

APPENDIX A - PURCHASE ORDER TERMS AND CONDITIONS FOR GENERAL AND RAW MATERIALS (E-2352, 08/20)

1. CHANGES

- 1.1 Buyer may make changes within the general scope of this Purchase Order (P.O.) in any one or more of the following ways at any time by written order: (i) drawings, designs or Specifications where the Supplies to be furnished are to be specifically manufactured for Buyer in accordance with the drawings, designs or Specifications; (ii) method of shipment or packaging; (iii) place or time of inspection, Delivery, or acceptance of Supplies or Services to be furnished under this P.O.; (iv) description, time or place of performance of Services to be performed (if any), and (v) Delivery schedules.
- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 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.

2. DEFINITIONS

- 2.1 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
 - (B) "Days" means calendar days unless otherwise stated.
 - (C) "Default" means failure to make progress in the work so as to endanger performance.
 - (D) "Delivery" or "Delivered" means the receipt at the F.O.B. Point of items ordered under the P.O., including all submittals, certifications, documentation, and any other items to be furnished under the terms of the P.O.
 - (E) "Government" refers to the Government of the United States.
 - (F) "Purchase order" or "P.O." refers to this instrument and includes changes and/or modifications hereto.
 - (G) "Purchasing Representative" refers to Buyer's authorized representative.
 - (H) "Seller" or "Supplier" means the legal entity who sells or contracts to sell Supplies or Services to Buyer through this P.O.
 - (I) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
 - (J) "Supplies" means all or any part of the items, articles, goods, or products contracted for by Buyer through this P.O.

- 2.2 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.

3. DISPUTES

- 3.1 Any claim, dispute or disagreement arising under or relating to this P.O. between Buyer and Seller which is not settled by agreement may be litigated before any court in the State of Maine having competent jurisdiction. Pending resolution of such matter, Seller shall proceed diligently with the performance of this P.O. in accordance with the decision and directions of Buyer.
- 3.2 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, without regard to the State's conflict of laws principles.

4. GENERAL STATEMENTS

- 4.1 Acceptance. When Seller accepts this P.O., either by executing and returning the Acknowledgment Copy to Buyer or by performance, or by Delivery of any item ordered under this P.O., it shall become a binding contract. This P.O., including its terms and conditions and price and Delivery schedule, constitutes the entire agreement between Seller and Buyer, it being expressly understood that there is no agreement or understanding other than as stated or referred to herein and this P.O. supersedes all other promises and proposals made prior to the date of this P.O.
- 4.2 Assignment. This P.O. may not be assigned, in whole or in part, by the Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld; provided, however, Seller may assign its rights to be paid amounts due as a result of performance of this P.O. to a financial institution without Buyer's consent.
- 4.3 Order of Precedence. In the event of any inconsistencies between provisions of this P.O., the inconsistencies shall be resolved by giving precedence to the Special Provisions (if any) contained on the face of the P.O., then these P.O. Terms and Conditions, then the Attachments (excluding Buyer Material Ordering Catalog, Specifications or Statement of Work), then to Buyer Material Ordering Catalog, Specifications or Statement of Work.
- 4.4 Compliance with Laws. Seller shall comply with all applicable Federal, State and local laws, and regulations in performing this P.O. Seller shall save and hold Buyer harmless from any and all costs, damages and other expenses (including attorneys' fees) incurred by Buyer as a result of any failure of Seller to comply with any such laws and regulations.

4.5 **Delivery.** Delivery of Supplies and Services shall be made no later than the last day of the Delivery time(s) set forth in the P.O. However, no deliveries shall be made earlier than the designated Delivery time(s) unless authorized in writing by the Buyer's Purchasing Representative. Supplies shall be delivered to the location(s) indicated on the P.O. F.O.B. Destination.

5. **INSPECTION AND TITLE**

5.1 All Supplies and Services, except Supplies inspected and accepted by the Government at source for direct shipments to the Government, are subject to final inspection and acceptance by Buyer at F.O.B. Destination, notwithstanding any prior payment or inspection at source. Final acceptance or rejection of the Supplies or Services shall be made as promptly as practicable, but not later than sixty (60) days after Delivery of the Supplies or Services to the F.O.B. Destination point. If Buyer does not provide written notification of acceptance or rejection within sixty (60) days, the Supplies or Services shall be deemed accepted and subject to the provisions of the "Warranty" Clause.

5.2 Seller shall bear the risk of loss of, or damage to, the Supplies until they are delivered in conformity with this P.O. at the appropriate destination point. 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. Destination point or as payment is made, whichever first occurs. Neither payment nor passing of title shall constitute acceptance of the Supplies by Buyer.

6. **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.

7. **MARKING, PACKAGING AND SHIPPING**

7.1 All shipments shall be marked with the following information

- (A) Buyer PO or Delivery Order Number
- (B) Buyer Line Item Number
- (C) Buyer Catalog Number (if applicable)
- (D) Quantity Shipped
- (E) MSDS# (if applicable)
- (F) QPL Source (if applicable)
- (G) Shelf Life (if applicable)

Within each container, each Buyer catalog number shall be segregated (i.e., bagged, boxed, layered or partitioned) and marked with the catalog number using a permanent marker or label.

Multiple orders shall not be shipped within a single container.

Multiple shipments to one specified delivery location on any given day shall be consolidated under one Bill of Lading. Multiple delivery locations require separate Bills of Lading.

8. **PAYMENTS**

8.1 Payments shall be made by Buyer upon receipt of proper invoices which include the following:

- (A) invoice date and Seller's invoice number;
- (B) name of Seller;
- (C) the P.O. number, line item number, description of Supplies and Services, quantity, unit of measure, unit price, and extended total;
- (D) date of shipment and shipping point;
- (E) name and address to which payment is to be sent in accordance with the terms specified in this P.O.;
- (F) name, title, phone number and address of person to be notified in the event of a defective invoice;
- (G) any other information or documentation required by other provisions of the P.O.;
- (H) any prompt payment discounts available; and
- (I) the invoice amounts for individual Supplies shall be shown separately on any invoice.

8.2 A separate invoice shall be issued for each shipment. No invoice shall be issued prior to the shipment of Supplies or performance of Services and no payment will be made prior to receipt of the Supplies or Services and a corresponding proper invoice.

8.3 All invoices shall be submitted to Buyer, attention Invoice Audit Section. Such invoices shall be in triplicate and shall be in such form and bear such certifications as may be required or approved by Buyer. No more than one P.O. shall appear on an invoice, and all invoices shall show the amount of any Federal excise taxes, or State or local sales, use, occupational, gross receipts, or other direct tax included therein.

9. **PRIORITY RATINGS**

The U.S. Government priority rating for the Supplies and Services to be delivered under this P.O. is DO-A3. This priority rating is applicable to this P.O. with respect to all work of the Seller performed in the United States. Seller shall follow the provisions of Defense Materials System 1 or Defense Priority System Regulation 1 (see 15 C.F.R. Part 700) and all other applicable regulations and orders of the Office of Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fill this P.O. as applicable.

10. **SAFETY AND SECURITY**

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.

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.

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

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

- 10.1 Only trained authorized personnel will operate or service equipment, and in accordance with manufacturer's recommendations.
- 10.2 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.
- 10.3 Seller has reviewed the Environmental, Health and Safety Regulations Handbook referenced above, and has duly disseminated it to any applicable personnel performing work on Buyer's property or vessels.

11. **TERMINATION**

- 11.1 Buyer may terminate performance of work under this P.O., in whole or in part, if: (i) Seller defaults in performing this P.O. and fails to cure the default within 10 days (unless extended by Buyer) after receiving a written notice specifying the default, or, (ii) the termination is for the convenience of Buyer.
- 11.2 If a termination is for default, Buyer may order the Supplies or Services from another source, and the Seller shall be liable for any additional costs incurred by Buyer in effecting the reprocurement. If, after termination for default, it is determined that Seller had not been in default, the rights and obligations of the Seller shall be the same as if the termination had been for the convenience of Buyer.
- 11.3 If the termination is for the convenience of Buyer, the Purchasing Representative will make an equitable adjustment in the P.O. price, but no allowance shall be made for anticipated profit on undelivered Supplies or unperformed Services.
- 11.4 The rights and remedies of Buyer under this Clause are in addition to any other rights and remedies provided by law or under this P.O.

12. **WARRANTY**

- 12.1 Seller warrants that all Supplies and Services supplied 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.
- 12.2 If Buyer finds the warranted Supplies or Services need to be repaired, changed or reformed, Buyer shall so inform the Seller in writing and the Seller shall promptly and without expense to Buyer replace or satisfactorily correct the Supplies or Services. Any Supplies, Services or parts thereof so corrected, shall also be subject to the provisions of this Clause, and the warranties for such Supplies, Services or parts shall be for twelve (12) months from the date of Buyer's final acceptance of such corrected Supplies or Services.
- 12.3 Seller shall have no liability to Buyer under this warranty or any consequential, special, or incidental damages resulting from defects or deficiencies in the Supplies or Services delivered under this P.O. No commercial warranty is given hereunder. Implied warranties of "merchantability" and "fitness for a particular purpose" are excluded from any obligation contained in this P.O. Disputes arising under this Clause shall be resolved in accordance with the Clause entitled "Disputes."

13.0 **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"]

14.0 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.

<u>FAR Reference</u>	<u>Clause Title</u>
<u>52.204-25</u>	<u>Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Covered Items)</u>
<u>52.204-26</u>	<u>COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION</u>