

## **SUPPLEMENTAL PURCHASING TERMS AND CONDITIONS FLOWDOWN CLAUSES FOR ITEMS PURCHASED IN SUPPORT OF THE ESB PROGRAM**

Effective on ESB-5 & ESB-6

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.

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- 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.”
    - h. If the Purchase Order involves “covered defense information” (as defined at DFARS 204.7301), Seller will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (see <http://dx.doi.org/10.6028/NIST.SP.800-171>) that are in effect at the time the Purchase Order is issued or as authorized by Buyer. If Seller proposes to vary from any of the security requirements specified by NIST SP 800-171 that are in effect at the time the Purchase Order is issued, Seller shall submit to Buyer a written explanation of: (i) why a particular security requirement is not applicable; or (ii) how an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.
  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.
- k. Seller shall request of Buyer, 7 days in advance, in writing, any required access to Buyer’s Customer’s facilities by any and all of Seller’s employees, sub-licensee, its suppliers or other agents, at any tier, and shall include in any such request, the name and citizenship/nationality, (or in the case of dual or third country

citizenship/nationality, the countries of citizenship/nationality), of each such person. For the purposes of the Purchase Order, the term “national” refers to an individual’s place of birth, all citizenships and all lawful permanent residencies of any country.

**6. COUNTERFEIT ELECTRONIC PARTS PREVENTION** (applicable only to Purchase Orders for Goods containing electronic parts)

a. Definitions:

- i. Authentic – shall mean (A) genuine; (B) purchased from the OEM, OCM or through the Authorized Dealers of the OEM or OCM; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
- ii. Authorized Dealer – A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM’s/OCM’s goods.
- iii. Counterfeit Electronic Part – An unlawful or unauthorized reproduction, substitution or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified Electronic Part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Electronic Parts represented as new, or the false identification of grade, serial number, lot, number, data code, or performance characteristics. This definition includes end items, components, subcomponents, parts, or assemblies that contain them.
- iv. Electronic Part – An integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode) or a circuit assembly, and also includes embedded software or firmware.
- v. Non-Franchised Source – Any source that is not authorized by the OEM or OCM to sell its product lines. Non-Franchised Sources may also be referred to as brokers or independent distributors.
- vi. Obsolete Electronic Part – Any Electronic Part that is no longer in production by the OCM or OEM or an aftermarket manufacturer that has been provided express written authorization from the current design activity or OCM or OEM.



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- vii. OCM or OEM– An organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.
  - viii. Suspect Counterfeit Electronic Part – An Electronic Part is no longer in production by the OCM or OEM or aftermarket manufacturer that has been provided express written authorization from the current design activity or OCM or OEM. A Suspect Counterfeit Electronic Part also includes any Electronic Parts that Buyer becomes aware, or has reason to suspect, through credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Electronic Part is Authentic. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, the entire lot of parts will be considered to be suspect counterfeit.
- b. Terms and Conditions:
- i. Seller represents and warrants that only new and Authentic materials are used in Goods delivered to Buyer and that the Goods delivered contains no Counterfeit Electronic Parts. No material, part, or component other than a new and Authentic part is to be used unless approved in advance in writing by Buyer’s authorized procurement representative. To further mitigate the possibility of the inadvertent use of Counterfeit Electronic Parts, Seller shall only purchase Authentic parts/components directly from the OEMs, OCMs or through Authorized Dealers of the OEM/OCM. Seller represents and warrants that all parts/components delivered under this Purchase Order are traceable back to the OEM/OCM. Seller must maintain and make available to Buyer, at Buyer’s request, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Buyer. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. Buyer’s procurement representative’s approval of Seller’s request(s) does not relieve Seller’s responsibility to comply with all Purchase Order requirements, including the representations and warranties in this Paragraph.
  - ii. Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and the procurement representative’s

approval before parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's Authorized Dealers. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request.

- iii. Seller must maintain an acceptable Counterfeit Electronic Part detection and avoidance system that complies with DFARS 252.246-7007 (Contractor Counterfeit Electronic Part Detection and Avoidance System) and SAE standard AS5553, *Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition*.
- iv. If it is determined that Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts were delivered to Buyer by Seller, the Suspect Counterfeit Electronic Parts will not be returned to Seller or the supplier. Buyer reserves the right to quarantine any and all Suspect Counterfeit Electronic Parts it receives and to notify the Government Industry Data Exchange Program ("GIDEP") and other relevant government agencies. Seller shall promptly reimburse Buyer for the full cost of the Suspect Counterfeit Electronic Parts and Seller assumes responsibility and liability for all costs associated with the delivery of Suspect Counterfeit Electronic Parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the Suspect Counterfeit Electronic Parts. The remedies in this Paragraph shall apply regardless of whether the Warranty Period has ended, and are in addition to any remedies available at law or in equity.
- v. If the procurement of materials under this Purchase Order is pursuant to, or in support of, a contract, subcontract, or task order for delivery of goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with this Purchase Order may be punishable, as a federal felony, by up to 5 years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.
- vi. Seller shall flow the requirements of this Paragraph ("Counterfeit Electronic Parts Prevention") to its Suppliers at any tier who render performance or supplies to be used in support of this Purchase Order, even if Seller itself or its Suppliers are (i) exempt from Cost Accounting Standards;





- (ii) are a small business; or (iii) offer commercial items for Electronic Parts or assemblies containing Electronic Parts.
- vii. Seller agrees to provide records, including traceability records, to Buyer to substantiate Seller's compliance upon Buyer's request. Seller agrees to cooperate in good faith in the event Buyer or Buyer's customers have a need to audit Seller's compliance.

Seller agrees to maintain all necessary records related to Seller's compliance with this Paragraph for a minimum of 10 years after the Goods have been delivered.

## **7. CONFLICT MINERALS DISCLOSURE**

- a. Pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations, Buyer is required to identify to its customer the presence and source of Conflict Minerals (gold, tantalum, tin or tungsten) contained in Buyer's manufactured Goods. Buyer's customer has implemented a comprehensive Conflict Minerals compliance program, which includes posting relevant information for suppliers at this website: <http://supplier.huntingtoningalls.com/sourcing/Conflict.minerals.html>. It is a requirement of this Purchase Order that Seller shall be familiar with this information and make all reasonable efforts to assist Buyer in identifying the presence and source of Conflict Minerals contained in the Goods sold by Seller to Buyer, as described further below.
- b. As of the time of award of this Purchase Order, Seller represents that:
  - i. The Good(s) Seller will be supplying under this Purchase Order do not contain (a) gold or (b) tantalum, tin, or tungsten (derivatives of columbite-tantalite (coltan), cassiterite, and wolframite); or
  - ii. Alternatively, if the Good(s) contain gold, tantalum, tin, or tungsten, Seller agrees to provide the Buyer one of the following completed forms prior to delivery of the Good(s):
    1. The Global E-Sustainability Initiative Conflict Minerals Reporting Template ("GeSI CMRT") available at <http://www.conflictreesourcing.org/conflict-minerals-reporting-template/>, with "Product" selected under the "Declaration Scope or Class" field;
    2. Written documentation about the source of Conflict Minerals in the Good(s) that provides substantively similar information to that requested by the GeSI CMRT.
- c. If the status of any Good(s) changes during performance of this Purchase Order so that the representation or information provided pursuant to paragraph (a) of this provision is no longer accurate, then Seller must within 30 days complete and submit updated, accurate and current information to Buyer.
- d. If Buyer determines that any representation made by Seller pursuant to this provision is inaccurate or incomplete in any respect, or Seller fails to timely submit the information required by this provision, then Buyer may, at its option, either withhold up to 10% of the Purchase Order price until such information is provided or terminate this Purchase Order pursuant to the provision of this Purchase Order titled "Termination for Default."

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- e. Seller agrees that it shall require its own subcontractors and sellers (at any tier in the supply chain for a product delivered to Buyer under the Purchase Order) to furnish information to Seller necessary to support Seller's obligations under this Paragraph.
8. **GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (GIDEP).** If this Purchase Order is over \$500,000, Seller shall participate in the appropriate interchange of the GIDEP in accordance with GIDEP PUBLICATION 1 dated April 2008. Data entered will be retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve Seller from complying with any other requirements of this Purchase Order. GIDEP materials, software and information are available without charge from the GIDEP Operations Center, P.O. Box 8000, Corona, California 92878. For further information, see this web site: <http://www.giddep.org>.
9. **DISPUTES.**
- a. If Buyer 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.
10. **WARRANTY**
- a. For purposes of this Purchase Order, the "Warranty Period" as used in Paragraph 14 of Buyer's Terms and Conditions of Purchase shall mean the period expiring on the earlier to occur of (i) expiration of twelve months after Delivery (of the Vessel), or (ii) expiration of thirty-six months after readiness for shipment of the Goods.
11. **NEW MATERIALS AND AUTHORIZED SOURCES**

- a. Seller represents and warrants to Buyer and its customer that the Goods are new (not used or reconditioned) and not of such an age or so deteriorated as to impair their usefulness or safety. If Seller intends to provide used or reconditioned Goods, Seller shall notify Buyer in writing and obtain advanced written authorization from Buyer to provide such used or reconditioned Goods.
- b. Seller shall only purchase Goods: (i) directly from the OCM or OEM; or (ii) from a distributor or other source that purchases directly from the OCM or OEM and is authorized, franchised or certified by the OCM or OEM. Seller shall notify Buyer in writing and obtain advanced written consent from Buyer to use such Goods if Seller plans to purchase from sources that are not authorized, franchised or certified sources.

## **12. QUALITY; PROBLEM IDENTIFICATION REPORTS**

- a. Seller shall provide and maintain a commercially reasonable quality control system (i.e., the current version of ISO 9001) that complies with the quality control requirements of the Purchase Order. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and Buyer's customer.
- b. Seller shall notify Buyer of any facts or occurrences that may increase the cost of, or time required for, performance of the Purchase Order or which may cause the Goods to fail to conform to the Purchase Order. Seller shall provide such notification within 2 days of the manifestation of such facts or occurrence.
- c. Buyer may at any time issue to Seller a corrective action request that identifies any actual or potential failure of Seller to perform its obligations under the Purchase Order and that requests information from Seller, including, but not limited to, a factual explanation of the cause of the failure, a discussion of correction of any defects, process changes that will be implemented to prevent recurrence, and a schedule of performance. Seller shall provide a responsive reply in writing to any corrective action request within 7 days of receipt.
- d. Problem Identification Reports ("PIR") shall be used by Seller to alert Buyer to actual or potential problems and to establish an early dialogue between Seller or Buyer with regard thereto. As used in this Paragraph, a problem is a fact or circumstance of which Seller is aware of that does, will or may (i) have an impact on the delivery schedule, completion or performance or cost (increase or decrease), or (ii) require a modification to the Purchase Order. Seller shall provide Buyer with a written report of each problem within 7 days after Seller identifies such problem. Each PIR shall be dated, reference the Purchase Order, and describe the nature of the problem, the date that the problem arose, and the anticipated effects of the problem including but not limited to, delivery, cost of performance, and Seller's recommended resolution of the problem. The parties expressly agree that the PIR shall not constitute a modification or amendment of the Purchase Order and do not modify price or schedule.

## **13. INSURANCE**

In addition to the insurance required by the Purchase Order, and without prejudice to Buyer's rights and Seller's indemnity obligations under Indemnity clause of the Purchase Order, Seller shall keep and maintain in effect, at its sole cost and expense, the following policies of insurance:

- a. Employer Liability insurance in the amount of \$1,000,000.
- b. When Seller, its employees, agents and subcontractors (including delivery persons) enter any facility owned, leased or operated by Buyer, then Seller shall maintain:
  - i. Commercial Automobile Liability insurance with coverage to include owned, hired and non-owned vehicles; with a minimum bodily injury and property damage combined single limit of \$2,000,000 per occurrence.
  - ii. Workers' Compensation and Longshore and Harbor Workers' Compensation Act insurance with minimum limits of liability conforming to the statutory requirements of the state where the work is to be performed and the United States of America, respectively.
  - iii. Employer's Liability insurance with minimum limits of \$1,000,000.
- c. If Seller's employees, subcontractors or suppliers are assigned aboard a Vessel for any reason, Seller shall maintain Maritime Employer's Liability (Jones Act) coverage with minimum limits of liability of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
- d. If Seller's employees, subcontractors or suppliers are required under the Purchase Order to perform any work related to any U.S. Government contract outside of the United States, Seller shall maintain Defense Base Act coverage with minimum limits conforming to the statutory requirements of the United States.
- e. Each such policy shall be underwritten by an insurance company with minimum A.M. Best ratings of "A-, VII" or equivalent and general liability insurance shall provide that it is primary insurance to and noncontributing with any other insurance carried by Buyer. The policies referred to above in paragraphs (a) and (b)(i) shall name Buyer as an "additional insured". The policies referred to above in paragraphs (b)(ii), (b)(iii), (c) and (d) shall contain a waiver of subrogation in favor of Buyer.
- f. Certificates evidencing Seller's compliance with these insurance requirements shall be delivered to Buyer upon issuance of the Purchase Order and renewals thereof sent to Buyer upon expiration of the respective policy terms. Seller, its insurance broker or insurer shall be obligated to immediately notify Buyer in writing of any cancellation of required coverage or any material change therein.
- g. The insurance coverage limits stated above are minimum insurance coverage requirements, not limits of Seller's liability. Notwithstanding the above-required insurance policies, Seller shall be obligated for the full and total amount of any damage, injury, expense or loss.

#### **14. CHANGES AND REQUESTS FOR EQUITABLE ADJUSTMENT SUBMISSIONS**

- a. This Paragraph covers all forms of changes to the Purchase Order, including without limitation, all agreed upon change orders as well as Requests for Equitable Adjustment (“REAs”). Nothing in this Paragraph shall excuse Seller from proceeding with diligent performance.
- b. Seller is advised that Buyer is under strict contractual terms with Buyer’s customer and Buyer is not allowed to make any change without first securing prior written approval from Buyer’s customer. Seller must notify Buyer of changes that Seller makes in its design, manufacturing process or commercial specifications that would change or modify the Purchase Order, even if such changes do not materially alter the form, fit or function of the Goods to be delivered under the Purchase Order. Seller shall inform Buyer of such changes not less than 20 days before the applicable delivery date specified in the Purchase Order.
- c. Seller shall submit a detailed written estimate of the impact of the change on the Purchase Order price, the performance or delivery schedule, and the performance capabilities of the Goods within 20 days after receiving a written request from Buyer’s authorized procurement representative. Seller’s failure to adhere to the time deadlines in asserting its equitable adjustment claim may cause Seller to waive its ability to make a claim if such delay is prejudicial to Buyer’s ability to include Seller’s claim in Buyer’s claim to Buyer’s customer. Buyer may, in its sole discretion, consider any claim regardless of when asserted.
- d. Buyer will issue a change order in the form of an additional or amended Purchase Order, adding or deleting elements of either the price or the time to complete the Purchase Order after the parties reach agreement on the change request. If the parties do not reach agreement or an accord and satisfaction, then Seller shall submit a written REA to Buyer fully stating, with all forms of back-up data, (e.g., specific and clear time records for laborers as to what they were doing, when, for what duration, and at what price, any underlying contracts for additional or different materials, delivery charges, etc.), as to why Seller is entitled to a price and/or time adjustment.
- e. SELLER’S REA SHALL EITHER BE RESOLVED BY THE PARTIES WITHIN 4 MONTHS FROM THE DATE OF ITS SUBMISSION TO BUYER OR IT SHALL BE THE SUBJECT OF THE DISPUTES CLAUSE. IF THE PARTIES HAVE NOT RESOLVED THE REA OR SUBMITTED THE MATTER FOR DISPUTE RESOLUTION PURSUANT TO THE DISPUTES SECTION WITHIN A REASONABLE PERIOD AFTER SUCH FOUR MONTH PERIOD, THE REA IS TIME BARRED, AND FOREVER RELEASED OR WAIVED. THIS IS A CONTRACTUAL STATUTE OF LIMITATIONS FOR THE PARTIES.
- f. SELLER AGREES IT SHALL NOT FILE AN REA AFTER EXPIRATION OF THE WARRANTY PERIOD.
- g. Seller shall certify any REA for a Purchase Order in support of a Government Prime Contract is made in accordance with the provisions of DFARS clause 252.243-7002, “Request for Equitable Adjustment.”

## 15. FURNISHED PROPERTY





- a. Buyer may provide Furnished Property to Seller for the Purchase Order. Title to Furnished Property remains with the original owner of the Furnished Property. THERE IS NO WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE FURNISHED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.
- b. Seller shall be strictly accountable for any Furnished Property that comes into the control of Seller, including, but not limited to, any material removed from any Vessel, oils or fuels. Unless already so marked by Buyer, Seller shall clearly mark all Furnished Property to identify the proper ownership and, upon request, shall furnish Buyer with a list of all Furnished Property in its possession. The Furnished Property shall be used only for the Purchase Order and held at Seller's sole risk and insured at Seller's sole risk and insured at Seller's sole expense in an amount equal to its replacement cost, with loss payable to Buyer. Buyer may inspect and/or remove any Furnished Property at any time at no charge to Buyer, and Buyer shall have reasonable access to Seller's premises for such purpose. Seller shall return such Furnished Property upon Buyer's demand, and return expenses paid as specified on the face of the Purchase Order.
- c. Seller shall protect, preserve and maintain records of all such property in conformance with the requirements of FAR clause 52.245-1, "Government Property" when the Purchase Order is in support of a Government Prime Contract.

## 16. CONFIDENTIALITY AND THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

Information furnished by Buyer and identified as “Fairbanks Morse Confidential/Proprietary Information,” “NASSCO Proprietary/Trade Secret Information,” or otherwise identified as proprietary or subject to restricted access or dissemination shall, as between Seller and Buyer, be and remain Buyer’s intellectual property or Buyer’s customer’s intellectual property, if identified with appropriate restrictive markings. The information shall not be duplicated, used or disclosed except for the purpose and to the extent necessary for Purchase Order performance. Upon Purchase Order completion, all such information relating to this Purchase Order shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Seller shall destroy all Buyer proprietary or confidential information within 1 year after termination or completion of the Purchase Order, and Seller shall provide a written acknowledgement confirming destruction of such information to the Buyer. Seller shall use its commercially reasonable efforts to maintain the confidentiality of this information. Seller may disclose such information only to those third parties who have a need to know such information for Purchase Order performance, provided that third parties are informed of the confidential nature of the same and have agreed in writing to protect such information consistent with Seller’s obligations hereunder. These obligations are not imposed upon Seller if: (i) such information is already known to Seller at the time provided, (ii) is lawfully obtained by Seller from another source, (iii) becomes a part of the public domain otherwise than as a result of breach of this Paragraph; or (iv) is independently developed by Seller without reference to the confidential information provided to Seller under this Purchase Order. Seller further represents that it has read and understood the specifications, and that based on its past experience and superior knowledge, Seller warrants to Buyer and its successors in interest that the manufacture, sale or use of the Goods, whether manufactured in accordance with the specification or otherwise, does not and will not infringe or interfere with any intellectual property rights(s) enforceable in the U.S. of any third party, including, without limitation, patent, trademark, copyright, trade secret, industrial design or other proprietary rights. Seller shall defend, indemnify and hold Buyer in respect of a breach hereof as set forth in Paragraph 22, Indemnity.

In addition:

- a. Seller acknowledges and agrees that the design of the Vessels represents the accumulated experience, knowledge and expertise of Buyer’s customer, NASSCO, and such design, including any subsequent changes thereto, as contained in the specifications, is claimed to be the proprietary intellectual property of NASSCO and that it has substantial commercial value. Therefore, NASSCO reserves all rights of ownership in the specifications for the Vessels (“Vessel Specifications”).

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- b. For performance of the Purchase Order, Seller shall use only those portions of the Vessel Specifications as are required to perform hereunder. Seller shall not disclose the Vessel Specifications, in whole or in part, except as expressly allowed in writing by Buyer and only for performing under the Purchase Order. The Vessel Specifications shall be disclosed to Seller only as reasonably required for such purposes as are necessary in order to carry out the terms of the Purchase Order that Buyer has agreed to perform for Buyer's customer. Seller shall not disclose any portions of the Vessel Specifications in such a complete form as would enable third parties to construct, or have constructed, a vessel of the same design as the Vessels without: (i) expressly prohibiting the further disclosure thereof; and (ii) expressly prohibiting the use thereof for the purpose of designing, constructing, repairing or having designed, constructed, or repaired, another vessel of the same design as the Vessels. For purposes of this Paragraph, "third parties" shall not include the American Bureau of Shipping ("ABS"), U.S. Coast Guard, or any other U.S. Regulatory Body or agency. At Buyer's sole discretion, it may require Seller to execute a Non-Disclosure Agreement with additional requirements consistent with the foregoing terms.
- c. Any design or engineering data, in whatever form, to the extent relating exclusively to the Vessels (as distinguished from the equipment itself and its ancillary components) that is produced by Seller under this Purchase Order ("Vessel IP") shall be considered a "work made for hire." In this regard, Seller agrees to assign, and does hereby assign, all rights, title and interest in and to all such Vessel IP produced under this Purchase Order, including without limitation all intellectual property rights in such design or engineering data. Notwithstanding anything else herein to the contrary, Buyer acknowledges and agrees that Seller may own certain know-how, trade secrets, plans, design and construction information, processes, manufacturing techniques, discoveries, inventions and ideas, product specifications, machinery, drawings, photographs, computer source codes, equipment, devices, tools and other engineering or technical information that is in existence prior to the date of the Purchase Order between the parties, whether or not protected by law, subject to pending applications or otherwise ("Pre-Existing Intellectual Property"). The Pre-Existing Intellectual Property shall remain the property of Seller. If the Pre-Existing Intellectual Property is incorporated into the Goods, Seller grants to Buyer a royalty-free, non-exclusive, irrevocable, world-wide license to use such Pre-Existing Intellectual Property as may be necessary for Buyer to use the Goods for the purposes for which such Goods were designed and intended, including Buyer's right to provide such Pre-Existing Intellectual Property as embedded in the final deliverables provided by Buyer to Buyer's customer. Seller grants to Buyer and Buyer's customer a limited use license to the standard package of schematics and drawings provided by Seller pursuant hereto but only for any purpose related to the operation, maintenance, conversion, modification and repair of Vessels. Seller hereby grants to any subsequent purchasers of any of the Vessels the same rights as are granted to Buyer and Buyer's customer under this Purchase Order.

- d. For Goods provided in support of a Government Prime Contract, Seller grants the Government and Buyer the rights delineated in DFARS 252.227-7013 (Rights in Technical Data – Noncommercial Items), DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation) and DFARS 252.227-7015 (Technical Data – Commercial Items ). Applicable Government procurement regulations incorporated herein shall take precedence over any conflicting terms of this Paragraph (Confidentiality and Third Party Intellectual Property Rights) to the extent that such regulations so require. Buyer’s review of any designs submitted by Seller shall not relieve or in any way diminish Seller’s obligations and responsibilities under this Purchase Order. If Buyer identifies any non-conformance with Purchase Order requirements in any of Seller’s designs, Seller, to the extent Seller agrees with such non-conformance, shall take the required corrective action and resubmit the affected design to Buyer. If the parties are unable to agree as to whether a design conforms to the Purchase Order requirements, either party may treat the matter as a dispute to be resolved as provided in Paragraph 9, Disputes.
- e. Seller shall comply with the requirements as administered by the Regulatory Bodies and ABS as set forth in the specifications or Purchase Order. If the specifications specifically require work in less than or even in excess of that required by a Regulatory Body, such specifically required work shall be performed by Seller, at its expense, as work required by this Purchase Order.
- f. Notwithstanding any obligations of confidentiality set forth in the Purchase Order, including this Paragraph, Seller understands and agrees that the ABS and any other Regulatory Body are authorized to discuss and disclose to Buyer all submitted drawings, specifications, correspondence, and information of Seller. Upon discovery by Seller of any inadvertent or accidental disclosure of Buyer’s or NASSCO’s Proprietary Information, Seller shall notify Buyer promptly and take all commercially reasonable steps to retrieve such disclosed Proprietary Information and to cease and prevent any further disclosure of the Proprietary Information.

#### **17. ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE.**

- a. Performance under this Purchase Order may require that Seller have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, Seller shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this contract, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or software. A copy of the executed agreement shall be provided to Buyer so that Buyer can provide a copy to its Customer and the Government’s Contracting Officer. Upon modification of the Prime Contract by the Government, Buyer may correspondingly unilaterally modify this Purchase Order to list those third parties with which Seller has agreement(s).

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- b. Seller agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Seller personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venture, affiliate, successor, or assign of Seller; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.
  - c. The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which Seller has access in the performance of this Purchase Order that contains proprietary or other restrictive markings.
  - d. Seller agrees that it will promptly notify Buyer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this Purchase Order to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.
  - e. Seller shall include this requirement in subcontracts of any tier which involve access to information covered by subparagraph (a), substituting “subcontractor” for “Seller” where appropriate.
  - f. Compliance with this requirement is a material requirement of this Purchase Order.
- 18. APPROVAL BY BUYER OR THE GOVERNMENT.** Approval by Buyer or the Government as required under this Purchase Order and applicable specifications shall not relieve Seller of its obligation to comply with the specifications and with all other requirements of the Purchase Order, nor shall it impose upon Buyer or the Government any liability it would not have had in the absence of such approval.
- 19. COMPUTER SOFTWARE AND/OR COMPUTER DATABASE(S) DELIVERED TO AND/OR RECEIVED FROM THE GOVERNMENT.**
- a. Seller agrees to test for viruses all computer software and/or computer databases, as defined in the clause entitled “RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION” (DFARS 252.227-7014), before delivery of that computer software or computer database in whatever media and on whatever system the software is delivered. Seller warrants that any such computer software and/or computer database will be free of viruses when delivered.
  - b. Seller agrees to test any computer software and/or computer database(s) received from the Government, Buyer’s Customer or Buyer prior to use under this Purchase Order.

- c. Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this Purchase Order must be paid-up and perpetual, or so nearly perpetual as to allow the use of the computer software or computer data base with the equipment for which it is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise, the computer software or computer database does not meet the minimum functional requirements of this Purchase Order. In the event that there is any routine to disable the computer software or computer database after the software is developed for or delivered to Buyer, Buyer's customer, or the Government, that routine shall not disable the computer software or computer database until at least 25 calendar years after the delivery date of the affected computer software or computer database to Buyer, Buyer's customer, or the Government.
  - d. No copy protection devices or systems shall be used in any computer software or computer database delivered under this Purchase Order to restrict or limit the Buyer, Buyer's customer, or the Government from making copies. This does not prohibit license agreements from specifying the maximum amount of copies that can be made.
  - e. Delivery by Seller to Buyer whose customer will ultimately deliver to the Government the technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery may cause confusion between data rights and computer software rights. It is agreed that, to the extent that any such data is computer software by virtue of its delivery in digital data form, the Government only will be licensed to use that digital-form with exactly the same rights and limitations as if the data had been delivered as hard copy.
  - f. Any limited rights legends or other allowed legends placed by Seller on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human readable form on a visible surface of the media carrying the digital-form data as delivered, to the extent possible.
20. **INDEMNITY.** Seller shall defend, indemnify, save and hold Buyer, its parent company, affiliated companies, directors, officers, agents and employees, free and harmless from and against all third-party claims, demands, and causes of action, for (i) death or injury to any person or persons (including, but not limited to, agents and employees of Seller and its Suppliers and their damages characterized as special, direct, consequential, loss of consortium, or future earnings) arising directly or indirectly out or in connection with Seller's performance of this Purchase Order; (ii) damage or loss of any property (including, but not limited to, loss of use, lost profits, or diminution in value) arising directly or indirectly out of or in connection with Seller's performance of this Purchase Order; and (iii) infringement by Seller of any third party intellectual property rights, in all including, without limitation, claims, demands, actions, damages and liabilities based in whole or in part on the negligence or other theory of liability of Seller or Seller's subcontractors or Suppliers, and excluding only claims and liabilities based on Buyer's sole negligence or willful misconduct. This provision survives termination of the Purchase Order, and is not subject to the limitation of liability clause. Buyer may assign its right to be indemnified hereunder.



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21. **FORCE MAJEURE.** Neither party shall be liable to the other for delays resulting from causes beyond its control and without its fault or negligence, including but not restricted to acts of God or of the public enemy, war, acts of terrorism, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Seller shall not be liable for delays of subcontractors or suppliers of Seller only when arising from causes beyond the control and without the fault or negligence of both Seller and such subcontractors or suppliers and only when Seller could not have obtained the supplies or services from other sources in sufficient time to permit Seller to meet the required delivery schedule. Upon the happening of any circumstances or causes aforesaid, the affected party shall notify the other party as soon as possible in writing, but no later than 10 days after the affected party has a reasonable reason to know of the existence of the force majeure event and include any estimated impact on performance or delivery schedule. The party claiming a force majeure event shall provide updates every 2 days to report the status when such event continues for a period that exceeds 2 days from the start of the impact. Any relief shall be limited to an extension of delivery dates or times of performance to the extent caused thereby.
22. **NO ADVERTISING OR USE OF BUYER'S TRADEMARKS.** Seller and its suppliers are prohibited from advertising or publishing any information about the Purchase Order or their work in support of the Purchase Order, and are prohibited from using Buyer's or Buyer's Customer's trademarks or trade names without Buyer's prior written consent. Seller shall include this Paragraph in all lower-tier subcontracts or orders placed in support of the Purchase Order.
23. **ORGANIZATIONAL CONFLICT OF INTEREST.** Seller represents that its Purchase Order execution and performance does not and will not conflict with or breach any contractual, fiduciary or other duty or obligation to which Seller is bound. Seller further represents that it will not accept work which would create for Buyer or Seller an actual or apparent Organizational Conflict of Interest ("OCI") as such term is defined in FAR Subpart 9.5, unless the OCI can be mitigated to the satisfaction of Buyer's customer, when Seller is providing Goods in support of a Government Prime Contract. Seller shall immediately provide notice to Buyer in the event that it discovers any actual or potential OCI concerns related to or arising out of the Purchase Order.
24. **DEPARTMENT OF LABOR SAFETY AND HEALTH STANDARDS FOR SHIPBUILDING.** Attention of Seller is directed to Public Law 91 596, approved December 29, 1970 (84 Stat. 1590, 29 USC 655) known as the "OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970" and to the "OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT" promulgated thereunder by the Secretary of Labor (29 CFR 1910 and 1915). These regulations apply to all shipbuilding and related work, as defined in the regulations. Nothing contained in this Purchase Order shall be construed as relieving Seller from any obligations that it may have for compliance with the aforesaid regulations.
25. **EXCLUSION OF MERCURY.** Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with the Goods furnished under this Purchase Order.
26. **INFORMATION AND DATA FURNISHED BY THE GOVERNMENT (FIXED-PRICE):**

- a. Specifications. Buyer will furnish the Buyer-generated purchase specifications applicable to the work required under the Purchase Order; however, Seller is responsible for obtaining MILSPEC documents as described in paragraph (e) below.
- b. Drawings and Data. Buyer will furnish drawings, design agent drawings, ship construction drawings, and/or other design or alteration data cited in the specification as mandatory for use or for performance.
- c. Government Furnished Information ("GFI"). GFI is defined as that information essential for the installation, test, operation, and interface support of all Government Furnished Material enumerated on NAVSEA Form 4205/19. The Government shall furnish only the GFI identified on the NAVSEA Form 4340/2. The GFI furnished to Buyer, who in turn may furnish the GFI to Seller, need not be in any particular format. Further, the Government reserves the right to revise the listing of GFI on the NAVSEA Form 4340/2, as follows: (1) The Government Contracting Officer may at any time by written order: (i) delete, supersede, or revise, in whole or in part, data listed or specifically referenced in NAVSEA Form 4340/2; or (ii) add items of data or information to NAVSEA Form 4340/2; or (iii) establish or revise due dates for items of data or information in NAVSEA Form 4340/2. (2) If any action taken by the Government's Contracting Officer pursuant to subparagraph (1) immediately above causes an increase or decrease in the costs of, or the time required for, performance of any part of the work under this Purchase Order, Seller may be entitled to an equitable adjustment in the Purchase Order price and delivery schedule in accordance with the procedures provided for in the clause of this Purchase Order entitled "CHANGES--FIXED-PRICE" (FAR 52.243-1).
- d. Except for the Government information and data specified by paragraphs (a), (b), and (c) above, the Government will not be obligated to furnish Buyer or Seller with any specification, standard, drawing, technical documentation, or other publication, notwithstanding anything to the contrary in the specifications, the GFI listed on the NAVSEA Form 4340/2, the clause of this Purchase Order entitled "GOVERNMENT PROPERTY" (FAR 52.245-1) or "GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES" (FAR 52.245-2), as applicable, or any other term or condition of this Purchase Order.
- e. Referenced Documentation. Buyer, Buyer's customer, and the Government will not be obligated to furnish Government specifications and standards, including Navy standard and type drawings and other technical documentation, which are referenced directly or indirectly in the specifications. Such referenced documentation may be obtained as described below. (1) From the ASSIST database via the internet at <https://assist.dla.mil/>; or (2) By submitting a request to the Department of Defense Single Stock Point ("DoDSSP") Building 4, Section D, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111-5094, Telephone (215) 697-6396, Facsimile (215) 697-9398. However, commercial specifications and standards, which may be referenced in the specification or any sub-tier specification or standard, are not available from Government sources and should be obtained from the publishers.

## 27. SPECIFICATIONS AND STANDARDS

- a. **Definitions.** (i) A “zero-tier reference” is a specification, standard, or drawing that is cited in the Purchase Order (including its attachments). (ii) A “first-tier reference” is either: (1) a specification, standard, or drawing cited in a zero-tier reference, or (2) a specification cited in a first-tier drawing.
- b. **Requirements.** All zero-tier and first-tier references, as defined above, are mandatory for use. All lower tier references shall be used for guidance only.

**28. UPDATING SPECIFICATIONS AND STANDARDS.** If, during the performance of this Purchase Order, Seller believes that any Purchase Order contains outdated or different versions of any specifications or standards, Seller may request that all of its purchase orders be updated to include the current version of the applicable specification or standard. Updating shall not affect the form, fit or function of any deliverable item or increase the cost/price of the item to the Government. Seller should submit update requests to Buyer for approval. Seller shall perform the Purchase Order in accordance with the existing specifications and standards until notified of approval/disapproval by Buyer. Any approved alternate specifications or standards will be incorporated into the Purchase Order.

**29. IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE**

- a. **Definitions.** The terms used in this requirement and associated CLINS are defined in the following clauses or sources:
  - i. DFARS 252.227-7013;
  - ii. DFARS 252.227-7014;
  - iii. DFARS 252.227-7015;
  - iv. DFARS 252.227-7017; and
  - v. DFARS 252.227-7018.
- b. **Identification and Assertion of Restrictions.** Seller shall not deliver or otherwise provide to Buyer, Buyer’s Customer, or the Government any technical data or computer software with restrictive markings (or otherwise subject to restrictions on access, use, modification, reproduction, release, performance, display, or disclosure) unless the technical data or computer software are identified in accordance with the following requirements:
  - i. As part of its proposal, Seller (including its subcontractors or suppliers, or potential subcontractors or suppliers, at any tier) shall identify all technical data and computer software that it proposes to be delivered or otherwise provided (including all Option CLINS as if the Option was exercised) with less than Unlimited Rights for the performance period as follows.
    - 1. **Noncommercial Technologies.** Noncommercial technical data and noncommercial computer software shall be identified in accordance with DFARS 252.227-7017 and DFARS 252.227-7028.

2. Commercial Technologies. Seller shall also identify and assert any restrictions for all commercial technical data (i.e., technical data pertaining to a commercial item) by providing the same types of information, using a similar format, and following the same procedures and requirements as specified at DFARS 252.227-7017 (Commercial '7017 Technical Data List). Seller shall also identify and assert any restrictions for all commercial computer software in accordance with the Table at paragraph (e) below.
  3. Seller's failure to submit, complete, or sign the identification and assertions required by paragraphs b.i.1 or b.i.2 of this Paragraph with its offer may render the offer ineligible for award.
  4. If Seller is awarded a purchase order, the assertions identified in paragraphs b.i.1 and b.i.2 shall be listed in an Attachment to that purchase order. Upon request by Buyer, Seller shall provide sufficient information to Buyer to enable Buyer to provide information to the Buyer's customer so that Buyer's customer can evaluate any listed assertion.
- ii. Post-Award Updates to the Pre-Award Identification and Assertions. Except as provided in this paragraph, Seller (including its subcontractors or suppliers at any tier) shall not supplement or revise the pre-award listings or notices required by paragraph b.1 of this Paragraph after purchase order award.
1. Noncommercial Technologies. Post-award identification and assertion of restrictions on noncommercial technical data and noncommercial computer software are governed by paragraph (e) of DFARS 252.227-7013, DFARS 252.227-7014, and DFARS 252.227-7018, respectively.
  2. Commercial Technologies. Seller may supplement or revise its pre-award identification and assertion of restrictions on commercial computer software and commercial technical data only if such an expansion or revision would be permitted for noncommercial computer software or noncommercial technical data pursuant to paragraph b.ii.1 of this Paragraph (i.e., based on new information, or inadvertent omissions that would not have materially affected source selection).
- c. Specific Identification of Technical Data and Computer Software. When identifying and asserting restrictions on technical data and computer software pursuant to paragraph (b) of this Paragraph, Seller shall:
- i. Ensure that the technical data and computer software are identified by specific reference to the requirement to deliver to provide that technical data or computer software in the purchase order. For example, by referencing the associated CLINS, DRL, or paragraphs in the statement of work.

- ii. Include the relevant information for all technical data and computer software that are or may be required to be delivered or otherwise provided under the purchase order—including all Option CLINS or other optional or contingent delivery requirements, online or remote access to information and firmware or other computer software to be embedded in hardware deliverables.
- d. Copies of Negotiated, Commercial, and Other Non-Standard Licenses. Seller shall provide copies of all proposed specially negotiated license(s), commercial license(s), and any other asserted restrictions other than Government purpose rights, limited rights; restricted rights; SBIR data rights for which the protection period has not expired; or Government’s minimum rights as specified in the clause at 252.227-7015.
- e. Commercial Computer Software (Including Open Source Software) assertions shall be identified by completing the following table.

Identification of Commercial Software (including Open Source Software) Use and Modifications				
Computer Software Title and Version # *	Computer Software License Name and Version # **	Name of Seller Delivering Open Source Software ***	If Open Source Software (OSS), was OSS modified by Seller? ****	If Modified, was Open Source Software modified by incorporation into a third party’s software? *****

\*The complete title and version number of the Open Source Software should be listed. If downloaded from a website, the website address should also be provided.

\*\*The Software license and version number should be listed. If a version number is not available, Seller should state no version number.

\*\*\*Corporation, individual, or other person as appropriate.

\*\*\*\*Seller should state whether it has modified the Open Source Software.

\*\*\*\*\*If Seller has modified the Software, Seller should state whether the Open Source Software was modified by combining with another party's non-open source software. The other party's non-open source may be licensed with distribution restrictions which would not allow the Government to accept delivery of the software combination.

- f. Contractor Use, But Not Delivery, of, Open Source Software (OSS). OSS-computer software for which the source code is available without charge for use, modification and distribution—is often licensed under terms that require the user to make the user's modifications to the open source software or any software that the user 'combines' with the open source software freely available in source code form. In cases where Seller proposes to use open source software while performing under a purchase order, but not to deliver OSS, Seller shall not: (i) create, or purport to create, any Government distribution obligations with respect to the computer software deliverables; or (ii) grant, or purport to grant, to any third party any rights to or immunities under Government intellectual property or Government data rights to the Government computer software deliverables. For example, Seller may not develop a computer software deliverable using an open source program (including without limitation libraries) and non-commercial computer software program where such use results in a program file(s) that contains code from both the non-commercial computer software and open source software if the open source software is licensed under a license that requires any "modifications" be made freely available. Seller also may not combine the non-commercial computer software deliverables with open source software licensed under the GNU General Public License (GPL) or the Lesser General Public License (LGPL) in any manner where such use would cause, or could be interpreted or asserted to cause, the non-commercial computer software deliverable or any modifications thereto to become subject to the terms of the GPL or LGPL.
30. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable Federal, State, and local laws, Government Orders and Regulations in performing this Purchase Order. Seller covenants to save and hold Buyer harmless of and from - and to reimburse Buyer for - any and all costs, damages and expenses (including attorneys' fees) incurred by Buyer as a result of any failure of Seller to comply with any such law, regulation or order.
31. **GRATUITIES AND KICKBACKS.** Seller is prohibited from offering any gratuities (in the form of entertainment, gifts or otherwise) or kickbacks to Buyer or its employees or agents with a view toward securing favorable treatment under the Purchase Order or for future business opportunities other than routine business courtesies. Seller shall ensure that the substance of this Paragraph is flowed down to its own contractors and vendors. Seller also agrees that it shall promptly report to Buyer any solicitation request for a kickback. Seller's breach of this Paragraph shall be considered a material breach of the Purchase Order and of all other contracts between the parties.
32. **CALIBRATION SYSTEM REQUIREMENTS.** The calibration of measuring and testing equipment shall, as a minimum, adhere to the requirements of ANSI/NCSL Z540.3-2006 or later.



**33. 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 Paragraph 9, Disputes 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
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	MAY 2014
52.203-6	Restrictions on Subcontractor Sales to the Government, (applies to Purchase Orders with a value over \$150,000)	SEP 2006
52.203-7	Anti-Kickback Procedures (except paragraph (c)(1), applies to Purchase Orders with a value over \$150,000)	MAY 2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	MAY 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	MAY 2014
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
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (applies to Purchase Orders funded in whole or in part with Recovery Act funds)	APR 2014
52.204-2	Security Requirements (applies to Purchase Orders that involve access to classified information)	AUG 1996
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	MAY 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 \$30,000)	OCT 2015
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations	NOV 2015
52.211-5	Material Requirements	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 (including Alt II)	OCT 2010



52.219-8	Utilization of Small Business Concerns	OCT 2014
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-2	Payment for Overtime Premiums (Applies to cost reimbursement Purchase Orders with a value exceeding \$150,000)	JUL 1990
52.222-3	Convict Labor	JUN 2003
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	MAY 2014
52.222-19	Child Labor – Cooperation with Authorities and Remedies	FEB 2016
52.222-20	Contracts for Materials, Articles, and Equipment Exceeding \$15,000	MAY 2014
52.222-21	Prohibition of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	APR 2015
52.222-35	Equal Opportunity for Veterans (applies to Purchase Orders with a value equal to or exceeding \$100,000)	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 \$100,000)	FEB 2016
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
52.222-50	Combating Trafficking in Persons	MAR 2015
52.223-3	Hazardous Material Identification and Material Safety Data	JAN 1997
52.223-6	Drug-Free Workplace	MAY 2001
52.223-11	Ozone Depleting Substances	JUN 2016
52.223-12	Refrigeration Equipment and Air Conditioners	JUN 2016
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	AUG 2011
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.227-1*	Authorization and Consent	DEC 2007
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (applies to Purchase Orders with a value over \$150,000)	DEC 2007
52.227-9	Refund of Royalties (applies if the amount of royalties reported during the negotiation of the Purchase Order exceeds \$250)	APR 1984
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
52.233-3	Protest After Award (In paragraph (b)(2), the term “30 days” is changed to “15 days”)	AUG 1996
52.234-1	Industrial Resources Developed Under Defense Production Act Title III	DEC 1994
52.242-13	Bankruptcy	JUL 1995
52.242-15	Stop-Work Order (In paragraph (b)(2), the term “30 days” is changed to “15 days”)	AUG 1989
52.243-1	Changes—Fixed Price (In paragraph (c), the term “30 days”	AUG 1987



	is changed to "15 days")	
52.243-6	Change Order Accounting	APR 1984
52.243-7	Notification of Changes (applies to Purchase Orders with a value exceeding \$1,000,000)	APR 1984
52.244-6	Subcontracts for Commercial Items	JUN 2016
52.245-1	Government Property	APR 2012
52.245-9	Use and Charges	APR 2012
52.247-63	Preference for U.S.-Flag Carriers (applies to Purchase Orders that may involve international air transportation)	JUN 2003
52.247-68	Report of Shipment (REPSHIP) (Applies if drop shipments by FM Suppliers)	FEB 2006
52.248-1	Value Engineering (applies to Purchase Orders with a value equal to or exceeding \$150,000)	OCT 2010
52.249-2	Termination for Convenience of the Government (Fixed-Price) (In paragraph (c), the term "120 days" is changed to "60 days", in paragraph (d) the term "15 days" is changed to "30 days" and the term "45 days" is changed to "60 days", in paragraph (e), the term "1 year" is changed to "90 days", and in paragraph (l), the term "90 days" is changed to "60 days")	APR 2012
52.249-8	Default (Fixed-Price Supply and Service) (In paragraph (a)(2), the term "10 days" is changed to "7 days")	APR 1984
52.252-6	Authorized Deviations in Clauses	APR 1984
DFARS	Clauses	Date
252.203-7000	Requirements Relating to Compensation of Former DoD Officials	SEP 2011
252.203-7002	Requirements to Inform Employees of Whistleblower Rights	SEP 2013
252.203-7003	Agency Office of the Inspector General	DEC 2012
252.203-7004	Display of Fraud Hotline Poster(s) (applies to Purchase Orders over \$5,500,000)	OCT 2015
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
252.204-7003	Control of Government Personnel Work Product	APR 1992
252.204-7005	Oral Attestation of Security Responsibilities (applies to Purchase Orders to which FAR 52.204-2 applies)	NOV 2001
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2015
252.209-7004	Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country	OCT 2015
252.211-7000	Acquisition Streamlining (applies to Purchase Orders over \$1,500,000)	OCT 2010
252.211-7003	Item Unique Identification and Valuation	MAR 2016
252.223-7001	Hazard Warning Labels (applies to Purchase Orders that involve the delivery of hazardous materials)	DEC 1991
252.223-7004	Drug Free Work Force	SEP 1988
252.223-7008	Prohibition of Hexavalent Chromium	JUN 2013



252.225-7001	Buy American and Balance of Payments Program – Basic (applies to Purchase Orders if Seller provides end products that will be delivered to the U.S. Government as-is (e.g., spare parts))	NOV 2014
252.225-7002	Qualifying Country Sources as Subcontractors	DEC 2012
252.225-7004	Report of Intended Performance Outside the United States and Canada—Submission After Award (Seller is only required to provide the information that Buyer needs to comply with this clause)	OCT 2010
252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies	SEP 2006
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	OCT 2014
252.225-7012	Preference for Certain Domestic Commodities	FEB 2013
252.225-7013	Duty-Free Entry	MAY 2016
252.225-7021	Trade Agreements – Basic (applies to Purchase Orders if Seller provides end products that will be delivered to the U.S. Government as-is (e.g., spare parts))	OCT 2015
252.225-7025	Restriction on Acquisition of Forgings	DEC 2009
252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (applies to Purchase Orders that involve delivery to the Government of carbon, alloy, or armor steel plate described in paragraph (b) of the clause)	DEC 2006
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 and Alt II (FEB 2014)	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
252.227-7016*	Rights in Bid or Proposal Information	JAN 2011
252.227-7017*	Identification and Assertion of Use, Release, or Disclosure Restrictions	JAN 2011
252.227-7019*	Validation of Asserted Restrictions – Computer Software	SEP 2011
252.227-7025*	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	MAY 2013
252.227-7037*	Validation of Restrictive Markings on Technical Data	JUN 2013
252.234-7002	Earned Value Management System (Deviation 2015-O0017) (applies to Purchase Orders that have a value exceeding \$100 million and that are with Sellers identified at paragraph (k) of the clause)	SEP 2015
252.234-7004	Cost and Software Data Reporting System—Basic (applies to Purchase Orders over \$50 million)	NOV 2014
252.235-7003	Frequency Authorization (applies to Purchase Orders	MAR 2014



	requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required)	
252.239-7000	Protection Against Compromising Emanations (applies to Purchase Orders involving information technology that requires protection against compromising emanations)	JUN 2004
252.239-7001	Information Assurance Contractor Training and Certification (applies to Purchase Orders involving the performance of information assurance functions)	JAN 2008
252.242-7005	Contractor Business Systems	FEB 2012
252.243-7002	Requests for Equitable Adjustment	DEC 2012
252.244-7000	Subcontracts for Commercial Items	JUN 2013
252.245-7001	Tagging, Labeling, and Marking of Government-Furnished Property	APR 2012
252.245-7002	Reporting Loss of Government Property	APR 2012
252.245-7004	Reporting, Reutilization, and Disposal	MAR 2015
252.246-7001	Warranty of Data – Basic	MAR 2014
252.246-7003	Notification of Potential Safety Issues	JUN 2013
252.246-7004	Safety of Facilities, Infrastructure, and Equipment for Military Operations (applies to Purchase Orders for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations)	OCT 2010
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System (applies to Purchase Orders for electronic parts or subassemblies 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
252.251-7000	Ordering From Government Supply Sources	AUG 2012

\*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.