

## **SUPPLEMENTAL PURCHASING TERMS AND CONDITIONS FLOWDOWN CLAUSES FOR COMMERCIAL ITEMS PURCHASED IN SUPPORT OF THE LITTORAL COMBAT SHIP (LCS) PROGRAM**

1. **RATED ORDER.** If this is a “rated order” certified for national defense use, Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulations (15 C.F.R. Part 700).
2. **CERTIFICATIONS.** By accepting or performing this Purchase Order, Seller certifies that:
  - a. Neither Seller nor any of its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency. “Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).
  - b. Neither Seller nor any of its affiliates are owned or controlled by the government of a country that is a state sponsor of terrorism.
  - c. Seller: (i) is in compliance with Sec. 202 of Executive Order 11246, as amended by Executive Order 11375, and subsequent Executive Orders and the Rules and Regulations set forth by the Secretary of Labor in effect as of the date of this Executive Order; (ii) does not and will not provide or maintain at any of its establishments, nor permit its employees to perform their services at any location under its control where there are maintained segregated facilities; and (iii) agrees that a breach of this Certification violates the Equal Employment clause of Executive Order 11246. “Segregated Facilities” means facilities which are in fact segregated on a basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Seller agrees to: (1) obtain an identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; and (2) maintain such certifications in its files. The penalty for making a false representation is prescribed under 18 U.S.C. 1001 and any such false representation shall be a material breach of this Purchase Order.
  - d. If it has participated in a previous prime contract or subcontract subject to FAR 52.222-26, “Equal Opportunity,” that Seller has filed all required compliance reports.
  - e. If it has previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), that Seller has developed and has on file at each establishment affirmative action programs required by such rules and regulations.
  - f. If Seller is registered in the System for Award Management (“SAM”), the size or socioeconomic representations and certifications in SAM (or any other successor system) are current, accurate and complete as of the date of Seller’s offer.

- g. To the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Purchase Order. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of Seller with respect to this Purchase Order, Seller shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of Seller to whom payments of reasonable compensation were made. Submission of this certification and disclosure is a prerequisite for making or entering into this Purchase Order imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure. As used in this Certification, "Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8) and the remaining terms are defined in FAR clause 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions."
3. EQUAL EMPLOYMENT OPPORTUNITY. Buyer and Seller shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Seller shall include this Paragraph 3 in each lower-tier subcontract it issues.
4. CERTIFICATES OF CONFORMANCE.
- a. Seller shall include with each shipment of Goods a Certificate of Conformance as follows:

I certify that on *[insert date]*, the *[insert Seller's name]* furnished the supplies or services called for by Purchase Order No. *[insert Purchase Order number]* via *[insert Carrier]* on *[identify the bill of lading or shipping document]* in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document. I further certify that, except as stated below, the supplies have been mined, produced, or manufactured in the United States and, if the supplies contain specialty metals, the supplies comply with the restrictions on specialty metals, as implemented through the Department of Defense Federal Acquisition Regulation Supplement.

Date of Execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

The following Goods supplied under this Purchase Order have not been mined, produced, or manufactured in the United States:

Item Number or Identifier: \_\_\_\_\_

Country of manufacture: \_\_\_\_\_

Buyer will not accept shipments of Goods that do not contain a properly executed Certificate of Conformance as required in this Paragraph 4.

## 5. EXPORT CONTROLS AND ECONOMIC SANCTIONS:

- a. Seller agrees to comply with all applicable export control and economic sanctions laws including, but not limited to: (i) the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce; (ii) the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State; (iii) the various economic sanctions programs administered by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC regulations) and the U.S. Department of State's Office of Terrorism Finance and Economic Sanctions Policy; and (iv) any export controls or economic sanctions maintained by the European Union ("EU"), United Kingdom, or any other governmental authority to which Seller is subject (collectively "Export Control Laws").
- b. Seller shall obtain any authorizations, licenses, or registrations required under the aforementioned Export Control Laws, including those required for the sale at issue to Buyer. Seller will furnish Buyer with: (i) documentation identifying: any articles, services, software, technology, and/or technical data requiring subject to these Export Control Laws; (ii) written confirmation of the relevant Export Classification Control Numbers ("ECCNs"), U.S. Munition List ("USML") category numbers, or other export classification designators for each such item; and (iii) copies of any related export licenses or authorizations. If Seller sources such items outside the United States, then Seller shall notify Buyer and take all necessary measures to comply with all foreign Export Control Laws that may relate to the sale or transfer of the same.
- c. Seller shall clearly and appropriately label any controlled technical data (including, but not limited to, drawings, designs, specifications, blueprints, CAD information, and other technical documents or electronic information related to the production, manufacture, or maintenance of a controlled article) that it provides to Buyer with as controlled pursuant to the EAR, ITAR, and/or other applicable laws. Seller shall provide any controlled technical data communicated to Buyer using secure communication protocols designed for the purpose of complying with the aforementioned Export Control Laws. Under no circumstances should such information be emailed using systems that are not designed for the secure communication of controlled technical data.
- d. Seller agrees that it will not source any articles, services, software, technology, or technical data that originate from any country, government, organization, or person that

is: (i) subject to U.S., EU, or British economic sanctions or other applicable sanction regimes; or (ii) any party that is debarred or restricted pursuant to the aforementioned Export Control Laws, or the U.S. Department of Defense Federal Acquisition Regulations.

- e. Seller is solely and exclusively responsible for safeguarding all export controlled articles, services, software, technology, or technical data until Buyer receives the items at issue. This includes both exports to a non-U.S. destination and allowing non-U.S. persons to access such items while located within the United States. Seller will also take appropriate steps to ensure that no export controlled articles, services, software, technology, or technical data can be shipped to a controlled country (or otherwise accessed by unauthorized foreign nationals) without the appropriate export licenses. Where the Seller is shipping of a controlled article, the Seller shall use a carrier that maintains procedures designed to comply with the aforementioned Export Control Laws, and to provide any required notifications to the carrier that the shipment involves controlled items.
- f. If the Seller is a signatory to a Technical Assistance Agreement (“TAA”) or Manufacturing License Agreement (“MLA”) with Buyer, Seller shall promptly notify Buyer of any changed circumstances that would require modifying the terms of such an agreement, including any potential violation of the terms of the agreement, any ineligibility to export, any investigation into alleged violations of the aforementioned Export Control Laws, any self-disclosure of potential export controls violations, any addition of foreign personnel to any project covered by such an Agreement, or any other circumstances that may affect the Seller’s ability to perform pursuant to the terms of the Agreement.
- g. Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List maintained by any U.S. EU, or British agency, or if any government denies, suspends, or revokes its export privileges.
- h. Seller shall prepare and provide accurate invoices and documentation for each shipment that will allow Buyer to comply with the export and import requirements administered by U.S. Customs & Border Protection (“CBP”), including: (i) the Seller’s name and address; (ii) the terms of sale; (iii) the total quantity of Goods being shipped; (iv) a description of the Goods being shipped; (v) the country of origin of the Goods; (vi) the valuation of the Goods; (vii) the currency in which the Goods are priced; and (viii) any discounts that have been included for the shipment that are not otherwise reflected in the unit price.
- i. Seller shall promptly notify Buyer of any suspected violation of the aforementioned Export Control Laws. Seller further agrees that it will fully cooperate in any investigation related to the subject matter of the Purchase Order, including by providing full access to relevant personnel and records to aid Buyer in the identification and evaluation of any suspected violation, following reasonable notice from Buyer.
- j. Seller agrees to indemnify Buyer for any fines, penalties, claims, losses, damages, costs (including legal costs), expenses, and liabilities (including costs of investigation of potential violations of the aforementioned Export Control Law) that may arise as a result of Seller’s breach of any of the provisions within this Paragraph 5.

## 6. CHANGES

- a. This Paragraph replaces and supersedes Paragraph 21, Changes, of Fairbanks Morse's Terms and Conditions.
- b. Buyer may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Purchase Order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.
- c. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Purchase Order, Seller shall make an equitable adjustment in the Purchase Order price and/or delivery schedule, and modify this Purchase Order accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- d. Seller must assert its right to an equitable adjustment under this clause within twenty (20) days from the date of receipt of the written change order from Buyer. If Seller's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, Seller shall have the right to prescribe the manner of disposition of the property.
- e. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Purchase Order. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Purchase Order as changed.

## 7. COUNTERFEIT WORK

- a. For purposes of this clause, Work consists of those parts delivered under this Purchase Order that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable. "Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.
- b. Seller shall not deliver Counterfeit Work or Suspect Counterfeit Work to Buyer under this Purchase Order.
- c. Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Seller may use another source only if (i) the foregoing sources are unavailable, (ii) Seller's processes will be employed to ensure the authenticity of the Work, and (iii) Seller obtains the advance written approval of Buyer.
- d. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. This clause applies in addition to and is

not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Purchase Order addressing the authenticity of Work.

- e. In the event that Work delivered under this Purchase Order constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Purchase Order. Notwithstanding any other provision in this Purchase Order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this subparagraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Purchase Order.
- f. Seller shall include subparagraphs (a) through (e) and this subparagraph (f) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Buyer.

## 8. DEFAULT

- a. Buyer, by written notice, may terminate this Purchase Order for default, in whole or in part, if Seller (i) fails to perform any of the other provisions of this Purchase Order; (ii) fails to make progress so as to endanger performance of this Purchase Order; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. Seller shall have seven (7) days (or such longer period as Buyer may authorize in writing) to cure any such failure after receipt of notice from Buyer. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.
- b. Following a termination for default of this Purchase Order, Seller shall be compensated only for Work actually delivered and accepted. Buyer may require Seller to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Purchase Order. Buyer and Seller shall agree on the amount of payment for these other deliverables.
- c. Upon the occurrence and during the continuation of a default, Buyer may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Purchase Order. If after termination for default under this Purchase Order, it is determined that Seller was not in default such termination shall be deemed a termination for convenience.
- d. Seller shall continue all Work not terminated or cancelled.

## 9. FURNISHED PROPERTY

- a. Buyer may, by written authorization, provide to Seller property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Purchase Order.

- b. Title to Furnished Property shall remain in Buyer or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- c. Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage to Furnished Property. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Purchase Order and good commercial practice.
- d. At Buyer's request, and/or upon completion of this Purchase Order, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.
- e. The Government Property Clause contained in this Purchase Order shall apply in lieu of subparagraphs (a) through (d) above with respect to Government-furnished property, or property to which the Government may take title under this Purchase Order.

#### **10. GRATUITIES/KICKBACKS**

- a. Seller shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a Fairbanks Morse supplier.
- b. By accepting this Purchase Order, Seller certifies and represents that it has not made or solicited and agrees it will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that subparagraph (c)(1) of FAR 52.203-7 shall not apply.

**11. INDEMNITY.** Seller shall defend, indemnify, and hold harmless Buyer, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including reasonable attorney's fees, all expenses of litigation and/or settlement, and court costs for personal injury, death, or property damage (other than damage to the Work) to the extent arising from any negligent act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Purchase Order.

**12. INDEPENDENT CONTRACTOR RELATIONSHIP.** Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Purchase Order shall be Seller's employees exclusively without any relation whatsoever to Buyer.

#### **13. INFORMATION ASSURANCE**

- a. Information provided by a Party to the other Party remains the property of the disclosing Party. The receiving Party shall comply with the terms of any proprietary information agreement with the disclosing Party and comply with all proprietary information markings and restrictive legends applied by the disclosing Party to anything provided hereunder to the receiving Party. The receiving Party shall not use any of the disclosing Party's provided information for any purpose except to perform this Purchase Order and shall not disclose such information to third parties without the prior written consent of the

disclosing Party. The receiving Party shall maintain data protection processes and systems sufficient to adequately protect the disclosing Party provided information and comply with any law or regulation applicable to such information.

- b. If the receiving Party becomes aware of any compromise of information used in the performance of this Purchase Order or provided by the disclosing Party to the receiving Party, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), the receiving Party shall immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to the disclosing Party after learning of the Incident. As used in this clause, "compromise" means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. The receiving Party shall provide reasonable cooperation to the disclosing Party in conducting any investigation regarding the nature and scope of any Incident. Any costs incurred in investigating or remedying Incidents shall be borne by the receiving Party.
- c. Any disclosing Party provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.
- d. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.
- e. DFARS 252.204-7012 applies to covered defense information.

#### 14. INSURANCE PROPERTY LOSS OR DAMAGE LIABILITY TO THIRD PERSONS

- a. Seller shall purchase from and maintain with a company or companies authorized to do business in the state in which the Work will be performed and having an A.M. Best rating of A- or better, the following insurance:
  - i. Worker's Compensation as required by applicable Federal, State or local workers compensation and occupational disease statutes. Where operations will be on or near navigable waterway(s), including in a shipyard, U.S. Longshore and Harbor Workers Act coverage is also required. If applicable, Jones Act coverage will also be provided by Seller for its employees.
  - ii. Employer's Liability (EL) - \$1,000,000 each accident, \$1,000,000 disease – policy limit, \$1,000,000 each employee.
  - iii. Commercial General Liability (CGL) including blanket contractual liability, Products/Completed Operations liability to cover products or services furnished under this contract, with a minimum limit of \$1,000,000 per occurrence. Fairbanks Morse to be included as additional insured. If Seller's Commercial General Liability will not cover Seller's operations (including in a shipyard) then Seller must carry insurance required in subparagraph (h) below.
  - iv. Automobile Liability Insurance (AL) (if applicable): Limits: \$1,000,000 per accident combined bodily injury and property damage. Fairbanks Morse to be included as additional insured.



- v. Umbrella/Excess Liability following form for a minimum of \$5,000,000 per occurrence. Seller shall provide a minimum of \$10,000,000 per occurrence for any work deemed hazardous by Buyer and Seller.
  - vi. All Risk Property Insurance, as needed, on a replacement cost basis to cover Government Furnished Property or Buyer furnished property.
  - vii. If Seller is handling hazardous substances or performing environmental work including cleaning, waste removal, and/or spill clean-up, Seller shall carry Pollution Liability coverage in the amount of \$5,000,000 each incident and aggregate. Fairbanks Morse to be added as additional insured.
  - viii. If Seller is operating marine vessels, Seller shall carry Protection and Indemnity coverage in the amount of \$2,000,000 per occurrence as required in clause 5252.228-9105, "Insurance Property Loss or Damage Liability to Third Persons (FT) (Jan 1990) (Modified) (Jun 2016).
- b. Such other insurance coverage (as applicable) required by Buyer deemed to be necessary to furnish reasonable protection against claims that may arise from operations under this Purchase Order, whether such operations be performed by the Seller or others whose services are engaged by the Seller, or anyone directly or indirectly employed by either.
  - c. Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to maintain the required insurance. Seller shall have its insurers name Fairbanks Morse as an additional insured on the CGL and AL policies for the duration of this Purchase Order. If requested, Seller shall provide a "Certificate of Insurance" evidencing Seller's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier. Seller's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Purchase Order.
  - d. All policies shall be considered primary and non-contributing to any coverage that Buyer may carry. Any deductibles will be the responsibility of Seller. Evidence of all required coverage, in the form of a certificate(s) of insurance, will be provided to Buyer upon request.

## 15. INTELLECTUAL PROPERTY

- a. This Paragraph replaces and supersedes Paragraph 9, Patent Indemnity, of Fairbanks Morse's Terms and Conditions.
- b. Seller warrants that the Goods delivered under this Purchase Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, Seller shall defend, indemnify, and hold harmless Buyer, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers

from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including reasonable attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Goods delivered under this Purchase Order infringes or otherwise violates the intellectual property rights of any person or entity.

- c. Seller's obligation to defend, indemnify, and hold harmless Buyer and its customers under subparagraph (a) above shall not apply to the extent FAR 52.227-1, "Authorization and Consent" applies to Buyer's customer's Prime Contract for infringement of a U.S. patent and Buyer and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys' fees by a third party.
- d. In addition to the Government's rights in data and inventions specified in FAR and FAR Supplemental clauses incorporated in this Purchase Order, Seller agrees that Buyer shall have a limited, revocable, nonexclusive, world-wide, royalty-free license to use, execute, or distribute internally copies of any inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports and works of authorship delivered in performance of this Purchase Order, to the limited extent necessary for Buyer to make use of the Goods delivered under this Purchase Order in the performance of its contract obligations with its customer.
- e. No other provision in this Purchase Order, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties under this clause.

## 16. QUALITY CONTROL SYSTEM

- a. Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Purchase Order.
- b. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.

## 17. HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT

- a. Seller shall provide and maintain a quality control system to quality standard ANSI/ISO/ASQ 9001-2008 or later. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.
- b. Seller shall include applicable requirements of the quality standard(s) listed in subparagraph (a) of this clause and the requirement to flow down such standards, as applicable, to lower-tier subcontracts, in—
  - i. Any subcontract for critical and complex items (see FAR 46.203(b) and (c)); or
  - ii. When the technical requirements of a subcontract require—
    - (1) *Control of such things as design, work operations, in-process control, testing, and inspection; or*

(2) *Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.*

## 18. GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM

- a. Seller shall participate in the appropriate interchange of the Government-Industry Data Exchange Program (GIDEP) in accordance with GIDEP PUBLICATION 1 dated April 2008. Data entered is retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve Seller from complying with any other requirement of this Purchase Order.
- b. Seller agrees to insert subparagraph (a) of this requirement in any subcontract hereunder exceeding \$500,000.00. When so inserted, the word "Contractor" shall be changed to "Subcontractor."
- c. GIDEP materials, software and information are available without charge from:

GIDEP Operations Center  
P.O. Box 8000  
Corona, CA 92878-8000

Phone: (951) 898-3207  
FAX: (951) 898-3250

Internet: <http://www.gidep.org>

## 19. LOGISTIC SUPPORT REQUIREMENT (AT)

- a. This requirement applies whenever the Purchase Order specifications, by reference to a Military Specification or otherwise, specify repair parts or stock components (hereinafter called "repair parts") for a ship component or item of equipment.
- b. With respect to ship components or equipments manufactured other than in the United States or Canada, Seller agrees that, in addition to any other data required by this Purchase Order, it will furnish under this Purchase Order sufficient data so that the repair parts can be reproduced in the United States or Canada unless the suppliers of the ship components or equipments shall have made arrangements satisfactory to Seller and approved by Buyer for the manufacturing of repair parts in the United States or Canada. For the purpose of this requirement, "sufficient data" shall mean detail drawings and other technical information sufficiently extensive in detail to show design, construction, dimensions, and operation or function, manufacturing methods or processes, treatment or chemical composition of materials, plant layout and tooling. All data shall be in the English language and according to the United States system of weights and measures, and drawings for components, assemblies, subassemblies and parts protected by U.S. patents shall contain a prominent notation to that effect fully identifying the patent or patents involved, and bearing the number of this Purchase Order.
- c. In order to satisfy the requirements of paragraph (b), above, unless the supplier of the ship components or equipments shall have made arrangements, satisfactory to Seller and approved by Buyer, for the manufacture of such repair parts in the United States or

Canada, Seller shall include in all subcontracts for the purchase of ship components or equipments from foreign sources a clause, acceptable to the Buyer, granting to the United States Government for a period of seven (7) years, "Government Purpose Rights" (as defined in paragraph (a)(12) of the clause of this contract entitled "RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS" (DFARS 252.227 7013) in all technical data necessary to manufacture spare and repair parts for such components or equipments.

**20. RELEASE OF INFORMATION.** Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Purchase Order or the subject matter hereof, will be made by Seller or its subcontractors without the prior written approval of Buyer. Seller shall not use the name of Buyer or its customer, or any other trademark or logo owned by Buyer or its customer, in whatever shape or form, without the prior written consent of Buyer.

**21. RETENTION OF RECORDS.** Unless a longer period is specified in this Purchase Order or by law or regulation, Seller shall retain all records related to this Purchase Order for three (3) years from the date of final payment received by Seller. Records related to this Purchase Order include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, Seller shall timely provide access to such records to the US Government, Buyer, and/or Buyer's customer upon request..

## **22. STOP WORK**

- a. Seller shall stop Work for up to ninety (90) days in accordance with any written notice received from Buyer, or for such longer period of time as the parties may agree in writing and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b. Within such period, Buyer shall either terminate in accordance with the provisions of this Purchase Order or continue the Work by written notice to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within twenty (20) days after date of notice to continue. In the event of a termination for convenience, reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

## **23. TERMINATION FOR CONVENIENCE**

- a. Buyer reserves the right to terminate this Purchase Order, or any part hereof, for convenience. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Purchase Order, Seller shall be paid a percentage of the Purchase Order price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate to the satisfaction of Buyer using its standard record keeping system have resulted from the termination. Seller shall not be

paid for any Work performed or costs incurred which reasonably could have been avoided.

- b. In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Purchase Order price. Seller's termination claim shall be submitted within sixty (60) days from the effective date of the termination.
- c. Seller shall continue all Work not terminated.

#### **24. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)**

- a. This clause only applies to Goods that include the delivery of software (including software residing on hardware).
- b. Seller shall disclose to Buyer in writing any FLOSS that will be used or delivered in connection with this Purchase Order and shall obtain Buyer's prior written consent before using or delivering such FLOSS in connection with this Purchase Order. Buyer may withhold such consent in its sole discretion.
- c. As used herein, "FLOSS License" means the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."
- d. As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- e. Seller shall defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use in connection with this Purchase Order or the delivery of FLOSS. No other provision in this Purchase Order, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties for the use of FLOSS in connection with this Purchase Order or for the delivery of FLOSS under this Purchase Order.

#### **25. WARRANTY**

- a. Seller warrants that all Goods furnished pursuant to this Purchase Order shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Purchase Order and be free from defects in design, material, and

workmanship. This warranty shall be for a period of thirty-six (36) months from the date of delivery by Seller or begin upon final US Navy acceptance and extend for a period of one (1) year, whichever occurs first. If any nonconforming Goods are identified within the warranty period, Seller, at Buyer's option, shall promptly repair or replace the Goods or reperform the Work. Transportation of replacement Goods, return of nonconforming Goods, and reperformance of Work shall be at Seller's expense. If repair or replacement of Goods or reperformance of Work is not performed by Seller within a commercially reasonable timeframe under the circumstances, Buyer may elect to return, reperform, repair, replace, or reprocur the non-conforming Goods/Work at Seller's expense. All warranties shall run to Buyer and its customers.

- b. This assurance shall apply to and include correction of technical data pertinent to defective work and equipment as the extent delineated herein above, but in no event will it include computer software. If the repair, correction, or replacement of Goods or equipment is not within the scope of this clause, then Seller shall require a separate purchase order from Buyer.

## 26. WORK ON PREMISES OF BUYER AND THIRD PARTY

- a. "Premises" as used in this clause means premises of Buyer, its customers, or other third parties where Work is being performed.
- b. Seller shall ensure that Seller personnel working on Premises comply with any on-premises policies and: (i) do not bring weapons of any kind onto Premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Premises; (iii) do not possess hazardous materials of any kind on Premises without Buyer's authorization; (iv) remain in authorized areas only; (v) do not conduct any non-Buyer related business activities (such as interviews, hirings, dismissals or personal solicitations) on Premises, (vi) do not send or receive non-Buyer related mail through Buyer's or third party's mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Premises without Buyer's written permission or as permitted by law; and (viii) follow instruction from Buyer in the event of an actual or imminent safety or environmental hazard on Premises.
- c. All persons, property, and vehicles entering or leaving Premises are subject to search.
- d. Seller shall promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.
- e. Prior to entry on Premises, Seller shall coordinate with Buyer to gain access. Seller shall provide information reasonably required by Buyer to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.
- f. Seller personnel requiring unescorted access to Premises shall, prior to entry, be screened in a manner satisfactory to Buyer.
- g. Seller shall ensure that Seller personnel: (i) do not remove Buyer, customer, or third party assets from Premises without Buyer's authorization; (ii) use Buyer, customer, or

third party assets only for purposes of this Purchase Order; (iii) only connect with, interact with or use computer resources, networks, programs, tools or routines authorized by Buyer; and (iv) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Seller's data residing on Buyer, customer, or third party assets on Premises.

- h. Buyer may, at its sole discretion, have Seller remove any specified employee of Seller from Premises and require that such employee not be reassigned to any Premises under this Contract.
- i. Violation of this clause may result in termination of this Contract in addition to any other remedy available to Buyer at law or in equity. Seller shall reimburse Buyer, customer, or third party for any unauthorized use of Buyer, customer, or third party assets.
- j. Seller shall advise the Buyer Procurement Representative of any unauthorized direction or course of conduct.
- k. Seller shall immediately report to Buyer all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) affecting the Work. Seller shall provide Buyer with a copy of any reports of such incidents Seller makes to governmental authorities.

## 27. DISPUTES.

- a. If Buyer or Buyer's Customer elects to prosecute any dispute involving this Purchase Order under the disputes procedure applicable to the U.S. Government prime or higher-tier contract, Seller shall cooperate fully with Buyer in prosecuting the dispute. Seller shall be bound by the final outcome of the disputes procedure if: (i) Buyer has afforded Seller an opportunity to participate in Buyer's prosecution of the dispute; or (ii) Buyer, having decided to discontinue its own prosecution of the dispute, has afforded Seller an opportunity to continue to prosecute the dispute in Buyer's name. Buyer and Seller shall each bear their own costs of prosecuting any dispute. Pending the final resolution of any dispute arising out of or relating to this Purchase Order, Seller shall proceed diligently with performance of this Purchase Order, including the delivery of Goods.
- b. For all other disputes, the parties shall strive to settle amicably and in good faith any dispute arising in connection with this Purchase Order using the following escalation process: (1) by the technical and contractual personnel for each party; (2) by executive management of each party; (3) by mediation, or (4) by a court of competent jurisdiction in the State of Wisconsin.
- c. Pending resolution of any dispute hereunder, Seller shall proceed diligently with the performance of work, including the delivery of Goods in accordance with Buyer's direction, as long as Buyer continues to pay Seller for Goods accepted at the Purchase Order price.

## 28. LIMITATION OF LIABILITY

- a. In no event shall Buyer be liable to Seller (i) for any punitive, exemplary or other special damages arising under or relating to this Purchase Order 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 Purchase Order or the subject matter hereof, regardless of whether such damages are based in contract, breach of warranty, tort, negligence or any other theory, and regardless of whether Buyer has been advised of, knew of, or should have known of the possibility of such damages.

- b. The maximum aggregate liability of Buyer to Seller arising out of or relating to this Purchase Order shall not exceed the purchase price for the Goods supplied hereunder.

**29. AMENDMENTS REQUIRED BY HIGHER-TIERED CONTRACT.** Seller agrees that upon the request of Buyer it will negotiate in good faith with Buyer relative to amendments to this Purchase to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable higher-tiered contract, or with the provisions of amendments to such higher-tiered contract. If any such amendment to this Purchase Order causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Purchase Order, an equitable adjustment shall be made pursuant to the “Changes” clause of this Purchase Order.

**30. FAR/DFARS CLAUSES.** The following clauses set forth in the Federal Acquisition Regulation (“FAR” available at <http://www.acquisition.gov/FAR>) and the Department of Defense FAR Supplement (“DFARS” available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>), in effect as of the date identified below are incorporated herein by reference with the same force and effect as if they were given in full text. For purposes of this Purchase Order, the following clauses shall operate, impose the obligations and responsibilities of the parties and be interpreted as if “Government” means “Buyer,” “Contracting Officer” means an authorized representative of Buyer’s purchasing department, “Contract” means this “Purchase Order,” “Offeror” means “Seller,” “Contractor” means “Seller,” and “Disputes clause” means the Disputes clause of this Purchase Order. Seller shall also include these FAR and DFARS clauses in each lower-tier subcontract it issues, as applicable.

FAR	Clauses	Date
52.202-1	Definitions	NOV 2013
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (applies to Purchase Orders with a value over \$150,000)	OCT 2010
52.203-13	Contractor Code of Business Ethics and Conduct (applies to Purchase Orders that have a: (i) value exceeding \$5.5 million; and (ii) performance period of more than 120 days)	OCT 2015
52.204-2	Security Requirements (applies to Purchase Orders that involve access to classified information)	AUG 1996
52.204-9	Personal Identity Verification of Contractor Personnel (applies where Seller will have physical access to a federally-controlled facility or access to a Federal information system.)	JAN 2011
52.209-6	Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (applies to Purchase Orders with a value over	OCT 2015



	\$35,000)	
52.211-5	Material Requirements (The Goods to be delivered hereunder shall consist of new materials, as defined in this clause, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety)	AUG 2000
52.211-15	Defense Priority and Allocation Requirements	APR 2008
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications	OCT 2010
52.219-8	Utilization of Small Business Concerns	OCT 2014
52.222-21	Prohibition of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-35	Equal Opportunity for Veterans (applies to Purchase Orders with a value equal to or exceeding \$150,000)	OCT 2015
52.222-36	Affirmative Action for Workers with Disabilities (applies to Purchase Orders with a value over \$15,000)	JUL 2014
52.222-37	Employment Reports on Veterans (applies to Purchase Orders with a value equal to or exceeding \$150,000)	OCT 2015
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (applies to Purchase Orders with a value over \$10,000)	DEC 2010
52.222-41	Service Contract Act of 1965 (applies if this Purchase Order is for services subject to the Service Contract Act)	MAY 2014
52.222-50	Combating Trafficking in Persons	MAR 2015
52.222-54	Employment Eligibility Verification (applies to Purchase Orders for services that have a value of more than \$3,000 and include work performed in the United States)	OCT 2015
52.223-11	Ozone-Depleting Substances (applies if the Goods are manufactured with or contain ozone-depleting substances)	JUN 2016
52.223-15	Energy Efficiency in Energy-Consuming Products	DEC 2007
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.227-1*	Authorization and Consent	DEC 2007
52.227-19*	Commercial Computer Software-Restricted Rights (applies if the Purchase Order required delivery of computer software)	DEC 2007
52.232-39	Unenforceability of Unauthorized Obligations	JUN 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (applies if Seller is a small business concern)	DEC 2013
52.239-1	Privacy or Security Safeguards (applies if the Purchase Order is for information technology which requires security of information technology, and/or is for the design, development, or operation of a system of records using commercial information technology services or support services)	AUG 1996
52.244-6	Subcontracts for Commercial Items	SEP 2016
52.245-1	Government Property (ALT I)	APR 2012
52.245-9	Use and Charges	APR 2012
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels (applies to Purchase Orders that may involve	FEB 2006

	international air transportation)	
DFARS	Clauses	Date
252.203-7002	Requirements to Inform Employees of Whistleblower Rights	SEP 2013
252.203-7003	Agency Office of the Inspector General (applies when FAR 52.203-13 applies to this Purchase Order)	DEC 2012
252.204-7000	Disclosure of Information (applies to Purchase Orders when the Seller will have access to or generate unclassified information that may be sensitive and inappropriate for public release)	AUG 2013
252.204-7008	Compliance with Safeguarding Covered Defense Information Controls	DEC 2015
252.204-7009	Limitations on the Use and Disclosure of Third Party Contractor Reported Cyber Incident Information (applies if the Purchase Order involves services related to safeguarding covered defense information and cyber incident reporting)	DEC 2015
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2015
252.204-7015	Disclosure of Information to Litigation Support Contractors	FEB 2014
252.211-7006	Passive Radio Frequency Identification	SEP 2011
252.211-7007	Reporting of Government-Furnished Property	AUG 2012
252.223-7001	Hazard Warning Labels (applies if this Purchase Order requires the delivery of hazardous materials)	DEC 1991
252.223-7002	Safety Precautions for Ammunition and Explosives (applies if the Goods provided under this Purchase Order contain ammunition or explosives, including liquid and solid propellants)	MAY 1994
252.223-7003	Changes in Place of Performance – Ammunition and Explosives (applies if DFARS 252.223-7002 applies)	DEC 1991
252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (applies this Purchase Order is for the development, production, manufacture, or purchase of arms, ammunition, and explosives, or when arms, ammunition, and explosives will be provided to Seller as Government Furnished Property)	SEP 1999
252.223-7008	Prohibition of Hexavalent Chromium	JUN 2013
252.225-7001	Buy American Act And Balance Of Payments Program – Basic (This clause only applies to the spare parts that Seller will be delivering under this Purchase Order)	AUG 2016
252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies (Applies to Purchase Orders for items covered by the U.S. Munitions List)	SEP 2006
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (except paragraphs (d) and (e)(1))	OCT 2014
252.225-7012	Preference for Certain Domestic Commodities	DEC 2016
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools	JUN 2005
252.225-7025	Restriction on Acquisition of Forgings	DEC 2009
252.225-7031	Secondary Arab Boycott of Israel	JUN 2005

252.225-7038	Restriction on Acquisition of Air Circuit Breakers (applies to Purchase Orders over \$150,000)	JUN 2005
252.225-7048	Export-Controlled Items	JUN 2013
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (applies to Purchase Orders with a value exceeding \$500,000)	SEP 2004
252.227-7013*	Rights in Technical Data – Noncommercial Items	FEB 2014
252.227-7014*	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	FEB 2014
252.227-7015*	Technical Data–Commercial Items and Alt I (Dec 2011)	FEB 2014
252.227-7019*	Validation of Asserted Restrictions – Computer Software	SEP 2011
252.227-7037*	Validation of Restrictive Markings on Technical Data	JUN 2013
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services (applies if the Purchase Order requires securing telecommunications)	DEC 1991
252.243-7002	Requests for Equitable Adjustment	DEC 2012
252.244-7000	Subcontracts for Commercial Items	JUN 2013
252.246-7000	Material Inspection and Receiving Report	MAR 2008
252.246-7001	Warranty of Data	MAR 2014
252.246-7003	Notification of Potential Safety Issues	JUN 2013
252.246-7006	Warranty Tracking Of Serialized Items (applies to Work Requiring Serialization)	JUN 2011
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System (applies if the Purchase Order is for electronic parts or assemblies containing electronic parts)	MAY 2014
252.247-7023	Transportation of Supplies by Sea	APR 2014
252.247-7024	Notification of Transportation of Supplies by Sea	MAR 2000
252.249-7002	Notification of Anticipated Contract Termination or Reduction (applies to Purchase Orders of \$150,000 or more)	OCT 2015

\*For clauses marked with an asterisk (\*), no substitution of parties for “Government” and “Contracting Officer” apply. References to the “Government” shall mean the U.S. Government and references to the “Contracting Officer” shall mean the U.S. Government Contracting Officer.