

Appendix A, Form E-2388

PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR CAPITAL ACQUISITIONS (E-2388) FOR SERVICES AND MATERIAL (OCTOBER 2024)

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1. **ACCEPTANCE OF ORDER**

Seller shall accept this Order by signing the acceptance copy and returning it promptly to Buyer or by providing to Buyer any of the products or performing any of the services specified herein. By Seller's acceptance of this Order, Seller agrees to the terms, conditions, and specifications of this Order. Buyer hereby objects to and rejects any terms, conditions, or specifications contained in Seller's acceptance of this Order (or any other form or paper submitted by Seller) which differ from or add to the terms, conditions, and specifications of the Order. Seller agrees that the terms, conditions, and specifications of the Order shall prevail over any inconsistent provisions in any form or other paper submitted by Seller.

2. **ENTIRE AGREEMENT**

This Order constitutes the entire agreement between the parties, and supersedes all communications, representations, negotiations, or agreements, whether written or oral, pertaining to the subject matter hereof. Seller represents that in entering the Order, Seller does not rely on any previous direct or implied representation, inducement, or understanding of any kind.

3. **WAIVER**

Buyer's failure to enforce any provision of the Order or to protest any breach or default of the Order 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 Order 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 an authorized representative of Buyer.

4. **DELIVERY**

(a) **Transportation:** Unless otherwise provided in this Order, transportation shall be F.O.B. Destination, Freight Prepaid. Buyer shall not be liable for insurance or premium transportation charges unless Buyer consents to such charges in writing. All items must be packaged in accordance with the instructions specified by Buyer and shipped by route and carrier designated by Buyer. If Buyer does not specify the manner of packing, route, or carrier, Seller will suitably pack and ship all items in accord with customs and practices prevailing in the industry, following wherever applicable the precedents of previous shipments to this Buyer and, unless otherwise specified, in the most economical mode available. Seller shall mark on all packages handling and loading instructions, shipping information, order number, item and account number, shipping date, and names and addresses of Seller and Buyer. Seller shall be liable to Buyer for all damages incurred directly or indirectly by Buyer as a result of Seller's failure to comply with the conditions set forth in this subparagraph.

(b) **Risk of Loss:** Seller shall bear the risk of any loss or damage to the items until they are delivered in conformity with this Order at the F.O.B. destination point stated herein. Upon such delivery, Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence or fault. Notwithstanding the foregoing, Seller shall remain responsible for risk of loss of any nonconforming or rejected Work, unless and to the extent such loss, destruction, or damage results from gross negligence or fault of Buyer.

(c) **Title:** Except as otherwise expressly stated in this Order, title to all items furnished under this Order shall pass to Buyer upon final acceptance, regardless of when or where Buyer takes physical possession of the items.

(d) **Delays:** Seller understands that Buyer depends upon prompt delivery and/or performance by Seller at the time specified in the schedules furnished by Buyer. Because time is of the essence, if delivery or performance of the Work 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 Order and the law, to take any of the following actions: (1) direct expedited delivery of items 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 Work not yet delivered, and purchase substitute Work elsewhere and charge Seller with any loss incurred. Seller shall, in the event of a delay or threat of delay, due to any cause, in the production, delivery, or performance of Work 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 or performance within the time called for by this Order or by any written instructions of Buyer, except where such delay in delivery or performance was due to causes beyond the reasonable control of Seller and Seller notifies Buyer as required by this paragraph.

(e) **Quantity:** Seller shall comply with the delivery/performance schedules but shall not make material or production commitments in advance of such time as Seller reasonably believes is necessary to meet the schedules without Buyer's prior written consent. Buyer may return excess quantities to Seller at Seller's sole expense and risk, or retain such excess quantities at no increase in price.

5. **FINAL ACCEPTANCE**

(a) Final acceptance by Buyer of any Work under this Order shall not limit or affect any warranty or right of indemnity granted by Seller herein. Except as otherwise agreed in writing, all delivery or performance under this Order shall be subject to final inspection and acceptance by Buyer. The parties expressly agree that any prior inspection or payment by Buyer will not constitute final acceptance. Buyer's final acceptance of the Work shall take place only after complete delivery in accord with the schedule specified herein and after final inspection by Buyer. Buyer's final acceptance shall be contingent upon agreement by Buyer that the Work conforms to the applicable contract requirements. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured, acceptance induced by false or negligent assurances of Seller or as otherwise provided in this Order or applicable law.

(b) Seller shall provide and maintain an inspection and quality control system covering the items/services provided hereunder. Seller shall keep complete records of all inspection work and make such records available to Buyer upon request.

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(c) Work delivered or performed by Seller and rejected, in whole or in part, by Buyer may, at Buyer's option, be returned to Seller or held for disposition at Seller's sole risk and expense. If Seller fails promptly to remove such Work and to proceed promptly to replace or correct the Work, Buyer, without Seller's consent, may replace or correct such Work at the sole expense of Seller, including, without limitation, any excess cost. Seller shall not again tender rejected or corrected Work unless Seller discloses the former tender and rejection or requirement of correction.

6. FACILITIES, TOOLS, ETC.

Unless otherwise specified herein, Seller shall supply all necessary services, facilities, materials, and equipment (including, but not limited to, tools, test apparatus, etc.). If, in connection with this Order, Buyer furnishes any facilities, materials, equipment, drawings, or other property to Seller, Seller accepts the property "as is, where is." Seller shall maintain such property in good condition and keep the property adequately insured. Seller shall use such property only in performance of work under this Order unless Buyer consents otherwise, in writing. Seller shall assume the risk of, and bear responsibility for, any loss, destruction of, or damage to the property while in Seller's possession or control, unless otherwise agreed in writing by Buyer. Seller shall return all such property in a condition as good as when received except for reasonable wear and tear upon completion of use of such property or at such earlier time as Buyer may request. Seller shall indemnify and hold harmless Buyer and Buyer's Customer from all claims which may be asserted against said property, including, without limitation, claims arising under the Worker's Compensation or occupational injury laws and from all claims for injury to persons or property arising out of or related to Seller's use of such property in performance of this Order.

7. TERMINATION

(a) For Cause: Buyer may by written notice of default effective when received by Seller, terminate this Order in whole or in part for cause in the event of any default by Seller, or if Seller fails to comply with any terms and conditions herein, or fails to provide Buyer, upon request, adequate assurances of future performance. Buyer also may by written notice of default effective when received by Seller, terminate this Order in whole or in part for cause in the event of Seller's insolvency, Seller's filing of a voluntary petition in bankruptcy, the filing of any involuntary petition to have Seller declared bankrupt provided the petition is not vacated within thirty (30) days from the date of such filing, or the execution by Seller of an assignment for the benefit of creditors. IN THE EVENT OF TERMINATION FOR CAUSE, BUYER SHALL BE LIABLE TO SELLER ONLY FOR THE AMOUNT OF ANY WORK ACCEPTED BUT NOT YET PAID FOR, AND SELLER SHALL BE LIABLE TO BUYER FOR ANY AND ALL RIGHTS AND REMEDIES PROVIDED BY THIS ORDER AND THE LAW. If it is determined that Buyer improperly terminated this Order for cause, such termination shall be deemed a termination for convenience.

(b) For Convenience: Buyer may, for its convenience, terminate this Order, in whole or in part, at any time, by written notice effective when received by Seller. In the event of such termination, Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers to cease work. Buyer shall have no liability for such termination except for liability for items accepted or services actually rendered prior to the effective date of such termination for which payment has not been made. The Seller shall not be paid for any Work performed or costs incurred that reasonably could have been avoided. Failure to agree shall be deemed a dispute and shall be settled under Paragraph 18 ("Disputes"). Seller must submit all claims within sixty (60) days after the effective date of termination. If Seller fails to submit its termination settlement proposal or request for equitable adjustment within the deadlines provided herein, Seller's claim shall be deemed waived. In no event shall Buyer be obligated to pay Seller any amount in excess of the Agreement price. Seller shall continue any Work not terminated.

8. REPRESENTATIONS AND WARRANTIES

(a) Except as to any items or components thereof which the specifications contained herein specifically provide need not be new, Seller represents and warrants to Buyer that the items and components provided are new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety. Seller also represents and warrants to Buyer that all Work furnished under the Order will comply with the requirements of this Order; be free from defects in design (except to the extent of Buyer's design), material, manufacture, and workmanship; will be free from liens and encumbrance; and, to the extent Seller knows such purpose, will be fit and sufficient for the purpose for which the Work was intended. If the items furnished contain any manufacturer's warranties, Seller hereby assigns such warranties to Buyer. Seller also represents and warrants to Buyer that all labor provided hereunder shall be performed by qualified personnel, with diligence, and shall conform to the terms, specifications, and description of Work specified by Buyer. Seller further represents and warrants to Buyer that the Work provided under this Order will not infringe upon the rights of any third party. These representations and warranties extend to the future performance of the Work and shall continue for a period of twenty-four (24) months (or such longer period of time as Seller may warrant similar Work to its most favored customer) following final acceptance by Buyer.

(b) Buyer shall not be deemed to waive any defects or nonconformity by reason or approval of samples or receipt of, or payment for Work. If Buyer finds through inspection and testing or through use and service that any Work performed or delivered by Seller is other than as warranted above, Buyer may, at its sole option and in addition to any other remedies available to Buyer by this Order or by law, (i) return the Work at Seller's sole risk and expense for credit or for replacement or correction; (ii) direct Seller to correct the Work in place; or (iii) retain the Work and receive an equitable reduction in price from Seller which shall include the cost of any repairs performed by Buyer or any third party to make such Work acceptable and any diminution in value. Seller shall warrant repaired or replacement Work as set forth in this paragraph.

(c) Seller warrants that any items supplied under the Order, including, without limitation, subassemblies and spare parts, shall be available to Buyer during the operation life of the items or five (5) years after the date of final acceptance of the last shipment under the Order, whichever is later.

(d) Seller warrants that the prices, terms of payment, warranties and services extended under this Order 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 items/services and quantities. Buyer shall have the right to examine all Seller records and other evidence sufficient to reflect that Seller's representations and warranties are correct and true.

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9. INTELLECTUAL PROPERTY RIGHTS, LICENSES, AND INDEMNIFICATION

(a) Seller hereby grants Buyer and Buyer's Customer the right, without payment of additional compensation, to use, duplicate, operate, process, disclose and sublicense, all data, writings, reports, or other information and items produced and delivered by Seller to Buyer in connection with this Order. To the extent any such data, writings, reports, or other information and writings were first created by Seller or its agents under this Order and comprise works susceptible to protection under the copyright laws, Seller agrees that such information or works shall be deemed "works for hire" hereunder. In the event any such work is determined not to be a "work for hire" under the copyright laws, this provision shall operate as an irrevocable license assigned by Seller to Buyer of the copyright in the work, including, without limitation, all right, title, and interest therein, in perpetuity.

(b) Seller shall indemnify, defend, and hold harmless, Buyer and its respective officers, directors, agents, and employees against liability and losses including without limitation, defense costs and attorneys' fees, for any allegation of or suit or action for infringement of any United States or foreign patent, copyright, trademark, or other intellectual property right arising out of the manufacture or delivery or performance of Work under this Order or out of the use or disposal of such Work by or for the account of Buyer. Seller shall at its own expense either procure for Buyer the right to continue using the alleged infringing Work, replace it with non-infringing Work, or modify it so that it becomes non-infringing. The foregoing indemnity shall not apply unless Buyer informs Seller of the suit or action or other proceeding alleging infringement and gives Seller the opportunity as is afforded by applicable laws, rules, or regulations, to participate in the defense thereof. Notwithstanding the foregoing, Seller shall not be required to indemnify or hold harmless Buyer from infringement claims based on items solely of Buyer's design.

10. ASSIGNMENT AND SUBCONTRACTING

(a) Seller shall not assign this Order or any right or interest in this Order, or delegate any obligation under this Order, without a prior written authorization by Buyer, which shall not be unreasonably withheld. All claims by Seller for payment due or to become due from Buyer shall be subject to set-off as provided by Paragraph 21, whether such setoff arose before or after an assignment by the Seller.

(b) For purposes of this Order, any Work performed or items(s) delivered by Seller's agents or subcontractors at any tier, shall be deemed Work performed by Seller.

11. CHANGES

(a) Buyer may at any time by written notice make changes within the general scope of the Order including, but not limited to, changes in the (1) statement of work (including, without limitation, the description or quantity of Work to be provided by Seller); (2) the drawings, designs, specifications, or other technical documents; (3) time (e.g., the hours of the day, days of the weeks, etc.) of performance, delivery, inspection, or acceptance; (4) place of performance, delivery, inspection, or acceptance; (5) method of delivery, packaging, or packing; and (6) terms and conditions of purchase of this Order. No conduct by Buyer other than a signed written change order will constitute a change to the Order.

(b) If any change made in compliance with subparagraph (a) affects the cost or schedules of this Order, Buyer may make an equitable adjustment in price or schedule or both. Any claim by Seller for an equitable adjustment of price or schedule must be in writing and submitted within ten (10) days from the date of Buyer's written notification of the change or such further time as Buyer may allow in writing. Seller's failure to adhere to the time deadlines in asserting its equitable adjustment claim shall serve as a waiver of the claim.

12. CONTROL OF BUYER INFORMATION, DATA, DESIGN, ARTICLES, SCRAP, ETC.

(a) Publication: Seller shall not, without first obtaining Buyer's written permission, in any manner advertise or publish the fact that it has furnished or has contracted to furnish Buyer with the Work herein ordered, nor disclose any of the details connected with this Order to any third party.

(b) Buyer Information: As used herein, "Buyer Information" shall mean trade secret, confidential, or proprietary information disclosed by Buyer to Seller in connection with this Order, which either is identified to Seller as trade secret, confidential, or proprietary information or which is information that a reasonable person would understand to be trade secret, confidential, or proprietary information, including, but not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer's products and services, as well as any duplicates or copies thereof. Buyer Information shall not include any information previously known to Seller without obligation of confidence, or which is in the public domain. Seller shall use Buyer Information only as necessary for Seller's performance under this Order. Seller shall duplicate the Buyer Information only as authorized in writing by Buyer. Seller shall hold the Buyer Information confidential and shall not disclose Buyer Information to any third party, without Buyer's written permission. Seller shall return to Buyer, or destroy and certify as destroyed, all Buyer Information upon completion of Seller's performance hereunder, Buyer's written request, or termination of the Order, whichever is earliest.

(c) Licenses: This Order does not confer or grant, in any manner, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of this Order. Any intellectual property license or other authorization extended by express grant from Buyer to Seller as a result of this Order is limited by the necessities of Seller's performance hereunder. Any such license shall terminate upon completion of Seller's performance hereunder or termination of the Order, whichever is earlier.

(d) Surplus Items and Reproduction Rights - To the extent Seller produces items covered by this Order in accordance with drawings or specifications that are proprietary to Buyer, Seller shall not manufacture or retain any more such items than is required to be delivered under this Order. If any surplus of items exists, Seller will not, without Buyer's written permission, use or sell any such surplus, or reproduce the item for itself or a third party. Upon completion of Seller's performance or termination of this Order, whichever is earlier, Seller, at its sole expense and risk shall deliver any surplus items, or parts thereof, to Buyer at the designated destination, or destroy the excess items or parts thereof and certify the destruction to Buyer.

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13. **NOTICE**

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed to be duly given when received if sent by mail to each party's address as stated on this Order, or when delivered by hand or by facsimile transmission if the transmittal report indicates that the facsimile was sent successfully.

14. **COMPLIANCE WITH LAWS**

Seller, at its sole expense, shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations which may be applicable to the Work and Seller's performance under this Order, including, without limitation, the Service Contract Act; the Work Hours and Safety Standards Act; the Walsh-Healey Public Contracts Act; the Davis-Bacon Act; the Fair Labor Standards Act of 1938; the Civil Rights Act of 1964, as amended; Title 41, Chapter 60, of the Code of Federal Regulations (CFR), as amended; the Equal Opportunity Clause as set forth in FAR 52.222-26; and all laws, regulations, and rules related to the safety and conditions of each job site, including but not limited to those promulgated or prescribed pursuant to the Occupational Safety and Health Act of 1970, and any amendment thereto. Seller also agrees that in connection with activities under this Agreement 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 the Foreign Corrupt Practices Act or other applicable anti-bribery laws.

15. **INDEMNIFICATION BY SELLER**

Seller shall indemnify, defend and save harmless Buyer and Buyer's customer (the United States 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 Order on part of Seller. Seller shall also indemnify, defend and save harmless 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 Order and with all applicable laws or regulations as set forth in this Order. This duty to defend, indemnify and save harmless extends to any suit, claim, judgment, or demand that may arise out of or in connection with the performance or nonperformance of this Order by Seller or its agents, breach of warranty by Seller or its agents, any defective Work performed or delivered by Seller or its agents, any patent infringement or misappropriation of trade secrets by Seller or its agents, any failure of Seller or its agents to pay royalties, any assertion under workers' compensation or similar acts by persons furnished by Seller or its agents, or any other breach of Seller's obligations hereunder, whether such suit, claim, judgment, or demand is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and extends not only to "third party claims" but also to any direct loss suffered by Buyer. Buyer will inform Seller of any claim, demand, judgment, or suit asserted or instituted against it to which this provision may apply. "Agents" as used herein includes, but is not limited to, Seller's employees, temporary labor, subcontractors, vendors and suppliers.

16. **INSURANCE**

(a) 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 Order, 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.

(b) As respects policies under (i) (i) and (iii) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide 30 days' advance written notice of any coverage suspension or material changes, must be written by carriers with A.M. Best rating of "A-, VII", and licensed to do business in the state where services are to be performed. All such insurance must be primary and non-contributory to any insurance which Buyer may carry and required to respond and pay prior to any other insurance or self-insurance available. Any other coverage available to Buyer shall apply on an excess basis. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Order.

17. **GRATUITIES AND CONTINGENT FEES PROHIBITED**

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 to 58. In addition to its other remedies provided by law or this Order, Buyer shall have the right to deduct from the Order price the full amount of any gift or contingent fee made by Seller in breach of these warranties and may terminate this Order 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.

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18. **DISPUTES**

(a) "Dispute" as used herein shall mean (i) any and all claims or disputes that in any way arise out of or relate to this Order, the negotiation or execution thereof, its performance, or the breach or enforcement thereof; (ii) any claims or disputes that in any way concern the conduct of any party in connection with this Order or the relationship or duties of the parties contemplated under this Order; or (iii) claims or disputes concerning the validity or scope of the terms and conditions of this Order (including, but not limited to, this paragraph). Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties, including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, misuse or theft of trade secrets or other confidential information, unfair competition, unfair trade practices, or other tort law claims.

(b) Arbitration: Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, the parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any Dispute which the parties cannot resolve by good faith negotiations within thirty (30) days or such longer period as the parties may mutually agree to shall be submitted and finally resolved by binding arbitration under the commercial arbitration rules of the American Arbitration Association ("AAA") then in effect. The arbitration shall be conducted by single arbitrator (mutually agreed to by the parties in accord with the AAA's commercial arbitration rules) at a location mutually agreed to by the parties in the Washington DC/Northern Virginia metropolitan region. Seller and Buyer shall pay their own attorneys' fees and expert fees and other costs related to prosecuting or defending any Dispute, but shall share equally the costs and fees associated with the arbitration hearing and the arbitrator. The Arbitrator's power will include the power to award monetary damages, declaratory judgments, specific performance and injunctive and other equitable relief. The Arbitrator shall not have the power to modify or amend the provisions of this Order (except in accordance with Paragraph 23) and shall not award any damages in excess of damages that could lawfully be awarded by a court of competent jurisdiction or that are inconsistent with Paragraph 20 of this Order. Any award by the Arbitrator may be entered as a judgment in any court of competent jurisdiction. The Arbitrator shall apply the law specified in Paragraph 22.

(c) THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE THEIR CASE, BUT THEY KNOWINGLY CHOSE TO WAIVE ALL RIGHTS TO A JUDGE OR JURY TRIAL AND, INSTEAD, HAVE ANY AND ALL DISPUTES DECIDED BY ARBITRATION.

(d) In the event that any unrelated third party is joined in any Dispute between the parties, the disputes procedures set forth in this paragraph nevertheless shall apply to compel the resolution of any Dispute between the parties hereto.

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

(f) Buyer's rights under the terms and conditions of this Order are cumulative and in addition to any other rights available at law or equity.

19. **RESERVED**

20. **LIMITATION OF LIABILITY**

(a) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER (i) FOR ANY PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (ii) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF USE, INCOME, PROFITS OR ANTICIPATED PROFITS, BUSINESS OR BUSINESS OPPORTUNITY, SAVINGS, DATA, OR BUSINESS REPUTATION) ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN AGREEMENT, BREACH OF WARRANTY, TORT, NEGLIGENCE OR ANY OTHER THEORY, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(b) THE EXCLUSIONS CONTAINED IN PARAGRAPH (a) OF THIS ARTICLE SHALL NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN PARAGRAPH 15 OF THIS AGREEMENT AND THE EXCLUSION IN PARAGRAPH a (ii) SHALL NOT APPLY TO ANY BREACH OF THE NONDISCLOSURE AGREEMENT BETWEEN THE PARTIES OR THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT; PARAGRAPH 40.

21. **SET-OFF AND WITHHOLDING**

(a) Set-off: Buyer may offset against any amounts due under Seller's invoices: (i) any damages resulting from Seller's default under or breach of this Order; (ii) any amount owed to Buyer from Seller, whether or not, arising from this Order; (iii) any adjustment for non-conforming delivery or performance and any costs occasioned thereby. Buyer's rights to set-off remain even if Seller assigns it right to payment to a third party.

(b) Withholding: In addition to all other remedies provided by the law and stated in this Order, Buyer may withhold payment of an invoice if Seller has not complied with any of its obligations under this Order and Buyer shall not be required to make the payment until Seller completely satisfies the obligation(s) in issue. Seller is not entitled to interest on any withheld payments unless it is later determined by an Arbitrator that Buyer's withholding was improper under this Order.

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22. CHOICE OF LAW

Buyer and Seller agree that the law of the State of Maine, excluding its choice of law rules and the Convention for the International Sale of Goods, if otherwise applicable, shall govern any and all Disputes addressed in Paragraph 18. Buyer and Seller also agree that the provisions of the Maine Uniform Commercial Code shall apply to this Order and all Disputes, regardless of whether the subject matter of this Order relates to the provision of services, the lease of rental equipment or material, or the license of software.

23. SEVERABILITY

In the event any provision or clause of the Order conflicts with governing law or if any arbitration panel or court of competent jurisdiction holds invalid any provision or clause of the Order, such provision or clause shall be deemed to be modified to reflect as nearly as possible the parties' intent. The remainder of the Order shall remain in full force and effect.

24. SURVIVAL

The provisions of the Order, which by their very nature would continue beyond the termination, cancellation, or expiration of the Order, including, without limitation, Paragraphs 8, 9, 12, 14, 15, 18, 20, 21, 22 and 40, shall continue as valid and enforceable rights and obligations of the parties and survive termination, cancellation, or expiration of the Order.

25. ORDER OF PRECEDENCE

The rights and obligations of the parties shall be subject to and governed by the Order. In the event of an inconsistency between the provisions of the Order, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order from the highest to lowest degree of precedence: (1) Typed Provisions in the Schedule of this Order; (2) Special Provisions or Terms and Conditions, if any; (3) these General Terms and Conditions of Purchase; (4) specifications, drawings, statement of work, or other attachments or documents incorporated by reference.

26. PRICE

The prices set forth in this Order cover all Work delivered or performed by Seller to satisfy the requirements of this Order. Buyer will not be liable for extra charges of any kind unless specifically agreed to in writing by Buyer.

27. TAXES

The prices in this order include, and Seller shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Order, except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

28. PAYMENT

(a) Invoicing: Seller shall deliver an invoice to Buyer on a monthly basis (unless otherwise directed by Buyer) for Work performed during the prior month. Each invoice shall be submitted to Buyer's designated Contract Administrator/Purchasing Administrator and Buyer's Project Manager (if specified). Except as otherwise provided in this Order, each such invoice shall contain: (i) the Order number; (ii) the original Order price and any change thereto accompanied by copies of authorized Change Orders; (iii) sufficient detail to identify the Work provided and the fee therefor, and (iv) supporting documentation for the amount invoiced; (v) a waiver of liens in accordance with subparagraph 28(b) below; and (vi) any other documents Buyer may reasonably require. Buyer shall not be responsible for and Seller shall not invoice Buyer for interest or carrying charges.

(b) Payment: Payment of each properly submitted invoice shall be made by Buyer within sixty (60) days following receipt of each invoice, subject to the following: (i) Buyer may withhold an appropriate portion of the payment until any disputed items are resolved and/or defects in the Work are corrected; (ii) Buyer may retain ten percent (10%) of the total amount invoiced by Seller (such retainage will be paid upon full and final completion of all Work and acceptance of such Work by Buyer); (iii) if Seller fails to make payments to its lower-tier subcontractors or suppliers in the performance of the Work, Buyer shall have the right (but not the obligation) to retain, out of payments due or to become due to Seller, reasonable amounts to satisfy any claims, bonds, or liens against Buyer or Buyer's property, to issue joint checks payable to Seller and any potential bond or lien claimant, or to pay such lower-tier subcontractors and suppliers to protect Buyer from any and all loss, damage, and expenses (including, without limitation, attorney's fees) arising out of or related to a claim or lien by a lower tier subcontractor or supplier; (iv) Buyer may exercise its rights set forth in Paragraph 21 to set off any amounts due Buyer from Seller against amounts payable under this Order or any agreements between Buyer and Seller. Payment by Buyer shall be deemed to have been made for the purpose of meeting the sixty (60) day requirement on the date Buyer deposited the payment in the mail or made the electronic funds payment. Seller acknowledges that progress payments to Seller shall not constitute final acceptance by Buyer of the Work or any portion of the Work. Unless Seller receives Buyer's consent in writing, Buyer shall not be responsible for payment of any invoices submitted by Seller to Buyer in excess of sixty (60) days after the final delivery of the Work. As a condition precedent to receiving any payments, including, without limitation, the payment of any retainage, under this Order, Seller shall furnish a full and unconditional release ("Release") stating that all of Seller's subcontractors or suppliers have been paid in full by Seller and that no liens or rights in rem of any kind lie upon or have attached against the Work or any part thereof, either for or on account of any Work done upon, or about such Work, or any materials, articles or equipment furnished therefore or in connection therewith, or any other cause or thing, or any claims or demands of any kind. The Release shall further state that Seller has no knowledge of or basis for making any request for equitable adjustment, claim or demand of any kind against Buyer concerning or in connection with the Work for which said invoice is issued and that Buyer is released from any and all further liability for payments in connection therewith, except for unsettled claims which have been presented to Buyer in writing prior to the tender of final payment by Buyer and have been identified in the Release. Copies of release of liens/claims signed by Seller's lower-tier

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subcontractors and suppliers, acknowledging receipt of full payment of all obligations incurred by such subcontractors and suppliers on behalf of Seller hereunder also may be required to be provided at Buyer's discretion. Final payment shall not release Seller from any warranty and indemnification provisions contained in this Order.

(c) Records: Seller shall maintain, for a period of two (2) years following the expiration or termination of this Order, accurate records of all matters that relate to its performance of the Work, including, without limitation, all records and backup associated with invoices that have been submitted to Buyer, and shall make such records available to Buyer and its representatives for audit and inspection.

29. INDEPENDENT CONTRACTOR

Nothing in this Order shall be deemed to represent that Seller, or any of Seller's employees or agents, are the agents, representatives, or employees of Buyer. Seller assumes full and sole responsibility for the payment of all compensation, expenses, benefits (including, but not limited to, workers' compensation and medical benefits) of its employees and for all state and United States income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings or taxes. Seller and its agents are independent contractors for all purposes and at all times.

30. SUSPENSION/STOP WORK

Buyer may at any time by written order to Seller require the Seller to stop all, or any part of the Work called for by this Order for a period of up to 100 days. After receipt of Buyer's notice, Seller shall stop Work in accord with the terms thereof, taking all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of Work stoppage. Within said 100-day period, or a longer period if agreed to by the parties in writing, Buyer shall either terminate the Order under Paragraph 7 or cancel the stop work order by written direction to Seller to continue the Work. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Order price or time for performance, Seller shall comply with the provisions (including, without limitation, the time deadlines and liability limitations) set forth in Paragraphs 11 and 20.

31. WORK PERFORMED ON BUYER PREMISES

(a) If this Order involves Work by Seller on the premises of Buyer (or Buyer's customer), Seller shall comply with and take all precautions required by any safety and security regulations to prevent the occurrence of any injury to person or property during the performance and progress of such Work. Seller shall promptly notify Buyer of any such injury or damage. In addition to any other indemnification obligations in this Agreement, Seller hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever to all persons, whether employees of Seller, or otherwise, and to all property, caused by, resulting from, or arising out of Seller's negligence or that of its agents or employees when performing work on the premises of Buyer or its customer. If such Work involves the construction, modification or rehabilitation or any improvements on Buyer's premises, Seller shall be responsible for procuring all necessary building and other permits and licenses necessary for the construction, modification or rehabilitation of any improvements on the Buyer's premises. All such Work shall be performed (i) in a good and workmanlike manner, (ii) with new materials of good quality and as otherwise specified in any drawings and specifications prepared in connection with such Work, and (iv) in accordance with all applicable laws, rules and regulations (as specified in Paragraph 14).

(b) Seller shall at all times enforce strict discipline and good conduct among its employees, and shall not employ in connection with the services covered by this Order any unqualified or unfit person or anyone not skilled in the work assigned to him or her. Seller also agrees that any employee, subcontractor, or agent provided under this Order to Buyer will abide by and perform in accordance with the employment policies of Buyer, which address mandatory internal dispute resolution of all covered claims, sexual and other unlawful harassment, drug and alcohol abuse, and equal employment opportunity. Seller shall indemnify, hold harmless and defend Buyer against any liability arising from a violation of such policies by Seller's employee, subcontractor, or agent. In addition to any other remedies available to Buyer, Buyer may, without notice and an opportunity to cure, expel from its property/worksites, or the property or worksite of Buyer, any employee, subcontractor or agent of Seller found violating any Buyer policy.

(c) Seller must receive written permission from Buyer before storing any materials upon the premises or constructing any temporary workshop or other apparatus on the premises. Seller agrees to keep the premises free from accumulations of waste material or rubbish caused by its employees, subcontractors, or agents during performance, and at the completion of performance, Seller shall remove from the premises all rubbish, implements, and surplus materials and leave the premises broom clean, unless otherwise instructed by Buyer or Buyer's Customer(s). Seller shall properly store all loose tools and materials.

(d) Prior to Buyer issuing any "No-Escort" badges to Seller's employees performing work in the operating areas of Buyer's premises or facilities for a period of 30 days or more within a 365 day period, or having any access to Buyer computer information systems for any period of time, Seller, shall, at its own expense, obtain a Background Investigation (BI) on the Seller's employee in accordance with standards established by Buyer's Security Organization.

(e) If requested by Buyer, Seller shall enter into a construction agreement in a form specified by Seller with respect to the performance of any Work requiring the construction, modification, or rehabilitation of any improvements on Buyer's premises.

32. FORCE MAJEURE

Buyer shall not be liable for delay or failure of performance occasioned by causes beyond its control, including, but not limited to, acts of God or the public enemy, actions or decrees of governmental entities, civil unrest, riots, acts of terrorism, organized labor strikes, declared or undeclared war, fire, floods, unusually severe weather, earthquakes, or volcanoes ("Force Majeure Event"). If Buyer is affected by a Force Majeure Event, Buyer shall give written notice to Seller, which shall cause, without penalty to Buyer, all obligations under this Order to be immediately suspended for a period of sixty (60) days. If the period of suspension caused by the Force Majeure Event exceeds that first sixty-day period, Buyer either may terminate the Order for convenience in accord with subparagraph 7(b) or suspend the Order for an additional period under Paragraph 30. Any termination settlement or equitable adjustment sought by Seller following the termination for convenience or suspension may not include any costs

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incurred during the first sixty-day suspension.

33. **SUBSTITUTION**

Seller agrees not to substitute materials or other components of Work without written consent by Buyer.

34. **COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS**

(a) Seller, at its sole expense, shall comply with all applicable U.S. export control laws and regulations in the performance of this Order, including, but not limited to, the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 to 130, the Export Administration Regulations (EAR) 15 CFR Parts 730 through 799, and with all other laws, regulations, or executive orders of the United States related to the import, export, or delivery of goods or services contemplated by this Order such as customs laws and regulations, immigration laws and regulations, etc.

(b) Seller, at its sole expense, agrees to determine and comply with all export license requirements, to obtain any export license or other official authorization, and to carry out any customs or immigration formalities or similar requirements for the export of any goods or services covered by this Order. Seller also hereby expressly agrees to bear sole responsibility for obtaining export licenses, if required, before utilizing foreign persons (as defined in 22 CFR § 120.16) in the performance of this Order, including instances where the work is to be performed on-site at any Government installation, where the foreign person will have access to export-controlled technical data, equipment or software. Seller also agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exemptions/exceptions.

(c) Seller shall insert the substance of this clause in any lower-tier subcontracts it enters into in connection with this Order.

35. **OFFSETS FOR FOREIGN SUBCONTRACTS OR PURCHASE ORDERS PLACED BY BUYER**

If Seller is located outside the United States or any Work ordered hereunder will be produced or performed outside the United States, the following clause also shall apply to permit utilization of any offset credits generated by Buyer, its divisions, subsidiaries and affiliates:

"Offset credits generated by this Order are for the exclusive use of Buyer, and/or any of its divisions, affiliates, subsidiaries, or expressly authorized subcontractors to fulfill all past, present, or future offset obligations. Buyer has, and retains, the right to assign these offset credits to third parties. Seller acknowledges this fact and agrees to assist and support Buyer and its divisions, affiliates, subsidiaries, expressly authorized subcontractors, and assignees in obtaining offset credits in an amount equal to the value of this Order."

36. **OFFSETS FOR FOREIGN SUBCONTRACTS PLACED BY BUYER'S SUBCONTRACTORS**

In the event Seller places a subcontract or purchase order with a lower tier subcontractor or supplier, and either the subcontractor or supplier is located outside the United States, or any of the supplies will be produced, or services performed, outside the United States, Seller also shall provide a copy of the subcontract or purchase order to Buyer and include the following clause therein:

"Offset credits generated by this subcontract or purchase are for the exclusive use of General Dynamics and/or any of its divisions, affiliates, subsidiaries, or expressly authorized subcontractors to fulfill all past, present, or future offset obligations. General Dynamics has, and retains, the right to assign these offset credits to third parties. Seller acknowledges this fact and agrees to assist and support General Dynamics and its divisions, affiliates, subsidiaries, expressly authorized subcontractors, and assignees in obtaining offset credits in an amount equal to the value of this subcontract or purchase order."

37. **COMPLIANCE WITH INTERNATIONAL LAWS**

If Seller is located outside the United States or any Work ordered hereunder will be produced or performed outside the United States, the following provisions also shall apply:

(a) Compliance with Foreign Laws and Regulations: In addition to complying with all applicable federal, state, and local laws, regulations, and rules as set forth in Paragraphs 14 and 34 of this Order, Seller, at its sole expense, shall comply with all applicable foreign laws, regulations, and rules or agreements governing or applicable to Seller's Work under this Order.

(b) Hazardous Activities, Waiver, and Insurance: Seller acknowledges that the international nature of the Work required under this Order may subject Seller and its employees and lower-tier subcontractors to increased personal safety and property risks and other risks, hazards, and potential liabilities. Seller knowingly and voluntarily accepts sole responsibility, financially, and otherwise, for all risks, hazards, and liabilities associated with any international performance under this Order. Seller also hereby releases and waives all claims of any sort that it may have in the future against Buyer or its successors, assigns, affiliates, parents, subsidiaries, or agents arising from or related to risks, hazards, or liabilities associated with any international performance under this Order. In addition to its other indemnification obligations under this Order, Seller agrees that it shall indemnify and hold harmless Buyer from and against any and all liability, damages, costs, and expenses (including defense costs and attorneys' fees) arising from or related to any suit, action, claim, or proceeding filed against Buyer by one or more of Seller's employees or lower-tier subcontractors related to any risk, hazard, or liability addressed in this subparagraph. Seller also agrees that, in addition to the foregoing indemnification agreement and any insurance required elsewhere in this Order, Seller, at its sole expense, shall, during the term of this Order, provide and maintain at reasonably adequate levels, workmen's compensation, comprehensive general liability, bodily injury, and any other insurance necessary to fully and adequately cover all reasonably foreseeable risks, hazards, and potential liabilities of any kind related to Seller's performance of this Order wherever performed. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. If specifically requested by Buyer, Seller and Seller's subcontractors shall furnish, prior to the start of Work, certificates or adequate proof of the foregoing insurance, including, without limitation, endorsements and policies. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interest of Buyer or Buyer's Customer shall not be effective until thirty (30) days after the insurer or Seller gives written notice to Buyer, whichever period is longer.

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Insurance companies providing coverage under this Order must be rated by A. M. Best with at least an A-rating. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Order.

(c) Taxes and Fees: Seller shall have sole responsibility for, and pay without reimbursement from Buyer, all foreign sales, value added, employment, transportation, business, income and any other taxes, duties, levies, tariffs, fees, and assessments of any sort applicable or related to any Work delivered under this Order unless this Order specifically states otherwise.

(d) Effect on Other Provisions: Nothing in this paragraph shall relieve Seller from complying with any other paragraph of this Order.

(e) Use in Lower-Tiered Subcontracts: Seller shall include the substance of this paragraph in any lower-tier subcontracts it enters in connection with this Order.

38. DEFINITIONS

(a) "Order" as used herein includes the Fixed-Price Purchase Order, the Schedule, these General Terms and Conditions, any Special Terms and Conditions, any plans, any specifications, and other documents incorporated by reference or attached hereto.

(b) "Work" means the subject of this Order, and therefore may include, without limitation, (i) goods (e.g., materials, equipment, products, hardware, software, or information) or services (whether or not ancillary to the sale of goods) or both furnished by Seller to Buyer in performance of and pursuant to this Order.

(c) "Items" as used herein includes goods (e.g., materials, equipment, products, hardware, software, or information) and any part thereof, and (ii) any construction, modification, or rehabilitation of any improvements on the Buyer's premises performed in connection with any other Work being performed pursuant to this Order.

(d) "F.O.B. Destination, Freight Prepaid" means title and risk of loss pass to Buyer at Destination Point; Seller bears and prepays freight charges; and Seller must file claims for loss, damage, or overcharges (if any) for items in transit.

(e) "Days" means calendar days unless otherwise expressly noted.

39. EQUAL EMPLOYMENT OPPORTUNITY

Seller agrees to comply with any applicable provisions of the Rehabilitation Act of 1973, the Veteran's Readjustment Act of 1974, and Executive Order 11246, and implementing regulations of the U.S. Department of Labor, which embody governmental policy on equal employment opportunity.

40. CONFIDENTIALITY

40.1 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.

40.2 All information of a proprietary nature disclosed by one party to the other party hereto in connection with this agreement 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 agreement and to comply with other terms of this agreement, and except by Buyer to the extent strictly necessary for its intended use as required by the Prime Contract. Buyer may disclose such information subject to equivalent conditions of confidentiality to their suppliers or prospective suppliers to the extent necessary for defining interface characteristics of Supplies to be delivered hereunder provided that they make such disclosure and restrictions on use as contained in this paragraph.

40.3 The information to be held in confidence as provided in Paragraphs 40.1 and 40.2 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 agreement; 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 paragraph.

40.4 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."

40.5 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.

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41. 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. 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.

In no event shall Supplier export, re-export, re-transfer or otherwise dispose of hardware, software, technology, technical data or services transferred under this Agreement (including releases of such items or information to persons who are not U.S. citizens or U.S. Persons as defined by ITAR, wherever located), whether knowingly or unknowingly, or even if incorporated into other products, whether by electronic means or otherwise, (a) without having obtained in advance the specific written authorization of BIW; and (b) except in compliance with the export licensing and other applicable requirements of the appropriate U.S. government agency.

Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property or on a vessel in Buyer's care or custody unless specific prior approval from Buyer is obtained.

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.

Appendix A, Form E-2388

PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR CAPITAL ACQUISITIONS (E-2388) FOR SERVICES AND MATERIAL (OCTOBER 2024)

<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 CYBBER INCIDENT INFORMATION.
252.204-7012	SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING.
252.204-7020	NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS.
252.239-7010	CLOUD COMPUTING SERVICES