

Appendix A, Form E-2387

PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR CAPITAL ACQUISITIONS (E2387) FOR MATERIAL AND EMBEDDED SOFTWARE (MAY 2024)

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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.); and,
 - (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

- 3.1 Seller warrants that in the performance of this P.O., Seller shall comply with all applicable Federal, State and local laws, orders, rules, regulations, and ordinances, whether or not such provisions are referenced elsewhere in this P.O., and including, without limitation, the Procurement Integrity Act (41 US Code 2101-2105) and its implementing regulations.
- 3.2 Seller also agrees to indemnify and hold Buyer and its assignees harmless from, any and all loss, costs, damages, expenses or liability (including reasonable attorney's fees) incurred by Buyer and its assignees, by reason of Seller's violation of this warranty, or as a result of any failure of Seller to comply with any such laws and regulations.
- 3.3 Seller shall maintain environmental, health and safety management systems as appropriate to ensure compliance with applicable federal, state and local requirements, including, without limitation those promulgated or prescribed pursuant to the Occupational Safety and Health Act of 1970, and any amendment thereto. Seller further agrees to continuously promote a safe and healthy workplace and a sustainable environment related to water and air quality, water and energy conservation, greenhouse gas emission reductions, solid and hazardous waste reductions. Seller shall convey the requirement of this clause to its suppliers.
- 3.4 Seller agrees to comply with any applicable provisions of the Rehabilitation Act of 1973, the Veteran's Readjustment Act of 1974, Executive Order 11246, and implementing regulations of the U.S. Department of Labor, which embody governmental policy on equal employment opportunity. To the extent applicable, Buyer and Seller shall abide by the requirements of 41 CFR 60-300.5 (a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veteran and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. Seller also agrees that in connection with activities under this P.O. it shall not make or promise to make any improper payments, or provide or offer to provide anything of value, directly or indirectly, to government officials or other parties in violation of applicable anti-bribery laws, including the Foreign Corrupt Practices Act.

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

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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. CONFLICT MINERALS DISCLOSURE

- 5.1 Seller certifies that, regardless of whether Seller is publicly traded or not, Seller 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").
- 5.2 Seller certifies and warrants that all products that will be delivered to Buyer by Seller under this Order are DRC Conflict Free, as defined by and consistent with the Rule.
- 5.3 Seller 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 Buyer pursuant to this Order originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller 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 Buyer 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. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.
- 5.4 Seller agrees that it shall require its own subcontractors and suppliers (at any tier in the supply chain for a product delivered to Buyer under this Order) to furnish information to Seller necessary to support Seller's obligations under this Section.
- 5.5 Seller will maintain records reviewable by Buyer to support its certifications above.
- 5.6 Seller acknowledges that Buyer may utilize and disclose Conflict Minerals information provided by Seller in order to satisfy its disclosure obligations under the Rule.
- 5.7 If Buyer determines that any certification made by Seller under this Section is inaccurate or incomplete, Buyer may terminate this P.O. for Default.

6. COUNTERFEIT PARTS PREVENTION

Seller shall strictly adhere to and fully comply with DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System and 252.246-7008 Sources of Electronic Parts.

7. DEFAULT

- 7.1 Buyer may, by written notice, terminate this P.O. in whole or in part, if the Seller:
- (a) fails to deliver the Supplies or to perform the Services within the time specified in the P.O. or any written extension authorized by Buyer's Authorized Purchasing Representative ; or
 - (b) fails to make progress so as to endanger performance of this P.O.; or
 - (c) fails to perform any of the other provisions of this P.O.; or
 - (d) fails to cure (a)-(c) above to Buyer's satisfaction within ten (10) days after receipt of notice from Buyer specifying the failure; or
 - (e) declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors.
- 7.2 Buyer shall pay for completed Supplies and Services delivered and accepted in accordance with the prices set forth in the P.O. Buyer and Seller shall agree on the amount of payment for in process materials, title to which has been transferred and delivered to Buyer. Failure to agree shall be a dispute and shall be settled under the Disputes Clause herein. Seller must submit all claims within sixty (60) calendar days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the P.O. price. The rights and remedies provided Buyer in this clause are in addition to any other right or remedies provided by law or in equity.
- 7.3 If Buyer terminates this P.O. in whole or in part by reason of Seller's default, Buyer may acquire (re-procure) 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

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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.

- 7.4 Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this P.O., all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

8. DEFINITIONS

- 8.1 The following words and expressions shall have the meaning hereby assigned to them for the purposes of this P.O. except where otherwise specifically stated or the context so requires:

- (a) "Buyer" means Bath Iron Works having its principal 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) "Hardware" refers to physical material provided under this P.O.
- (g) "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).
- (h) "P.O. Price" means the total sum of the Supplies' or Services' prices which individually may be called unit price(s).
- (i) "P.O.", or "Subcontract" refers to this instrument and includes changes and/or modifications hereto.
- (j) "Purchasing Representative" refers to Buyer's authorized representative.
- (k) "Seller", "Subcontractor", or "Supplier" means the legal entity who sells or contracts to sell Supplies to Buyer by this P.O.
- (l) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
- (m) "Software" refers to any computer programs, embedded in Hardware or otherwise, provided under this P.O.
- (n) "Statement of Work" or "Specifications" means Buyer's statement of Specifications for the Supplies being acquired.
- (o) "Supplies," means all or any part of the items, articles, goods, or products contracted for by Buyer through this P.O.
- (p) "Supplies' Prices" means the F.O.B. prices for the Supplies.

- 8.2 Clause headings are for purposes of reference only and shall in no way affect the interpretation of any of the terms of this P.O.

9. DELIVERY DATE

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.

10. DELIVERY OF MEDIA

The Licensed Software shall be delivered on the media specified in the Purchase Order. If no media are specified, Seller will deliver the Licensed Software on the media that Seller customarily provides to end users of the Hardware.

11. DISCONTINUANCE OF MANUFACTURE

Should Seller decide to discontinue manufacture of the Supplies purchased by Buyer under this P.O., Seller: (1) shall provide written notice to Buyer of the intended supply discontinuance; and (2) shall provide Buyer a minimum of twelve (12) months from the written notification date to allow Buyer to place final "lifetime buy" P.O.s for the Supplies at a unit price to be negotiated, but in no event higher than the unit price provided in this P.O. In the event one or more "lifetime buy" P.O.s are made during such twelve-month period, Seller shall deliver the purchased Supplies to Buyer no later than six (6) months after the end of the "lifetime buy" period. Seller's obligations under this clause shall extend for two years beyond the effective date of this P.O. irrespective of whether the P.O. is completed/terminated within the two-year period.

12. DISPUTES

- 12.1 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.

- 12.2 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.

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- (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.
- 12.3** 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.
- 12.4** 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.
- 12.5** 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.
- 12.6** 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.

13. ENVIRONMENTAL, SAFETY, AND OCCUPATIONAL HEALTH

The Seller shall provide Supplies and Services for any Buyer program in accordance with the P.O. scope of work that ensures the Supplies or Services can be tested, operated, maintained, repaired, and disposed of in accordance with Environmental, Safety, and Occupational Health (“ESOH”) statutes, regulations, policies, and, as applicable, environmental treaties and agreements (collectively termed regulatory requirements). The Seller shall review regulatory requirements and, where applicable, establish a program to identify and evaluate environmental impact, safety and health hazards, including pollution prevention explosives safety, and appropriate use and disposal of the Supplies or Services. The Seller shall establish a hazardous materials management program to consistently reduce or eliminate the use of hazardous materials in Supplies or Services processes and products (Executive Order 13148).

14. EXCUSABLE DELAY

- 14.1** 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 unforeseeable 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. Unforeseeable causes does not include known and foreseeable COVID-related impacts at the time Seller provides a price. “Known and foreseeable COVID-related impacts” are those related to the Severe Acute Respiratory Syndrome-Coronavirus Disease 2019 (“COVID-19”) pandemic, recognized as a national emergency on March 13, 2020, that could impact cost, schedule, or performance, and that are actually known or a reasonable person in Seller's position would know at a given point in time.
- 14.2** If delay or failure arises out of causes beyond the reasonable control of both the Seller and the Seller's subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for damages occasioned by delays in Delivery unless the Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other known sources in sufficient time to permit the Seller to meet the required Delivery schedule.
- 14.3** 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.
- 14.4** 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 immediately 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. 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.

15. MAINTENANCE OF RECORDS

- 15.1** 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.
- 15.2** The periods of access to and right of examination of records which relate to (i) Buyer's appeals under the “Disputes” Clause of the Prime Contract, (ii) litigation or settlement of claims arising out of the Prime Contract, or, (iii) cost and expenses of the Prime Contract or this P.O. shall continue until such appeals, litigation, or claims have been finally disposed of.

16. EXPORT & IMPORT COMPLIANCE

- 16.1** Seller shall comply with all applicable U.S. export control and sanctions laws and regulations, specifically including, but not limited to, the requirements of the International Emergency Economic Powers Act, as amended, 50 U.S.C. 1701-1706, and other sanctions laws and regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (“OFAC”); the Arms Export Control Act, 22 U.S.C.2751-2794 and the International Traffic in Arms Regulation (“ITAR”), 22 C.F.R. 120 et seq.; and the Export Control Reform Act of 2018, 50 U.S.C. 4801-4852 and the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any registration, export license or agreement, if applicable. Without limiting the foregoing, Seller shall not transfer any export controlled item, software, technical data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- 16.2** Import Compliance: Seller shall comply with all U.S. Customs laws and regulations (e.g., 19 C.F.R.) and all other applicable U.S.G. regulations pertaining to importations of Products and materials into the U.S. for domestic Orders (Orders issued to entities addressed in the U.S.): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, U.S. Customs clearance, and payment of duty,

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taxes, and fees for Products entering into the U.S. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for Products procured through a domestic Order.

17. GOVERNING LAW

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 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, as applicable. Federal Common Law and Contract Law as applied by the Federal courts, boards of contract appeals and other administrative and quasi-judicial bodies of the Federal Government shall be used to interpret federal law, including federal procurement laws and regulations.

18. GRATUITIES

Seller warrants and agrees that it will comply with Buyer's policy providing that Buyer's employees and agents accept no gratuities or gifts from its vendors. Seller also warrants and agrees that it will comply with the Anti-Kickback provisions of 41 U.S.C. §§ 51-58. In addition to its other remedies provided by law or this P.O., Buyer shall have the right to deduct from this P.O. price the full amount of any gift or contingent fee made by Seller in breach of these warranties and may terminate this P.O. for default for breach of these warranties by Seller. Seller also agrees to indemnify and hold harmless Buyer for any claims, loss, damage or expense (including, without limitation, attorneys' fees), resulting from a breach of these warranties by Seller.

19. INDEMNIFICATION

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. The obligations under this clause shall not be subject to Clause 24, Limitation of Liability.

20. INSPECTION

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

20.1 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 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 and Services will be tested and approved for shipment at the location specified in the P.O.

20.2 Notice of Testing

Seller shall inform the QAR by written notice (e.g., email, 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.

20.3 Inspection

- (a) All Supplies and Services shall be subject to inspection and test by the QAR 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.
- (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 "Excusable Delay", 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 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, 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.

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21. INTELLECTUAL PROPERTY RIGHTS

- 21.1** Seller represents and warrants that the Supplies and Services will not infringe or otherwise violate any intellectual property rights of any third party. Seller agrees to defend, indemnify, and hold harmless Buyer and its representatives and customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Supplies or Services infringe or otherwise violate the intellectual property rights of any person or entity. If Seller becomes aware of any claims that the Supplies or Services infringe or otherwise violate the intellectual property rights of any third party, Seller will promptly notify Buyer in writing.
- 21.2** Each Party shall retain its intellectual property rights in any specifications, drawings, other works of authorship, information and inventions created or conceived independently of this P.O. ("Background IP"). Seller grants Buyer and its customers a nonexclusive, worldwide, royalty-free license to practice rights in Seller Background IP in connection with their use of Supplies and Services purchased from Seller and to authorize their contractors to do the same. If Buyer provides Seller any Buyer Background IP in connection with this P.O., Seller shall use the same only for the performance of this P.O. Seller shall not otherwise practice rights in Buyer Background IP or seek intellectual property protection for any item using or based on Buyer background IP.
- 21.3** Buyer shall own all intellectual property rights with respect to any specifications, drawings, other works of authorship and inventions created or conceived in the performance of this P.O. ("Foreground IP"), and Seller shall use Foreground IP only for the performance of this P.O. Works of authorship that are Foreground IP shall be considered works made for hire commissioned by Buyer. To the extent that Seller has rights in or to Foreground IP notwithstanding the foregoing, Seller hereby assigns all such rights to Buyer. Seller agrees to give Buyer or its designees all assistance reasonably required to perfect such rights.

22. INVOICES AND PAYMENTS

22.1 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 via email to biwap@gdbiw.com.
- (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.

22.2 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 for which payment is made.

23. LIABILITY INSURANCE

- 23.1** 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.
- 23.2** As respects policies under (i), (ii) and (iii) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide thirty (30) days advanced written notice of any coverage suspension or material changes, must be written by carriers with A.M. Best's 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.

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24. 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. OBLIGATIONS ARISING UNDER SECTIONS 7.3 AND 19 ARE NOT CONSIDERED INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES AND SO THIS SECTION SHALL NOT APPLY TO THOSE OBLIGATIONS.

25. MARKING, PACKING, PACKAGING AND PRESERVATION

25.1 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.

25.2 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.

25.3 All packing lists shall minimally contain the information in paragraph 25.2. 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)."

25.4 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.

- (a) 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 25.2 above. If multiple loose Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 25.2 above and mark all remaining Supplies as part of the Buyer catalog number.
- (b) Multiple orders shall not be shipped within a single container.
- (c) Multiple shipments to one (1) specified Delivery location on any given day shall be consolidated under one (1) Bill of Lading.
- (d) 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.

25.5 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.

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- (3) Notification is also required within thirty (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).

26. **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.

27. **NOTIFICATION OF CHANGES**

27.1 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.

27.2 Except as provided in Paragraph 27.5 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 27.3 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.

27.3 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 27.3(B).

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

27.5 Paragraph 27.2 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 ten (10) days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 27.1 above. Buyer shall respond as set forth in Paragraph 27.3 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.

27.6 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 27.1 above.

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28. ORDER OF PRECEDENCE AND SEVERABILITY

- 28.1** 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.
- 28.2** 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.
- 28.3** 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.

29. 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.

30. PRIORITY RATINGS

The Department of Defense may prioritize certain products for delivery under the Defense Production Act. Buyer may be subject to different priority ratings based on DoD's needs, and will flow down those priority ratings to its Sellers. "DO" rated orders must be given production preference over unrated (commercial) orders, and "DX" rated orders must be given preference over DO-rated orders and unrated orders. The priority rating for the Supplies to be delivered under this P.O. is DO-A3, unless otherwise indicated in the upper right hand corner of this P.O. where it states "DPAS Rating." The priority rating identified on this P.O. will apply with respect to all work of the Seller performs in the United States. Seller shall follow the provisions of Defense Materials System Regulation 1 or Defense Priorities and Allocations System ("DPAS") Regulation 1 (see 15 C.F.R. Part 700) and all other applicable regulations and orders of the Office of Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fulfill this P.O.

31. 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.

32. PUBLICITY

Seller shall not, without first obtaining Buyer's written permission, in any manner imply any relationship or connection with Buyer, or advertise, promote, or publish the fact that it has furnished or has contracted to furnish Buyer with the Supplies herein ordered, nor disclose any of the details connected with the P.O. to any third party.

33. QUALITY ASSURANCE REQUIREMENTS

- 33.1** 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.
- 33.2** 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.
- 33.3** 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.
- 33.4** 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.
- 33.5** When nondestructive testing is required (radiography, magnetic particles, liquid penetrant, and ultrasonic) procedure, and personnel qualifications shall be in accordance with MIL-STD-271F.
- 33.6** 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.

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34. REPRESENTATIONS

- 34.1 Seller warrants that the prices, terms of payment, warranties and support services extended under this P.O. are no less favorable to Buyer than those extended to any other Seller customer as in effect on the date of this Order for substantially similar Supplies and quantities.
- 34.2 Seller certifies that all Supplies, except those listed below in this provision, are manufactured in the United States. (List each product manufactured Outside the United States. If none, say NONE.).
- 34.3 Seller hereby incorporates by reference any representations and certifications submitted via SAM or to the Buyer under annual certifications or in response to Buyer's request for these Supplies or Services.

35. RISK OF LOSS AND INSURANCE

- 35.1 F.O.B. Destination: Risk of loss of or damage to Supplies shall remain with Seller until, and shall pass to the Buyer upon, Delivery of the Supplies to the F.O.B. Destination point specified in the P.O. and the Buyer's acceptance of the Supplies, regardless of whether that acceptance is conditional or final.
- 35.2 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.
- 35.3 Delays: Seller understands that Buyer depends upon prompt delivery by Seller at the time specified in the schedules furnished by Buyer in order to comply with Buyer's contractual obligations to third parties. Because time is of the essence, if delivery of the Supplies or Services is not made in the quantities and at the time and manner specified, Buyer shall have the right without liability, and in addition to its other rights and remedies under this P.O. and the law, to take any of the following actions: (1) direct expedited delivery of Supplies for which Seller shall bear all premium transportation charges and risk of loss; (2) direct acceleration of work for which Seller shall bear all premium labor costs and other acceleration costs; (3) delay payment for a period of time equal to the lateness of such delivery or performance; and/or (4) terminate this Order by written notice effective when received by Seller as to the Supplies or Services not yet delivered, and purchase substitute Supplies and Services elsewhere and charge Seller with any loss incurred. Seller shall, in the event of delay or threat of delay, due to any cause, in the production, delivery of Supplies or Services hereunder, immediately notify Buyer in writing of the delay. Seller's notice shall include all relevant information with respect to such delay or threatened delay. Seller shall be liable for any damages resulting from failure to make delivery within the time called for by this P.O. or by any written instructions of Buyer, except where such delay in delivery was due to causes beyond the reasonable control of Seller and Seller notified Buyer as required by these terms. Seller agrees to add the substance of this Section to each Order issued by Seller hereunder.
- 35.4 Advance Shipments: If, without written authorization from Buyer, Seller ships Supplies so as to arrive more than five (5) business days in advance of schedule, Buyer may return the Supplies to Seller and Seller shall be liable for transportation charges and risk of loss for the return of the Supplies as well as for the shipment of the Supplies. Seller shall not invoice Buyer for payment prior to the scheduled delivery date. Invoices covering Supplies shipped in advance of the delivery schedule will not be paid until normal maturity after the specified date of delivery.
- 35.5 Insurance: The Seller shall bear the risk of loss or damage to any property of the Buyer in Seller's possession or care, and shall maintain adequate insurance so as to cover any such loss or damage, and shall name the Buyer as the additional insured and beneficiary of any payments therefrom with waiver of any right of subrogation.

36. SAFETY AND SECURITY

- 36.1 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.
- 36.2 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.
- 36.3 Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property unless specific prior approval from Buyer is obtained.
- 36.4 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.

37. SHIPPING AND DELIVERY

- 37.1 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.
- 37.2 Items shall be delivered to the locations indicated on the P.O., F.O.B. Destination, unless otherwise specified.
- 37.3 Freight Collect
- 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.
 - At least five (5) 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.
 - 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.

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38. SOFTWARE LICENSE

38.1 Seller hereby grants to Buyer and its affiliates and subsidiaries a non-exclusive, perpetual, worldwide license to:

- (a) Use the Licensed Software on the Hardware in accordance with the Seller provided instructions;
- (b) Make additional copies of the Licensed Software as reasonably necessary for backup or archival purposes, or to benchmark or other temporary testing;
- (c) Change, modify and copy the Seller provided instructions, including, without limitation, to edit and reformat any of the Seller provided instructions or convert any of the Seller provided instructions into machine-readable form, whether for on-line or other kinds of electronic access to it, and
- (d) Transfer the Licensed Software to another party in connection with the surplus or disposal of the Hardware.

38.2 This license includes the right to authorize employees, customers and suppliers of Buyer and its subsidiaries and affiliates to perform any of the activities described in this section.

38.3 Object Code. Buyer is not obligated to keep confidential the Licensed Software in object code or written form. Nothing in this Agreement or any Purchase Order is intended to establish, or should be construed as establishing, any kind of confidential relationship between Buyer and Seller with respect to the Licensed Software in object code form regardless of any markings, screen displays, or other notices given by Seller at any time. Buyer shall refrain, however, from any reverse compilation, disassembly, or other attempt to obtain the Licensed Software in source code form, except to the extent permitted by law.

38.4 Misuse of Licensed Software. In the event Seller has knowledge, or has reason to believe, that Buyer is using the Licensed Software beyond the scope of the license granted under this Agreement, Seller shall notify Buyer of the alleged misuse, in writing, in accordance with the Section entitled "Notices." Upon receipt of such notice, or in the event Buyer itself has reason to believe that misuse of the Licensed Software may be occurring, Buyer shall promptly investigate the alleged misuse, and shall destroy any unauthorized copies of the Licensed Software, or submit a written request to Seller for authorization to continue using some or all of them, and in either case pay any license fees owed for such copies. Buyer shall provide Seller with a written report which summarizes the results of Buyer's investigation into the alleged misuse and what actions Buyer took to correct it. The foregoing sets forth Seller's sole and exclusive remedy for misuse of the Licensed Software so long as Buyer performs its investigation and makes payment of any excess license fees to Seller in a timely fashion.

39. STOP WORK

39.1 Seller shall stop work for up to ninety (90) days in accordance with any written notice received from Buyer, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the work during the period of work stoppage.

39.2 Within such period, Buyer shall either terminate in accordance with the provisions of this contract or continue the work by written notice to Seller, in the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after the date of notice to continue.

40. STORAGE

40.1 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.

40.2 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.

40.3 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.

40.4 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.

41. SUPPORT SERVICES AND RELATED SERVICES

During the Warranty Period, Seller shall provide Support Services at no charge to Buyer. Thereafter, Seller shall provide the Support Services, if ordered under a Purchase Order, at a price to be mutually agreed upon. Such a price shall, in no event, exceed Seller's standard price for the provision of Support Services. The parties may agree in writing from time to time upon additional related services to be provided by Seller to Buyer in connection with the products.

42. TERMINATION FOR CONVENIENCE

This P.O. and any and all rights granted and obligations assumed hereby may be terminated in whole or part by Buyer giving written notice to Seller. Upon receipt of a notice of termination, and except as otherwise directed by Buyer, Seller shall immediately, as to the terminated portion of this P.O. and regardless of any delay in determining or adjusting any amounts due under this clause, promptly stop work, notify subcontractors to stop work, and protect property in Seller's possession in which Buyer has or may acquire an interest.

Seller shall submit a termination settlement proposal within sixty (60) days after the effective date of termination. Buyer shall determine the amount due Seller on the Termination in accordance with FAR 52.249-2. Seller and Buyer shall agree upon the whole or any part of the amount to be paid because of the termination and the P.O. shall be amended and Seller paid the agreed amount. In no event shall Buyer be obligated

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to pay Seller any amount in excess of the total P.O. price. Seller shall continue as reduced by the amount of payments previously made and the P.O. price of work not terminated.

43. 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.

44. WAIVER

Buyer's failure to enforce any provision of the P.O. or to protest any breach or default of the P.O. by Seller shall not be construed as evidence of (or evidence to interpret) the rights or obligations of the parties, or as a waiver of any Seller obligation or Buyer right provided under the P.O. or by law. No right or remedy of Buyer shall be deemed waived or released unless such waiver or release is in writing and signed by Buyer's Authorized Purchasing Representative. 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.

45. WARRANTY

45.1 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.

45.2 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.

45.3 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.

45.4 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.

45.5 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.

45.6 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.

45.7 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.

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

46. 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."

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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 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.

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

Some Clauses in the list below may not be applicable to specific orders due to factors such as the type of subcontract/purchase order to be issued, dollar thresholds, or other requirements of the FAR/DFARS, Public Laws, or Mandatory Flow Down Requirements of a particular Prime Contract. For example, Any Cost Reimbursement Clauses included herein shall only be applicable to Cost Reimbursement type P.O.s.

Clauses shall not be removed from the list. Instead, those clauses that are not applicable are deemed to be self-deleting and will be considered by the Parties to be without force and effect. Otherwise, all Clauses are incorporated by reference.

FULL TEXT CLAUSES

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

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

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REFERENCED CLAUSES

<u>FAR</u>	<u>TITLE</u>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHCS AND CONDUCT IF THE SUBCONTRACT EXCEEDS \$5.5 MILLION AND HAS A PERFORMANCE PERIOD OF MORE THAN 120 DAYS. IN ALTERING THIS CLAUSE TO IDENTIRY THE APPROPRIATE PARTIES, ALL DISCLOSURES OF VIOLATION OF THE CIVIL FALSE CLAIMS ACT OR OF FEDERAL CRIMINAL LAW SHALL BE DIRECTED TO THE AGENCY OFFICE OF THE INSPECTOR GENERAL, WITH A COPY TO THE CONTRACTING OFFICER.
52.203-15	WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 IF THE SUBCONTRACT IS FUNDED UNDER THE RECOVERY ACT.
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS.
52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS.
52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OF PROVIDED BY KAPERSKY LAB AND OTHER COVERED ENTITIES.
52.204-24	REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND SURVEILLANCE SERVICES OR EQUIPMENT.
52.204-25	PROHIBITION ON CONTRACTNG FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.
52.204-26	COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION.
52.204-27	PROHIBITION ON A BYTEDANCE COVERED APPLICATION.
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT.
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS IF THE SUBCONTRACT OFFERS FURTHER SUBCONTRACTING OPPORTUNITIES. IF THE SUBCONTRACT (EXCEPT SUBCONTRACTS TO SMALL BUSINESS CONCERNS) EXCEEDS \$700,000 (\$1.5 MILLION FOR CONSTRUCTION OF ANY PUBLIC FACILITY), THE SUBCONTRACTOR MUST INCLUDE 52.219-8 IN LOWER TIER SUBCONTRACTS THAT OFFER SUBCONTRACTING OPPORTUNITIES.
52.222-21	PROHIBITION OF SEGREGATED FACILITIES.
52.222-26	EQUAL OPPORTUNITY.
52.222-35	EQUAL OPPORTUNITY FOR, VETERANS.
52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES.
52.222-37	EMPLOYMENTS REPORTS ON VETERANS.
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT.
52.222-50	COMBATING TRAFFICKING IN PERSONS AND ALT I.
52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658.
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES.
52.225-26	CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES.
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS.
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS.
52.247-64	PREFERENCE FOR PRIVATELY OWNED US - FLAG COMMERCIAL VESSELS.

<u>DFARS</u>	<u>TITLE</u>
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS).
252.203-7002	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS.
252.204-7009	LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBDER INCIDENT INFORMATION.

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252.204-7012	SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING.
252.204-7020	NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS.