O. The parties acknowledge potential changes are to be identified and resolved as they arise. Therefore, except for written change orders issued by Buyer, the Seller shall notify Buyer of any conduct which the Seller considers constitutes or requires a change to this P.O. Such notice shall be provided promptly, and in any event within ten (10) calendar days from the date the Seller identifies any such conduct. As used in this Clause, the term "conduct" includes both actions and failures to act, and the furnishing of, or the failure to furnish, any item under any provision of this P.O. The notice shall be written and shall state, on the basis of the most accurate information available to the Seller:
- (A) the date, nature and circumstances of the conduct regarded as a change;
  - (B) the name, function and activity of the individuals directly involved in or knowledgeable about such conduct;
  - (C) the identification of any documents and the substance of any oral communication involved in such conduct;
  - (D) the particular elements of contract performance for which the Seller might seek an equitable adjustment under this Clause, including:
    - (1) what Supplies and Services have been or might be affected by the potential change;
    - (2) to the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
    - (3) to the extent practicable, the Seller's preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
    - (4) what and in what manner are the particular technical requirements or contract requirements regarded as changed.
- 18.2 Except as provided in Paragraph 18.5 below, following submission of notice the Seller shall take no action to implement a potential change until advised by Buyer in writing as provided in Paragraph 18.3 below, unless the potential change was previously directed by Buyer, in which case the Seller shall conform therewith. Nothing in this Paragraph shall excuse the Seller from proceeding with the work in accordance with directions issued by Buyer.
- 18.3 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 18.3(B).
- 18.4 Equitable adjustments for changes confirmed by Buyer shall be made in accordance with the Clause of this P.O entitled "Changes".
- 18.5 Paragraph 18.2 above provides that Seller is to take no action to implement a potential change pending Buyer's response to Seller's notice of the potential change except where specifically directed by Buyer. In special situations, however, where:
- (i) the circumstances do not allow sufficient time to notify Buyer of the facts prior to the need to proceed with the work, and;
  - (ii) the work must proceed to avoid hazards to personnel or property or to avoid additional cost to Buyer, Seller may proceed with work in accordance with the potential change. In such special situations, Seller shall advise Buyer in writing within five (5) days of the conduct giving rise to the potential change that Seller has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within ten (10) days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 18.1 above. Buyer shall respond as set forth in Paragraph 18.3 above. If Buyer determines that the conduct constitutes a change and countermands it, Seller shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.
- 18.6 When Seller identifies any conduct which may result in delay to delivery of the ship(s), Seller shall promptly so inform Buyer thereof prior to providing the notice required by Paragraph 18.1 above.



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

- 19.1 In the event of any inconsistency between provisions of this P.O., the inconsistency shall be resolved by giving precedence in the following order:
- (A) any special provisions included on the face of the P.O.;
  - (B) Standard terms and conditions of this P.O.;
  - (C) Attachments (excluding the Specifications, and Statement of Work); and,
  - (D) Specifications, and/ or Statement of Work.
- 19.2 This P.O. contains and constitutes the entire understanding and agreement between Buyer and the Seller, and supersedes all previous understandings and agreements relative to the subject matter contained herein.
- 19.3 If any provision of this P.O. is declared or found to be illegal, unenforceable or void, then the parties shall be relieved of all obligations under that provision. The remainder of this P.O. shall be held in full force and effect.

## **20. PERFORMANCE**

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

## **21. 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; anticipated effects of the problem including, but not limited to, Delivery schedule and cost of performance, and Seller's recommended resolution of the problem.

## **22. QUALITY ASSURANCE REQUIREMENTS**

- 22.1 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. may be inspected by Seller prior to shipment to verify conformance with all requirements and Specifications.
- 22.2 Seller shall establish and maintain subject to Buyer's right to audit a system of material identification that ensures the use of specified materials and components. Supplies shipped shall be in such a manner as to permit verification of the use of specified materials and components upon receipt by Buyer. Raw materials used by Seller in the fabrication or processing of the Supplies shall conform to the physical, chemical and other technical requirements of the applicable material Specification and Seller shall employ laboratory testing as necessary to confirm the identity of raw materials.
- 22.3 Quantitative, semi-quantitative or functional test results must be forwarded to Buyer when specified by the P.O. Documentation must reflect actual test results and not merely that the minimum requirements of the P.O. 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.
- 22.4 Supplies which are received and are found to be nonconforming by virtue of the fact that they are not in accordance with this P.O. or that the documentation or verifiable data are missing, incomplete or incorrect, may be returned to Seller at Seller's expense. Prior to returning the non-conforming Supplies, Buyer will notify Seller of the nature of the discrepancy such that, if possible, the discrepancy may be rectified at Seller's expense without returning the Supplies to Seller.
- 22.5 When nondestructive testing is required (radiography, magnetic particles, liquid penetrant, and ultrasonic) procedure, and personnel qualifications shall be in accordance with MIL-STD-271F.
- 22.6 Fabrication welding and inspection, and casting inspection and repair for machinery, piping and pressure vessels shall be in accordance with all requirements of the Specifications. Inspection of brazed piping including equipment, procedure and personnel qualifications shall be in accordance with the requirements of the Specifications.

## **23. RISK OF LOSS**

- 23.1 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 Buyer's initial acceptance of the Supplies, regardless of whether that acceptance is conditional or final.
- 23.2 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.

## **24. SAFETY AND SECURITY**

- 24.1 When the Seller is performing any of its obligations on Buyer's premises or on a vessel in Buyer's care or custody, the Seller and its subcontractors shall comply with all Buyer plant rules and regulations and Buyer security policies and procedures including, but not limited to, the use of personal protective equipment as required. At a minimum, the Seller and its

subcontractors shall have in their possession a suitable hardhat, safety glasses with side shields, hearing protectors, and safety shoes. A copy of Buyer's Environmental, Health and Safety Regulations Handbook outlining said policies and procedures can be located at GDBIW.com, purchasing, forms/appendices, safety regulations.

- 24.2 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.
- 24.3 Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property unless specific prior approval from Buyer is obtained.
- 24.4 Seller acknowledges, that by accepting this purchase order/contract the following is applicable to any work performed hereunder:  
Only trained authorized personnel will operate or service equipment, and in accordance with manufacturer's recommendations.  
Seller is responsible for properly managing hazardous waste generated by Seller in accordance with applicable regulations. Disposal of hazardous waste shall be coordinated and approved through the Buyer's Environmental Operations Department.  
Seller has reviewed the Environmental, Health and Safety Regulations Handbook referenced above, and has duly disseminated it to any applicable personnel performing work on Buyer's property or vessels.

## **25. SHIPPING AND DELIVERY**

- 25.1 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.
- 25.2 Items shall be delivered to the locations indicated on the P.O., F.O.B. Destination, unless otherwise specified.
- 25.3 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.

## **26. STOP WORK**

- 26.1 Buyer may, at any time, by written order to the Seller, require the Seller to stop all or any part, of the work called for by this P.O., for a period of ninety (90) days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a "Stop Work Order" issued under this Clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, Buyer shall either (i) cancel the Stop Work Order; or (ii) terminate the work covered by the order as provided for in the "Default" or the "Termination for Convenience" Clauses of this P.O.
- 26.2 If a Stop Work Order issued under this Clause is canceled or the period of the order of any extension thereof expires, the Seller shall resume work. Buyer shall make an equitable adjustment in the Delivery Schedule or P.O. price, or both, and the P.O. shall be modified, in writing, accordingly if: (i) the Stop Work Order results in an increase in the time required for, or in the Seller's cost properly allocable to the performance of any part of this contract; and, (ii) the Seller asserts a right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if Buyer decides the facts justify the action, Buyer may receive and act upon a proposal submitted at any time before final payment under this P.O.
- 26.3 If the Stop Work Order is not canceled and the work covered by the order is terminated for convenience, Buyer shall allow reasonable costs resulting for the Stop Work Order in arriving at the termination settlement.
- 26.4 If a Stop Work Order is not canceled and the work covered by the order is terminated for default, Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.

## **27. STORAGE**

- 27.1 Buyer shall not be responsible for any storage charges incurred by the Seller for Supplies completed prior to the Delivery date. Buyer may require the Seller to store Supplies furnished under this P.O. beyond the Delivery date specified. Any additional storage and local transportation costs incurred by the Seller to store Supplies at Buyer's direction shall be the subject of an equitable adjustment to the P.O. price.

- 27.2 Supplies stored under this Clause shall be placed in a secure location, separate from the Seller's other inventory, identified as Buyer's property and adequately protected. The Seller shall provide insurance in an amount to cover the full value of the Supplies in the event of a loss, with Buyer designated to receive all proceeds in case of a loss. A certificate issued by the insurer shall be provided to Buyer as evidence of coverage.
- 27.3 Upon receipt by Buyer of Seller-furnished information (e.g., deliverable data), and evidence of insurance, Seller may invoice Buyer for payment in accordance with the terms of this P.O.
- 27.4 At the direction of the Purchasing Representative, Seller shall remove the Supplies from storage and effect Delivery pursuant to the shipping instructions of this P.O. and, upon receipt by Buyer at the F.O.B. point, the Supplies shall be accepted pursuant to the "Inspection" Clause of this P.O.

## **28. TERMINATION FOR CONVENIENCE**

- 28.1 Buyer may terminate performance of work under this P.O. in whole or, from time to time, in part if Buyer determines that termination is in Buyer's interests. Buyer shall terminate by delivering to the Seller a Notice of Termination specifying the extent of the termination and the effective date.
- 28.2 After receipt of the Notice of Termination, and except as directed by Buyer, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Clause: (i) stop work as specified in the notice; (ii) place no further subcontracts or orders (referred to as subcontracts in this Clause) for materials, Services, or facilities, except as necessary to complete the continued portion of the subcontract; (iii) terminate all subcontracts to the extent they relate to the work terminated; (iv) assign to Buyer, as directed by Buyer, all right, title and interest of the Seller under the subcontract terminated, in which Buyer shall have the right to settle or to pay any termination settlement proposal arising out of this termination; (v) with approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval and ratification will be final for the purposes of this Clause; (vi) as directed by Buyer, transfer title and deliver to Buyer (a) the fabricated or unfabricated parts, work in process, completed work, Supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information and other property that, if the P.O. had been completed, would be required to be furnished to Buyer; (vii) complete performance of the work not terminated; (viii) take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this P.O. that is in the possession of the Seller in which Buyer has or may acquire an interest; (ix) use best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in Paragraph (vi) above, provided, however, that the Seller (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this P.O., credited to the price or cost of the work, or paid in any other manner as directed by Buyer.
- 28.3 After expiration of the plant's clearance period as defined by Buyer, the Seller may submit to Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding Supplies authorized for disposition by Buyer. The Seller may request Buyer to remove those Supplies or enter into an agreement for their storage. Within fifteen (15) days, Buyer will accept title to those Supplies and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the Supplies, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- 28.4 After termination, the Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. The Seller shall submit the proposal promptly, but no later than one (1) year from the effective date of the termination, unless extended in writing by Buyer upon written request of the Seller within this one (1) year period. However, if Buyer determines the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due to Seller because of the termination and shall pay the amount determined.
- 28.5 Subject to Subparagraph 28.4 above, the Seller and Buyer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this Subparagraph 28.5 or Subparagraph 28.6 below, exclusive of costs shown in Subparagraph 28.6(C) below, may not exceed the total P.O. price as reduced by (i) the amount of payments previously made and (ii) the P.O. price of work not terminated. The P.O. shall be amended, and the Seller paid the agreed amount. Subparagraph 28.6 below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this Subparagraph.
- 28.6 If the Seller and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay to the Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed on in Subparagraph 28.5 above:
- (A) The P.O. price of the completed Services or Supplies accepted by Buyer (or sold or acquired under Subparagraph 28.2(ix) above) not previously paid for, adjusted for any saving of freight and other charges.
  - (B) The total of (1) the cost incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any cost attributable to Services or Supplies paid or to be paid under Subparagraph (A) above; (ii) the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the P.O. if not included in subdivision (i) above; and (iii) a sum, or profit on subdivision (i) above, determined by Buyer to be fair and reasonable; however, if it appears

that Seller would have sustained a loss on the entire P.O. had it been completed, the Buyer shall allow no profit under subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

- (C) The reasonable cost of settlement of the work terminated, including (i) accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; (ii) the termination settlement of subcontracts (excluding the amounts of such settlements); and (iii) storage, transportation and other costs incurred, reasonably necessary for the preservation, protection or disposition of the termination inventory.

- 28.7 Except for normal spoilage, and except to the extent Buyer expressly assumes the risk of loss, Buyer shall exclude from the amounts payable to Seller under Subparagraph (28.6) above, the fair value, as determined by Buyer of property that is destroyed, lost, stolen or damaged so as to become undeliverable to Buyer.
- 28.8 Generally accepted accounting principles shall govern all cost claims agreed to or determined under this Clause.
- 28.9 The Seller shall have the right of claim, under the "Disputes" Clause of this P.O., for any determination made by Buyer in Subparagraphs 28.4, 28.6 or 28.11, except that if the Seller failed to submit termination settlement proposal within the time provided under Subparagraphs 28.4 or 28.11, and failed to request a time extension, there is no right of claim. If Buyer has made a determination of the amount due under Subparagraphs 28.4, 28.6 or 28.11, Buyer shall pay to the Seller (i) the amount determined by Buyer if there is no right of appeal or if no timely appeal has been taken, or (ii) the amount finally determined on a appeal.
- 28.10 In arriving at the amount due the Seller under this Clause, there shall be deducted (i) all unliquidated advance or other payments to the Seller under the terminated portion of this P.O. (ii) any claim which Buyer has against the Seller under this P.O.; and (iii) the agreed price for, or the proceeds of sales of, materials, Supplies or other things acquired by the Seller or sold under the provisions of this Clause and not recovered by or credited to Buyer.
- 28.11 If the termination is partial, the Seller may file a proposal with Buyer for equitable adjustment of the price(s) of the continued portion of the P.O. Buyer shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this Clause shall be requested within ninety (90) days of the effective date of termination unless extended in writing by Buyer.
- 28.12 Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the P.O., if Buyer believes the total of these payments will not exceed the amount of which the Seller will be entitled. If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. Appendix 1215(b)(2). Interest shall be computed for the period from the date of the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention disposition, or later date determined by the Buyer because of the circumstances.
- 28.13 Unless otherwise provided in this P.O., the Seller shall maintain all records and documents relating to the terminated portion of this P.O. for three (3) years after final settlement. This includes all books and other evidence bearing the Seller's costs and expenses under this P.O. The Seller shall make these records and documents available to Buyer, at the Seller's office, at all reasonable times, without any direct charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## **29. TITLE**

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

## **30. WAIVER**

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.

## **31. WARRANTY**

- 31.1 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.
- 31.2 If, within the warranty period, Buyer finds that the warranted Supplies or Services need to be repaired, changed or reperfomed because of the use of materials, equipment or workmanship which, in its opinion are inferior, defective or not in accordance with the terms of the P.O., insofar as it is practicable, Buyer shall so inform the Seller in writing and the Seller, if so directed, shall promptly and without additional expense to Buyer:

- (A) place in satisfactory condition the warranted work;
- (B) satisfactorily correct direct damage to equipment, the site, the compartment or contents thereof, which is the result of such unsatisfactory warranted work; and

- (C) satisfactorily correct the work, materials and equipment that are disturbed in fulfilling the warranty, including the disturbed work, materials and equipment that may have been warranted under another contract.

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

- 31.3 Any Supplies, Services or parts thereof corrected, repaired, replaced or otherwise placed in a satisfactory condition shall also be subject to the conditions of this Clause to the same extent as the Supplies or Services initially accepted. The warranties for such Supplies, Services or parts thereof shall be for twelve (12) months, to run from the date of Buyer's final acceptance of such Supplies or Services.
- 31.4 Buyer shall have the right to purchase parts, for installation either from the Seller, or directly from the Actual Parts Manufacturer (APM) without voiding this warranty. Any special warranty that may be required under this Subcontract shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special warranties.
- 31.5 Seller shall obtain each transferable guaranty or warranty of equipment, material or installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's or installer's business or trade. In addition, the Seller shall obtain and furnish to Buyer all information which is required in order to make any such guaranty or warranty legally binding and effective, and shall submit both the information and the guaranty or warranty to Buyer to meet any time limit requirements specified in the guaranty or warranty, or if no time limit is specified in the guaranty or warranty, prior to completion and acceptance of all work under the P.O.
- 31.6 The Seller shall have no liability to Buyer under this warranty for any consequential, special and incidental damages, resulting from defects or deficiencies in the Supplies or Services delivered under this P.O.
- 31.7 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.
- 31.8 Disputes arising under this Clause shall be resolved in accordance with the Clause of this P.O. entitled "Disputes".

#### 32.0 **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"]

#### 33.0 **FEDERAL CONTRACTOR REQUIREMENTS**

"This order/contract is subject to the requirements of 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, which are incorporated into this order/contract by reference, **as applicable**. In addition, this order/contract is subject to the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which are incorporated herein by reference, **as applicable**. The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran

**status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities.”**

## **GOVERNMENT “FLOW-DOWN” CLAUSES**

### **FULL TEXT CLAUSES**

Pursuant to Buyer’s Prime Contract with the U.S. Government and Buyer’s acquisition policies, the following Clauses are included in this 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”

#### **52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (DEC 2019)

The Offeror shall not complete the representation in this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at 52.204-26, Covered Telecommunications Equipment or Services - Representation, or in paragraph (v) of the provision at 52.212-3, Offeror Representations and Certifications - Commercial Items.

(a) Definitions. As used in this provision -

Covered telecommunications equipment or services, critical technology, and substantial or essential component have the meanings provided in clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing -

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(d) Representation. The Offeror represents that it [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(e) Disclosures. If the Offeror has represented in paragraph (d) of this provision that it “will” provide covered telecommunications equipment or services”, the Offeror shall provide the following information as part of the offer -

(1) A description of all covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

## **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>
<b><u>52.204-25</u></b>	<b><u>Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Covered Items)</u></b>

52.204-26

COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION

52.204-27

PROHIBITION ON A BYTEDANCE COVERED APPLICATION