

AEROFLEX

PURCHASE ORDER TERMS AND CONDITIONS

DEFINITIONS

As used throughout this order, the following definitions apply unless otherwise specifically stated:

- a. "Buyer" means the legal entity issuing this order.
- b. "order" means this contractual instrument, including change notices, supplements, amendments, or modifications thereto.
- c. "Seller" means the legal entity performing work for Buyer pursuant to this order.
- d. "Government" means the Government of the United States unless otherwise specified.
- e. "Buyer's customer" means a customer other than the Government of the United States.
- f. "prime contract" means the Government contract under which this order is issued.
- g. "goods," "supplies," or "items" means those part numbers, model numbers and/or descriptions set forth on the face of this order.
- h. "services" means any effort supplied by Seller incidental to the sale of goods by Seller under this order including, without limitation, installation, repair and maintenance services. The term "services" shall also include, without limitation, any effort specifically required by this order such as design, engineering, maintenance, technical, construction, consulting or professional services.
- i. "Contracting Officer" means any officer or civilian employee of the Government who is properly designated and duly authorized to enter into, administer, or make any determinations or findings with respect to the prime contract, including the authorized representative of the Contracting Officer acting within the limits of his authority.
- j. "FAR" means Federal Acquisition Regulation.

SHIPPING AND BILLING INSTRUCTIONS

- A. **PACKING**—Unless otherwise specified, standard commercial preservation, packing and packaging is acceptable. Do not make any charges for packaging or boxing since Buyer will not allow such charges. Do not combine in same container material for different receiving locations.
- B. **MARKING**—Exterior containers must be marked with the following: (i) address, (ii) purchase order number; (iii) part number; and (iv) any other special markings called for by this order.
- C. **BILL OF LADING**—The bill of lading must reference purchase order number, correct ship to address. When delivery point is f.o.b. origin, make NO declaration of value on bill of lading EXCEPT where a declaration of value will result in lower total cost of shipment, and then declare such value as will entitle Buyer to the lowest applicable transportation rates. The original copy of the bill of lading shall be retained by Seller for one (1) year and provided to Buyer's Traffic Department if requested.
- D. **ROUTING**—On orders where Buyer either pays for or reimburses Seller directly for shipping costs, ship in accordance with routing instructions furnished by Buyer. If such instructions are not received, Seller shall secure the least expensive transportation method consistent with good commercial practice for protection and shipment of the goods shipped.
- E. **PACKING SLIP**—Include with each shipment of goods a packing slip which displays (i) the purchase order number; (ii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (iii) the quantity of items.
- F. **INVOICE**—Render a separate invoice in duplicate to Buyer's Financial Department on the day of each shipment made pursuant to this order and indicate thereon: (i) the location to which the item has been shipped; (ii) the purchase order number; (iii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (iv) the quantity of items shipped.
- G. **TEST REPORT**—Address all Test Reports, when required, to the Materials Control Laboratory at the plant to which the goods are shipped. Test Reports must be in Buyer's possession at the time the goods are received.

TERMS AND CONDITIONS OF PURCHASE

1. **Specifications:** Seller shall comply with all the specifications stated in this order and (unless the goods called for by this order are standard commercial products not intended as component parts of or as equipment or as accessories for Buyer's products) with all applicable Government specifications.
2. **Inspection; Rejection:**
 - a. Seller shall provide and maintain, without additional charge to Buyer, an inspection system which complies with all specifications stated in this order and in the absence of such specifications, Seller shall be required to provide and maintain, without additional charge to Buyer, an inspection system, which is acceptable to Buyer, Buyer's customer and the Government and which has been approved in writing by Buyer. Seller shall tender to Buyer for acceptance only goods that have been inspected in accordance with the appropriate inspection system and have been found by Seller to be in conformity with all requirements of this order. As part of the system, Seller shall prepare records evidencing all inspections made under the system and the outcome of such inspections. These records shall be complete and made available to Buyer during performance of this order and for as long afterwards as required by this order or applicable laws and/or regulations, but in no event shall such period expire prior to (i) three (3) years after final payment or (ii) final resolution of any dispute involving the goods delivered hereunder, whichever is later. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. Such reviews and evaluations shall be conducted in a manner that will not unduly delay work under this order. Buyer's right of review, whether exercised or not, does not release Seller of any of its obligations of testing, inspection, quality control and associated documentation.
 - b. Buyer, Buyer's customer and the Government shall have the right to inspect and test the material and workmanship of all goods required under this order at all places and times including, when practicable, during the period of manufacture; and if any such inspection or test is made on the premises of Seller, Seller shall furnish, without additional charge to Buyer, all reasonable facilities and assistance for the safe and convenient performance of the inspection or test.
 - c. Notwithstanding (i) prior inspection, (ii) payment for, or (iii) use of the goods ordered hereunder, Buyer shall have the right to reject any of such goods which do not conform to all requirements of this order. Such right shall be exercisable within the period provided in Buyer's applicable specification, or elsewhere in this order, or in the absence thereof, within six (6) months following Buyer's receipt of the goods called for hereunder. All such rejected goods shall be returned to Seller at Seller's risk and expense, (transportation collect declared at full value, unless Seller advises otherwise), for full credit or refund (at Buyer's option) excepting, however, those goods which Buyer elects to repair at Seller's expense or to retain at an equitable reduction in price. The rejected goods returned to Seller shall not be replaced by Seller except upon written instructions from Buyer. Rejected goods shall not again be tendered for acceptance without disclosure of former rejection. Resubmitted goods must be shipped separately. Should Buyer elect to repair the nonconforming goods, all terms and conditions of this order shall remain in full force and effect as to the goods furnished by Seller. Prior inspection or test, payment for, or use of the goods ordered hereunder does not relieve Seller from any responsibility regarding defects or other failures to meet the requirements of this order which may be discovered prior to acceptance. Acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Buyer's rights under this subparagraph shall be in addition to and shall not be deemed to diminish its rights under this paragraph or under the paragraph hereof entitled "Warranty."
 - d. In the event that Buyer's customer and/or the Contracting Officer charges Buyer for additional costs related to inspection or test when goods are not ready at the time specified by Seller or when prior rejection makes reinspection or retest necessary, Buyer shall have the right to reduce the amount payable under this order; such right to include, without limitation, Buyer's right to deduct or set off pursuant to Paragraph 7d. hereof.
3. **Warranty:**
 - a. Seller warrants to Buyer, its successors, assigns, customers, and users of goods sold by Buyer that all goods provided hereunder shall be (i) merchantable; (ii) new; (iii) free from defects in material and workmanship; (iv) with regard to goods designed by Seller, free from defects in design; (v) suitable for the purposes intended whether expressed or reasonably implied; (vi) in compliance with all applicable specifications, drawings, and performance requirements; and (vii) free from liens or encumbrances on title. Delivery, inspection, test, acceptance or use of or payment for the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use. Seller agrees to correct defects in or replace any goods not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. Deliveries of corrected or replaced goods shall be accompanied by a written notice specifying that such goods are corrections or replacements. In the event that Seller fails to correct defects in or replace nonconforming goods promptly, Buyer, after reasonable notice to Seller, shall have the right to correct or replace such goods and charge Seller for the cost incurred by Buyer in doing so, such right to include, without limitation, Buyer's right to deduct or set off pursuant to Paragraph 7d. hereof.
 - b. If services or technical data are to be provided by Seller hereunder, Seller warrants to Buyer that such services and/or technical data have been performed or prepared in a professional and workmanlike manner.
4. **Infringement Indemnity:**
 - a. As to the goods provided hereunder, Seller shall be liable for and shall indemnify and save Buyer and each subsequent purchaser or user thereof, harmless from any infringement claim, suit or action, including proceedings under 28 U.S.C. Section 1498, alleging that the manufacture, use or sale of such goods infringes any patent, trademark, copyright, semiconductor chip product mask work right or other proprietary right; except, however, that when such alleged infringement arises as a necessary consequence of Seller's compliance with specifications or designs furnished by Buyer which describe that aspect of the goods on which such alleged infringement is based, then Buyer shall be liable and shall save Seller harmless therefrom, but this exception shall not apply if the subject matter giving rise to the claim for infringement either (i) was derived from, or selected by Seller, or (ii) relates to materials or compositions, or processes relating to materials or compositions.

- b. The party against whom such infringement claim is made, or such suit or action is commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions of paragraph a. hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action, if such is commenced against the other party. Insofar as its interests are affected, the other party shall have the right, as its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action.
- c. Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event Seller shall be released from any obligation arising from such infringement claim, suit or action under this infringement indemnity clause. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.
5. **Software License:** Buyer is licensed to copy any software provided under this order onto a computer memory device and to make back-up copies of such software. Unless otherwise provided for in this order, or in a prior written agreement directed to the software provided hereunder, Buyer's sole obligation with respect to software provided hereunder shall be to use such software in compliance with applicable U.S. copyright laws and regulations, irrespective of any other license agreement including, but not limited to, any license agreement packaged with such software.
6. **Changes:**
- a. Buyer may, at any time and without notice to sureties (if any), unilaterally make changes within the general scope of this order, including, but not limited to, changes to any one or more of the following: (i) shipping or packing instructions, (ii) place of delivery, (iii) any drawings, designs, or specifications, (iv) the statement of work, (v) the method or manner of performance of the work, (vi) Buyer-furnished or Government-furnished property, facilities, equipment, materials, or services, (vii) the schedule of performance of the work, (viii) Seller's obligation to comply with any provision of the FAR and its supplements and any applicable agency regulations whether or not incorporated herein as of the date hereof. Seller shall perform any changes ordered by Buyer.
- b. Buyer's engineering and technical personnel are not authorized to change the goods or services ordered or any provisions, drawings, designs, or specifications of this order. No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's Purchasing Department. Any other written or oral order will be treated as a change if and only if, prior to performance of such order, Buyer gives Seller written notice stating the date, circumstances, and source of the order and stating that buyer regards such order as a change.
- c. Subject to paragraph d hereof, if any change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause, however, must be submitted in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's Purchasing Department not later than fifteen (15) days after the date of receipt by Seller of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Seller's request, provided, however, that Buyer in its sole discretion may consider any such claim regardless of when asserted, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this order.
- d. Notwithstanding the pendency of any claim for an adjustment submitted by Seller hereunder, Seller shall diligently proceed with the performance of the order, as directed by Buyer, and nothing herein shall be construed as relieving Seller of its obligations so to perform, including without limitation the failure of the parties to agree upon Seller's entitlement to, or the amount or nature of, any such adjustment.
- e. Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.
7. **Assignment and Setoff:**
- a. Performance of this order shall not be assigned by the Seller in whole or in part without the prior written consent of Buyer. Any prohibited assignment by Seller shall be null and void, shall be deemed a material breach of this order, and Seller shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations hereunder.
- b. Claims for money due or to become due to seller from Buyer arising out of this order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under this order and not already paid. Any such assignment shall be subject to Buyer's rights under paragraph d. hereof. Buyer shall be under no obligation to pay such assignee unless and until Buyer shall have received written notice of the assignment from Seller, a certified copy of the instrument of assignment, and suitable documentary evidence of Seller's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder.
- c. In no event shall any documents, relating to work under this order, marked with Government security classifications such as "Top Secret," "Secret," or "Confidential," be furnished to any assignee or to any other person not otherwise authorized to receive the same without the prior written authorization of the Contracting Officer.
- d. All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
8. **Buyer - Furnished Materials, Tooling and Equipment:**
- a. All materials, tooling and equipment which Buyer is required to furnish to Seller under the provisions of this order shall be delivered in sufficient time to enable Seller to meet its delivery schedule. If such materials, tooling and equipment are not delivered to Seller in sufficient time, the resultant delay of Seller in delivering to Buyer shall be excusable. Buyer shall have no liability to Seller by reason of any delay in delivery of, or failure to deliver such materials, tooling and equipment.
- b. Title to any materials, tooling and equipment furnished by Buyer to Seller shall remain in Buyer, Buyer's Customer, or the Government as the case may be.
- c. Seller agrees, as a material condition of this order, that it will (i) label, identify and segregate any and all material, tooling, and equipment (hereinafter referred to as "material") delivered to Seller by Buyer in connection with this order in such fashion as to clearly identify such material as being the property of Buyer, Buyer's Customer or the Government, as the case may be, at all stages of its possession by Seller, (ii) prevent the commingling of said material with other material in the Seller's possession except in accordance with applicable buyer specifications or Buyer's written approval, and (iii) assume responsibility for all taxes and risk of loss or damage with respect to said material at all times while it is in the custody, care or control of Seller, including while in the hands of carriers. Seller further agrees that a copy of this order and/or any applicable attachments and/or supplements may be filed with any cognizant governmental (federal, state or local) agency(ies) and agrees to execute such documents, including, without limitation, UCC financing statements, and take such other action as Buyer deems appropriate in order to protect Buyer's, Buyer's Customer and/or the Government's interest in and to the material delivered to Seller in connection with this order.
- d. Seller shall not be required to account to Buyer for the proceeds from the sale of scrap generated during the performance of this order by the processing of material furnished by Buyer; provided, however, that Seller shall reimburse Buyer at Buyer's prices then current for any such material used by Seller in excess of the allowance, if any, set forth in this order. Upon completion or termination of this order, any of the material furnished by Buyer and not properly consumed in the performance of the order, and any tooling and equipment shall be disposed of in accordance with instructions from Buyer.
- e. When Buyer furnishes any material, in whole or in part, for the manufacture of parts or assemblies, Seller shall not substitute material from any other source nor shall Seller or its subcontractors alter the material's physical or chemical properties except in accordance with applicable Buyer specifications or with Buyer's written approval.
9. **Force Majeure:** Buyer may delay Seller's delivery, Buyer's acceptance or Buyer's payment for the goods when such delays are occasioned by causes beyond Buyer's control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause effecting the delay has been removed. Buyer's sole liability and Seller's sole remedy for any such delay shall be limited to Seller's direct additional costs in holding the goods or delaying performance of this order. Causes beyond Buyer's control may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.
10. **Compliance With Laws:** In the performance of this order, Seller shall comply with all applicable federal, state and local laws, ordinances, rules and regulations. Seller hereby certifies that the goods called for by this order have been or will be produced in compliance with the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219) and, insofar as applicable to this order, the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45) and the Work Hours Act of 1962 (40 U.S. Code 327-332) and any amendments thereto, as well as with the provisions of any other federal law with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted, and with any and all rules and regulations issued under each and every such act. Seller agrees that this certification may be considered as the certificate contemplated by the amendment dated October 26, 1949, to the Fair Labor Standards Act of 1938.
11. **Anti-Kickback / Procurement Integrity Provisions**
- A. ANTI-KICKBACK PROCEDURES**
- (a) Definitions.
- "Kickback", as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- "Person", as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company or individual.
- "Prime Contract", as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- "Prime Contractor Employer", as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract", as used in this clause, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor" as used in this clause,-

- means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

- includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

"Subcontractor Employee", as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from-

(1) providing or attempting to provide or offering to provide any kickback;

(2) soliciting, accepting or attempting to accept any kickback; or

(3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

(c) (1) Seller shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) above in its own operations and direct business relationships.

(2) When Seller has reasonable grounds to believe that a violation described in paragraph (b) above may have occurred, Seller shall promptly report in writing the possible violation. Such reports shall be made to buyer and to the inspector general of the government contracting agency responsible for the prime contract, or the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) Seller shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) above.

(4) Regardless of the contract tier at which a kickback was provided, accepted or charged under the contract in violation of paragraph (b) above, Buyer may-

(i) offset the amount of the kickback against any monies owed by the Buyer under this contract; and/or

(ii) direct that the Seller withhold from sums owed its subcontractor, the amount of the kickback. Buyer may order that monies withheld under this subparagraph be paid over to Buyer unless Buyer has already offset those monies under subparagraph (i) above. In the latter case, Seller shall notify Buyer when the monies are withheld.

(5) Seller agrees to incorporate the substance of this clause, including this paragraph (5), in all subcontracts.

B. SELLER'S REPRESENTATION, WARRANTY AND INDEMNIFICATION OF BUYER

(a) Definitions:

The term "Kickback", "Subcontract", "Subcontractor", and "Subcontractor Employee" as used in this clause shall have the same meanings as those set forth in the clause entitled "ANTI-KICKBACK PROCEDURES".

(b) Seller's Representation and Warranty to Buyer

Seller represents and warrants to Buyer that neither Seller (including any of its officers, partners, employees or agents) nor any Subcontractor below Seller or Subcontractor employee has:

(1) provided or attempted to provide or offered to provide any kickback;

(2) solicited, accepted, or attempted to accept any kickback; or

(3) included, directly or indirectly, the amount of any kickback in the price applicable to this purchase order or in the subcontract price charged by any subcontractor to a higher tier subcontractor.

(c) Seller's Indemnification of Buyer

In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including, without limitation, Buyer's costs, attorney's fees, or any fines or penalties assessed against Buyer, resulting from a violation of the Anti-Kickback Act of 1986 by Seller (including any of its officers, partners, employees, or agents); or by any Subcontractor below Seller or Subcontractor employee.

C. PROCUREMENT INTEGRITY INDEMNIFICATION: If the price of Buyer's contract with its customer is reduced for a violation of the procurement integrity provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 423) and if the violation is by Seller or otherwise attributable to Seller, then Seller will indemnify and hold Buyer harmless. This indemnity will survive close-out of this purchase order.

12. **FAR and DOD FAR Supplement Clauses:** (applicable if a Government prime contract number is indicated on the face of the Order)

The following FAR and Department of Defense FAR Supplement (DFARS) clauses as in effect, and as modified by Federal Acquisition Circulars and Defense Acquisition Circulars respectively, as of the date of the prime contract(s) appearing on the order, are hereby incorporated by reference and made a part hereof:

(a) FAR 52.203-1 "Officials Not To Benefit";

FAR 52.203-3 "Gratuities";

FAR 52.203-5 "Covenant Against Contingent Fees", in which "Government" means Buyer in paragraph (a).

FAR 52.203-6 "Restrictions on Subcontractor Sales to the Government";

FAR 52.203-11 "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions";

FAR 52.204-2 "Security Requirements";

FAR 52.208-1 "Required Sources for Jewel Bearings and Related Items";

DFARS 52.208-7000 "Required Sources for Miniature and Instrument Ball Bearings";

DFARS 52.208-7001 "Required Sources for Precision Components for Mechanical Time Devices";

DFARS 52.208-7002 "Required Sources for High-Purity Silicon";

DFARS 52.208-7003 "Required Sources for High Carbon Ferrochrome";

DFARS 52.208-7006 "Required Sources for Antifriction Bearings";

DFARS 52.209-7000 "Acquisition from subcontractors subject to on-site inspection under the Intermediate Range Nuclear Forces (INF) Treaty";

FAR 52.210-5 "New Material", in which "Contracting Officer" means Buyer's purchasing representative and "Government" means Buyer in the last two sentences of the clause.

FAR 52.210-7 "Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property";

FAR 52.212-8 "Defense Priority and Allocation Requirements";

FAR 52.215-26 "Integrity of Unit Prices" less paragraph (c).

FAR 52.215-39 "Reversion or Adjustment of Plans for Postretirement Benefits Other than Pensions (PRB)";

DFARS 52.215-7000 "Aggregate Pricing Adjustment";

FAR 52.222-1 "Notice to the Government of Labor Disputes," in which "Contracting Officer" means Buyer's purchasing representative.

FAR 52.222-4 "Contract Work Hours and Safety Standards Act - Overtime Compensation - General" (paragraphs (a) through (d) only).

FAR 52.222-21 "Certification of Nonsegregated Facilities." Such certification shall be effective for all bids and orders issued by Buyer for a period of one (1) year after Seller's acceptance of this order.

FAR 52.222-26 "Equal Opportunity," paragraphs (b)(1) through (b)(11) only.

FAR 52.222-35 "Affirmative Action for Special Disabled and Vietnam Era Veterans"

FAR 52.222-36 "Affirmative Action for Handicapped Workers"

FAR 52.222-41 "Service Contract Act of 1965, as Amended"

FAR 52.223-3 "Hazardous Material Identification and Material Safety Data";

FAR 52.225-11 "Certain Communist Areas";

DFARS 52.225-7001 "Buy American Act and Balance of Payments Program";

DFARS 52.225-7002 "Qualifying Country Sources as Subcontractors";

DFARS 52.225-7005 "Buy American - Trade Agreements - Balance of Payments Program Certificate";

DFARS 52.225-7006 "Buy American Act, Trade Agreements Act, and the Balance of Payments Program";

DFARS 52.225-7011 "Preference for Domestic Specialty Metals (Major Programs)";

DFARS 52.225-7013 "Preference for Domestic Hand or Measuring Tools";

DFARS 52.225-7026 "Restriction on Contracting with Toshiba Corporation and Kongsberg Vapenfabrik";

FAR 52.227-8 "Reporting of Foreign Royalties";

FAR 52.227-9 "Refund of Royalties";

FAR 52.227-10 "Filing of Patent Application - Classified Subject Matter" (if patent application contains classified subject matter).

DFARS 52.227-7013 "Rights in Technical Data and Computer Software" with Alternate I "Notice of Certain Limited Rights";

DFARS 52.227-7018 "Restrictive Markings on Technical Data";

DFARS 52.227-7028 "Requirement for Technical Data Certification";

DFARS 52.227-7029 "Identification of Technical Data";

DFARS 52.227-7030 "Technical Data - Withholding of Payment";

DFARS 52.227-7032 "Rights in Technical Data and Computer Software (Foreign)";

DFARS 52.227-7036 "Certification of Technical Data Conformity";

DFARS 52.227-7037 "Validation of Restrictive Markings on Technical Data";

- DFARS 52.228-7006 "Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles,"
DFARS 52.228-7007 "Safety Precautions for Ammunition and Explosives,"
FAR 52.229-3 "Federal, State, and Local Taxes", in which "Government" means Buyer and "Contracting Officer" means Buyer's purchasing representative.
FAR 52.229-5 "Taxes - Contracts Performed in U.S. Possessions or Puerto Rico,"
FAR 52.230-2 "Cost Accounting Standards"
FAR 52.230-3 "Disclosure and Consistency of Cost Accounting Practices"
FAR 52.230-5 "Administration of Cost Accounting Standards"
DFARS 52.231-7000 "Supplemental Cost Principles,"
DFARS 52.235-7002 "Recovery of Nonrecurring Costs on Commercial Sales,"
DFARS 52.243-7001 "Pricing of Adjustments,"
FAR 52.245-2 "Government Property (Fixed Price Contracts)," in which
• "Contracting Officer" means Buyer's purchasing representative.
• "Government" means Buyer except:
1) the second time it appears in paragraph (b)(1)(ii), and
2) in paragraph (c)(1).
• "Government" means Government or Buyer:
1) in paragraph (f) and in the following phrase "its" becomes "their," and
2) in paragraph (j) and subparagraph (j)(1).
• The fourth sentence of paragraph (h) is changed to read: "Neither the Government nor the Buyer shall be liable..."
FAR 52.245-17 "Special Tooling" in which "Contracting Officer" shall be deemed to refer to Buyer's authorized representative and the term "Government" shall be deemed to refer to Buyer except in paragraphs (e)(1), (i)(1) and (j)(4) where the term will be interpreted as referring to either the Government or Buyer.
FAR 52.245-18 "Special Test Equipment,"
FAR 52.246-16 "Responsibility For Supplies,"
FAR 52.247-63 "Preference for U.S.-Flag Air Carriers,"
FAR 52.247-64 "Preference for Privately Owned U.S.-Flag Commercial Vessels,"
DFARS 52.247-7203 "Transportation of Supplies by Sea"
(b) If a purpose of this order is the conduct of experimental, developmental or research work,
FAR 52.227-11 "Patent Rights - Retention by one Contractor (Short Form),"
FAR 52.227-12 "Patent Rights - Retention by the Contractor (Long Form)," "Excepting Paragraph (o),"
FAR 52.227-13 "Acquisition by the Government (Long Form),"
DFARS 52.227-7034 "Patents - Subcontracts"
depending on which clause is required by the prime contract under which this order is placed.
(c) If this order is for more than \$2,500,
FAR 52.222-36 "Affirmative Action for Handicapped Workers,"
(d) If this order is for \$10,000 or more,
FAR 52.222-35 "Affirmative Action for Special Disabled and Vietnam Era Veterans,"
FAR 52.222-37 "Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era,"
(e) If this order is for more than \$10,000,
FAR 52.214-26 "Audit Sealed Bidding,"
FAR 52.215-1 "Examination of Records by Comptroller General," excluding paragraph (c),
FAR 52.215-2 "Audit-Negotiation" (excluding the first part of the first sentence up to and including the phrase "combination of these")
FAR 52.219-8 "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns,"
FAR 52.222-20 "Walsh-Healey Public Contracts Act,"
(f) If this order is for more than \$25,000,
FAR 52.219-13 "Utilization of Women-Owned Small Businesses,"
FAR 52.220-3 "Utilization of Labor Surplus Area Concerns,"
FAR 52.227-1 "Authorization and Consent"
FAR 52.227-2 "Notice and Assistance Regarding Patent and Copyright Infringement,"
(g) If this order is for more than \$100,000,
DFARS 52.204-7005 "Overseas Distribution of Defense Subcontracts," excluding paragraph (c).
FAR 52.214-28 "Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding,"
FAR 52.215-24 "Subcontractor Cost or Pricing Data,"
FAR 52.215-25 "Subcontractor Cost or Pricing Data - Modifications,"
FAR 52.223-1 "Clean Air and Water Certification," wherein Seller certifies that facilities used in performance of this order are not listed on the Environmental Protection Agency List of Violating Facilities.
FAR 52.223-2 "Clean Air and Water,"
FAR 52.248-1 "Value Engineering," in which "Contracting Officer" means Buyer's purchasing representative except in paragraph (j) sentence 3. "Government" means Buyer in paragraphs (e)(1), (e)(2), (g)(4) and (j)(4), and means Government and Buyer in paragraph (m), sentence 1 and in sentence 2 of the legend. Replace the share percentage figures in paragraphs (f) and (j) with those the parties agree upon.
(h) If this order is for more than \$500,000,
FAR 52.219-9 "Small Business and Small Disadvantaged Business Subcontracting Plan." Seller shall submit a subcontracting plan in compliance with such clause. This clause does not apply to small business concerns.
FAR 52.220-4 "Labor Surplus Area Subcontracting Program"
(i) Optional clauses
The following clauses apply if indicated on the face of the order.
(A1) FAR 52.224-2 "Privacy Act"
(A2) FAR 52.225-10 "Duty-Free Entry" (in Paragraph (e), the terms "Government" and "Contracting Officer" do not change)
(A3) DFARS 52.225-7004 "Identification of Expenditures in the United States"
(A4) DFARS 52.225-7007 "Supplies to be Accorded Duty-Free Entry" (for solicitation purposes only)
(A5) DFARS 52.225-7008 "Duty-Free Entry - Qualifying Country End Products and Supplies"
(A6) DFARS 52.225-7012 "Preference for Domestic Specialty Metals"
(A7) DFARS 52.225-7014 "Duty-Free Entry - Additional Provisions"
(A8) DFARS 52.227-7022 "Government Rights (Unlimited)"
(A9) DFARS 52.227-7023 "Drawings and Other Data to Become Property of Government"
(A10) DFARS 52.227-7026 "Deferred Delivery of Technical Data or Computer Software"
(A11) DFARS 52.227-7027 "Deferred Ordering of Technical Data or Computer Software"
(A12) DFARS 52.235-7004 "Frequency Authorization"
(A13) FAR 52.228-5 "Insurance Work on a Government Installation"
(A14) DFARS 52.246-7001 "Warranty of Data"
(A15) FAR 52.230-2 "Cost Accounting Standards"
(A16) FAR 52.230-3 "Disclosure and Consistency of Cost Accounting Practices"
(A17) FAR 52.230-5 "Administration of Cost Accounting Standards"
(A18) FAR 52.230-6 "Consistency in cost accounting practices." in addition to any other remedies provided by law or under this order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense (including profit) if Buyer is subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of this clause.
(A19) FAR 52.232-16 "Progress Payments"
(A20) FAR 52.246-23 "Limitation of Liability" in which
• The terms "Contractor" and "Contractor's" shall mean "Seller" and "Seller's" respectively.
• The term "acceptance" shall mean the acceptance by the U.S. Government of the end items in which are incorporated the goods delivered under this order.
This limitation shall not be construed to impose any obligation or liability on Buyer not to relieve Seller of any liabilities or obligations which Seller may have to Buyer under this order.
(A21) FAR 52.246-24 "Limitation of Liability - High Value Items" in which
• the terms "Contractor" and "Contractor's" shall mean "Seller" and "Seller's" respectively.
• the term "acceptance" shall mean the acceptance by the U.S. Government of the end items in which are incorporated the goods delivered under this order.

Insert the following preamble before paragraph (a) of the clause: "This clause shall apply only to those items identified in this order as being subject to the clause."

(A22) FAR 52.246-25 "Limitation of Liability - Services"

Wherever necessary to make the context of the FAR and DFARS clauses applicable to this order, the term "Contractor" shall mean Seller, the term "Contract" shall mean this order, and the term "Government," "Contracting Officer" and equivalent phrases shall mean Buyer and/or buyer's purchasing representative, except the terms "Government" and "Contracting Officer" do not change: (1) in the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property;" (2) in the patent clauses incorporated herein (3) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or his duly authorized representative, (4) when title to property is to be transferred directly to the Government, (5) when access to proprietary financial information or other proprietary data is required except as provided in paragraph 13 hereof, and (6) where specifically modified herein. If there is a conflict or addition to a clause in effect on the effective date of this order and a clause of the prime contract, the prime contract clause shall govern.

13. **Inspection of Records:** Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of any Department of the United States Government. Additionally, if this order is a time and material or construction order or provides for the payment of any amounts prior to the completion hereof, including, without limitation, progress payments, Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of Buyer notwithstanding any other provision herein to the contrary.

14. **Seller's Financial Status:** This order shall automatically terminate without any action by Buyer if:

a. Seller shall consent to the appointment of a receiver, trustee, liquidator, assignee, custodian, sequestrator or similar official of itself or of all or a substantial part of its property, or Seller shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors; or

b. Seller shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a case under any chapter of the Federal Bankruptcy Code or an answer admitting the material allegations of a petition filed against Seller in any such case, or an order for relief shall be entered against Seller in any such case, or Seller shall by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporation, or providing for an agreement, composition, extension or adjustment with its creditors; or

c. An order, judgment or decree shall be entered in any proceeding by any court appointing, without the consent of Seller, a receiver, trustee, liquidator, assignee, sequestrator or similar official of Seller or of all or any substantial part of its property, or sequestering all or any substantial part of the property of Seller, and any such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of ten (10) days after the date of entry thereof; or

d. A petition against Seller in a case under any chapter of the Federal Bankruptcy Code or any other bankruptcy or insolvency laws as now or hereafter in effect shall be filed and shall not be withdrawn or dismissed within ten (10) days thereafter.

15. **Price Reduction for Defective Cost or Pricing Data (applicable if a Government prime contract number is indicated on the face of the Order)**

a. In the event Buyer's customer(s) (including the Government) makes a determination pursuant to the clause(s) in, or required to be in, Buyer's contract(s) related to the Truth in Negotiations Act ("Act") or its implementing regulations, that any cost, price or fee in Buyer's contract(s) should or will be reduced because:

i. Seller furnished cost or pricing data that were not complete, accurate and current as certified, or as required to be certified, in the Seller's Certificate of Current Cost or Pricing Data; or

ii. A subcontractor of Seller furnished cost or pricing data that were not complete, accurate and current as certified, or as required to be certified, in the subcontractor's Certificate of Current Cost or Pricing Data; or

iii. A subcontractor or prospective subcontractor of Seller furnished cost or pricing data that were required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by Seller but that were not complete, accurate and current as of the date certified, or as required to be certified, in the Seller's Certificate of Current Cost or Pricing Data; or

iv. Seller or a subcontractor or prospective subcontractor of Seller furnished any data not within (i), (ii) or (iii) above (i.e., all data submitted at any and all times whether or not certified), that were not complete, accurate, or current as submitted; or

v. Seller or a subcontractor or prospective subcontractor of Seller failed to furnish any cost or pricing data, including any requested data, that were required under the Act or its implementing regulations;

then, at any time following such determination, the sums paid or payable to Seller under this order may, at Buyer's sole option, be reduced in the amount by which the sums received or receivable by Buyer from its customer(s) (including, but not limited to, the allocable share of Buyer's indirect costs and profit or fee) are reduced based upon such determination, and this order shall be modified in writing as may be necessary to reflect such reduction. At Buyer's election, Buyer may, pursuant to paragraph 7d. hereof, set off against any amounts due or to become due to the Seller from Buyer, whether or not under this order, all amounts by which this order has been reduced as set forth above. For purposes of this subparagraph, a "determination" by Buyer's customer means a final decision of a Government contracting officer and/or the formal assertion of a claim by a non-Governmental customer of Buyer and/or the withholding of money from Buyer by a customer based on an alleged failure of Buyer or its subcontractors to comply with the Act and/or the agreement by Buyer to a reduction in any cost, price, or fee of its contract(s) as the result of an alleged failure to comply with the Act.

b. **Appeal.** If an appealable decision is made by a contracting officer of the United States relating to cost or pricing data required to be submitted or actually submitted by Seller or a subcontractor of Seller, such decision (or portions thereof as relate to Seller) shall be conclusive upon Seller, provided that Seller, in the discretion of Buyer, is given the opportunity to appeal such decision in the name of Buyer and fails to do so. Any such appeal brought by Seller in the name of Buyer shall be at the sole expense of Seller. Seller shall be solely responsible for the prosecution of such appeal, including, but not limited to, the presentation of all pleadings, documents, evidence, facts, data and testimony in connection therewith. Further, Seller shall be responsible for providing any and all information requested by Buyer to verify, support, or provide any and all certifications required by the Contract Disputes Act of 1978, 41 U.S.C. Section 601 et seq., to perfect any such appeal. If Seller is given the opportunity to so appeal and elects to do so, Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation and opportunity to participate in the appeal as Buyer may reasonably request. As used in this subparagraph b, the term "appeal" shall include any and all proceedings taken by Seller under this subparagraph before a Board of Contract Appeals and any Federal court. Seller shall be conclusively bound by any decision of any such Board of Contract Appeal or Federal Court.

c. **Indemnification.** In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including Buyer's costs and attorney's fees, resulting from any and all determinations by Buyer's customer(s) as set forth in subparagraph a. above or from Seller's failure otherwise to comply with the clauses incorporated by reference in this order.

16. **Termination for Default:**

a. Buyer may by written notice terminate the whole or any part of this order for default in either of the following circumstances:

(i) If Seller fails to deliver the supplies or perform the services required by this order within the time specified herein, or any extension thereof granted by Buyer in writing; or

(ii) If Seller fails to perform any of the other provisions of this order or so fails to make progress as to endanger performance of this contract in accordance with its terms and Seller does not cure such failure to Buyer's reasonable satisfaction within a period of ten (10) days after receipt of notice from Buyer specifying such failure.

b. In the event Buyer terminates this order in whole or in part as provided in this clause, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar goods, provided, however, that Seller shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

i. Except with respect to defaults of vendors or subcontractors, Seller shall not be liable for any excess costs if the failure to perform this order arises out of causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; and in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a vendor or subcontractor to Seller, and if such default arises out of causes beyond the control of both the Seller and the vendor or subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods to be furnished by the vendor or subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. No cause shall constitute a basis for excusable delay unless Seller has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.

ii. If this order is terminated under this clause, Buyer, in addition to any other rights provided in this section, may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (i) any completed goods, and (ii) any partially completed goods and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "contract materials") as the Seller has specifically produced or specifically acquired for the performance of such part of this order as has been terminated; and the Seller shall upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered or rendered to and accepted by Buyer shall be at the order price. Payment for contract materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed goods or contract materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

iii. If, after notice of termination of this contract under this provision it is determined for any reason that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 17 entitled "Termination for Convenience."

c. As used in paragraph (b) of this clause, the terms "subcontractor" and "subcontractors" means subcontractor(s) at any tier and the terms "vendor" and "vendors" mean vendor(s) at any tier.

17. Termination for Convenience

a. The performance of work under this order may be terminated, in whole or from time to time in part, by Buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to Seller of a Notice of Termination specifying the extent to which performance of work under the order is terminated, and the date upon which such termination becomes effective.

b. After receipt of a Notice of Termination and except as otherwise directed by Buyer, Seller shall:

i. stop work under the order on the date and to the extent specified in the Notice of Termination;

ii. place no further orders or suborders for materials, services, or facilities except as may be necessary for completion of such portions of the work under the orders as may not be terminated;

iii. terminate all orders and suborders to the extent that they relate to the performance of any work terminated by the Notice of Termination;

iv. assign to Buyer, in the manner, and to the extent directed by Buyer all of the right, title and interest of Seller under the orders or subcontracts so terminated;

v. settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of Buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

vi. transfer title and deliver in the manner, to the extent, and at the times directed by Buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the order had been completed, would be required to be furnished to Buyer;

vii. use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by Buyer, any property of the types referred to in (vi) above; provided, however, that Seller (A) shall not be required to extend credit to any purchaser and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by Buyer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Buyer to Seller under this order or shall otherwise be credited to the price or cost of the work covered by this order or paid in such other manner as Buyer may direct;

viii. complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

ix. take such action as may be necessary or as Buyer may direct for protection and preservation of the property related to this order which is in the possession of Seller and in which Buyer or the Government has or may acquire an interest.

c. After receipt of a Notice of Termination, Seller shall submit to Buyer his termination claim, in the form and with the certification prescribed by Buyer. Such claim shall be submitted promptly, but not later than four (4) months from the effective date of termination, unless one or more extensions in writing are granted by Buyer, upon request of Seller made in writing within such four-month period or authorized extensions thereof. Upon failure of Seller to submit his termination claim within the time allowed, Buyer may determine, on the basis of information available to him, the amount, if any, due to Seller in respect to the termination; however, if Buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such four-month period or any extension thereof. After Buyer has made a determination under this paragraph, he shall pay the Seller the amount so determined and such determination shall be final.

d. Subject to the provisions of paragraph (c) hereof, Seller and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and Buyer shall pay the agreed amount or amounts; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total order price as reduced by the amount of payments otherwise made and as further reduced by the order price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to Seller in the event of the failure of Seller and Buyer to agree upon the whole amount to be paid to Seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Seller pursuant to this paragraph (d).

e. In the event of the failure of Seller and Buyer to agree as provided in paragraph (d) upon the whole amount to be paid to Seller by reason of the termination of work pursuant to this clause, Buyer shall pay to Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

i. for completed supplies or services accepted by Buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the order, appropriately adjusted for any saving of freight or other charges;

ii. the total of

(A) the cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies or services paid or to be paid for under (i) above; and

(B) the cost of settling and paying claims arising out of the termination of work under suborders or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the suborder prior to the effective date of the Notice of Termination of work under this order, which amount shall be included in the cost on account of which payment is made under (A) above, and

(C) a sum, as profit on (A) above, determined by Buyer pursuant to section 49.202 of the Federal Acquisition Regulation (FAR) in effect as of the date of execution of this order, to be fair and reasonable; provided, however, that if it appears that Seller would have sustained a loss on the entire order had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

iii. the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the order and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this order. The total sum to be paid to Seller under (i) and (ii) above shall not exceed the total order price reduced by the amount of payments otherwise made and as further reduced by the order price of work not terminated. Except for normal spoilage and except to the extent that Buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Seller under (i) and (ii)(A) above the fair value as determined by Buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Buyer or to a purchaser pursuant to paragraph (b)(vii).

f. The obligation of Buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to Seller applicable to the terminated portion of this order, (ii) any claim which Buyer may have against Seller, in connection with this order, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by Seller or sold, and not otherwise recovered by or credited to the Buyer.

g. If the termination hereunder be partial, Seller may file with Buyer a claim for an equitable adjustment in the price or prices specified in the order for the work in connection with the continued portion not terminated by the Notice of Termination, and an appropriate equitable adjustment shall be made in such price or prices. Any claim by Seller for an equitable adjustment under this clause must be asserted within forty-five (45) days from the effective date of the termination notice, unless an extension is granted in writing by Buyer.

h. Buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by Seller in respect to the terminated portion of the order, whenever in the opinion of Buyer the aggregate of such payments shall be within the amount to which Seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by Seller to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2) for the period from the date such excess payment is received by Seller to the date on which such excess is repaid; provided, however, that no interest shall be charge with respect to any such excess payment attributable to a reduction in Seller's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by Buyer by reason of the circumstances.

i. For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by Buyer to Seller shall be determined in conformity with the policies and principles set forth in Part 49 of the FAR in effect at the date of this order. Unless otherwise provided for in this order, or by applicable statute, Seller shall - from the effective date of termination until the expiration of three years after final settlement under the order - preserve and make available, without any direct charge, to the Buyer, Buyer's customer, and to the Government at all reasonable times at the office of Seller, all his books, records, documents, and other evidence bearing on the costs and expenses of Seller under this order and relating to the work terminated hereunder, or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

18. Stop Work Order

- a. Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this purchase order for a period of 90 days after the order is delivered to Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to Seller, or within any extension of that period to which the parties shall have agreed, Buyer shall either—
- Cancel the stop-work order; or
 - Terminate the work covered by the order as provided in the Termination for Default, or the Termination for Convenience, clause of this purchase order.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, Seller shall resume work. Buyer shall make an equitable adjustment in the delivery schedule or purchase order price, or both, and the purchase order shall be modified, in writing, accordingly, if—
- The stop-work order results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this purchase order; and
 - Seller asserts a claim for the adjustment within 15 days after the end of the period of work stoppage; provided, that, if Buyer decides the facts justify the action, Buyer may receive and act upon the claim asserted at any time before final payment under this purchase order.
- c. If a stop-work is not canceled and the work covered by the order is terminated for the convenience of Buyer, Buyer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- d. If a stop-work is not canceled and the work covered by the order is terminated for default, Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

19. Certificates

Seller shall furnish to Buyer or directly to the Government upon request of Buyer any certificate required to be furnished by any provision of this order (including the FAR clauses incorporated or set out herein) and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of the FAR or such laws, ordinances, or regulations. As used in this paragraph, the word "certificate" shall include any plan or course of action or record-keeping function, as, for example, the small business subcontracting plan required by FAR Section 52.219-9.

20. Indemnification:

- a. Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer, its parent and affiliated companies and their respective directors, officers, employees, successors and assigns from and against any and all claims for loss, damage or injury and from and against any suits, actions, or legal proceedings of any kind brought against Buyer, or such other parties by or on account of any person, persons, or entities, or on account of any injuries received or sustained by any person, persons, or entities in any manner (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material, workmanship, services, or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of defects in the design, manufacture or materials used in the goods, or negligence in the manufacture or installation of the goods or any other services supplied hereunder.
- b. Notwithstanding the above provision, Buyer shall have the right, at its own election, and without releasing any obligation, liability, or undertaking of Seller to indemnify Buyer hereunder, to:
- cooperate in the defense of such claim.
 - with permission of the court, to intervene in any such suit or action, and
 - supersede Seller in the defense of any such claims, suits actions, or legal proceedings.
- c. Seller further agrees to:
- promptly pay the settlement or judgment pertaining to all such claims, suits actions or legal proceedings; to hold harmless and indemnify Buyer therefrom; and
 - promptly pay the costs of attorneys' fees or other expenses incurred in any such defense either by Seller and/or Buyer, and to hold harmless and indemnify Buyer therefrom.
- d. Seller agrees that in any instance where such claims in any way affect Buyer's interests under this order or otherwise, Seller shall not consummate any settlement without Buyer's prior written consent.
- e. Seller's covenants of indemnity herein shall continue in full force and effect notwithstanding the termination of this order.

21. Confidential Disclosure:

- a. Information Furnished by Buyer - Information and ideas disclosed to Seller in connection with this order at any time in any form (including without limitation, orally, or in drawings, specifications, software, tools, gauges or goods provided hereunder) which Buyer considers proprietary and so indicates to Seller at the time of disclosure or within a reasonable time thereafter ("proprietary information" hereinafter), are entrusted to Seller only for use on behalf of Buyer. Seller shall keep proprietary information in confidence and shall neither use (other than in performance under this order) nor disclose such proprietary information except as authorized in writing by Buyer. On completion of this or all subsequent related orders (as appropriate), Seller shall deliver to Buyer or destroy to Buyer's satisfaction all material (including without limitation, documents, software, tools and goods which may be defective, partially completed, or completed) embodying proprietary information, unless otherwise instructed by Buyer. Any such material disposed of by Seller at any time other than by delivery to Buyer shall be altered to such an extent that prevents discovery of any proprietary information embodied therein. However, Seller shall not be liable for use or disclosure of any proprietary information which is shown by clear and convincing proof to either have been known to the Seller at the time of receipt from Buyer or to be in the public domain.
- b. Information Developed by Seller - Information and ideas developed by Seller under or in the course of performing this order for Buyer shall be owned by and disclosed to Buyer and if Buyer so indicates to Seller, such information and ideas shall be treated as proprietary information in accordance with the provisions of paragraph a. hereof.
- c. The restrictions set forth above do not apply to use by the Subcontractor on other Government contracts of data, tooling or designs which the Government owns or has right to use without restrictions and which were forwarded to the Subcontractor by Buyer.
- d. Tools & Materials - Notwithstanding any other provisions of this Purchase Order, upon prior written notice to Buyer and to the extent such use will not interfere with Seller's performance of purchase orders with Buyer in effect at the time, Seller with the U.S. Government's authorization, may use on other contracts all buyer furnished designs, drawings, special tooling, equipment, material, engineering data or other technical or proprietary information, etc., which the U.S. Government owns, or has the right to authorize the use thereof. All such materials, tools and equipment shall be satisfactorily marked, segregated or otherwise clearly identified by seller as property of the buyer and shall be kept by seller in good condition and repair and shall be returned by seller at buyers request in as good a condition as when received, reasonable wear and tear excepted, except to the extent that any such materials, tools and equipments that have been incorporated in supplies furnished to buyer under this order or have been properly consumed in the normal performance of work thereunder, Buyer shall have the right to remove its materials, tools and equipments upon receivership, bankruptcy or default of seller upon termination of this order. All risks of loss or damage to such materials, tools and equipment shall be upon seller until the materials, tools, and equipments have been re-delivered to buyer.

22. **Price Warranty:** Seller warrants that the prices for the articles sold Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such articles during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

23. **Delivery:** Time is of the essence of this order, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred. Substitutions will not be accepted. The supplies must be delivered by the date(s) specified, but must not be delivered earlier than two (2) weeks prior to such date(s) unless prior approval for an earlier delivery is given in writing by Buyer.

24. **Duty to Proceed:** Except as expressly authorized in writing by the Buyer, no failure of Seller and Buyer to reach any agreement provided for by the terms of this order shall excuse the Seller from proceeding diligently with the performance of this order.

25. Interpretation

It shall be the obligation of Seller to exercise due diligence to discover and to bring to the attention of Buyer at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts herein or in or between any specifications, drawings, or other documents attached hereto or incorporated by reference herein. Ambiguities, inconsistencies, or conflicts in this order will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

26. **Partial Invalidity:** If in any instance any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.

27. **Waiver:** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any such terms, conditions, or privileges or any other terms, conditions, or privileges, whether of the same or similar type.

28. **Attorney Fees:** In the event Buyer should bring an action for enforcement of the terms and conditions of this order, Seller agrees that Buyer shall be entitled to award of its reasonable attorney's fees and court costs associated with such enforcement proceedings.
29. **Applicable Law and Forum:**
This order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the state from which the Buyer's order is issued. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this order in the appropriate state or federal court in Buyer's state, and Seller hereby irrevocably consents to personal jurisdiction in any such court, hereby appointing the Secretary of State of Buyer's state as agent for receiving service of process. Any action or claim by Seller with respect hereto shall also be brought in such appropriate state or federal court in Buyer's state, if Buyer so elects. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of Buyer's state if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid.
30. **Captions:** Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions may refer.
31. **Cumulative Remedies:** The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.