



an EnPro Industries company

**SUPPLEMENTAL PURCHASING TERMS AND
CONDITIONS FLOWDOWN CLAUSES FOR
COMMERCIAL ITEMS PURCHASED IN SUPPORT
OF THE LPD 29 PROGRAM**

BF5864

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. MARKING REQUIREMENTS. Seller shall place the following statement on documents containing technical data controlled by either the Arms Export Control Act or the Export Administration Act: "WARNING – This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. Sec. 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App 2401, et seq. Violations of these export laws can result in severe criminal penalties. Disseminate in accordance with terms of OPNAVINST 5510.161." Additional marking requirements may be included elsewhere in this Purchase Order.

7. EUROPEAN UNION (EU) SAFE HARBOR. With respect to personal information about Seller's employees located in European Union (EU) countries, Buyer's customer adheres to a self-regulatory program that complies with the safe harbor privacy principles set forth in the July 2000 agreement between the EU and the United States Department of Commerce. For details about Buyer's customer's privacy policy with respect to individuals located in EU countries, please refer to the Huntington Ingalls Incorporated privacy policy information at: <http://www.huntingtoningalls.com/about/docs/euprivacypolicy.pdf>. Seller shall provide this notice to each of its EU employees who provide personal information to Buyer.

8. SUSPECT/COUNTERFEIT PARTS

a. "Suspect/counterfeit parts" are electronic parts that may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. The term "suspect/counterfeit parts" also includes refurbished electronic parts, with or without false labeling, that are represented as new parts or any parts that are designated as suspect by the U.S. Government, including but not limited to parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP).

b. Seller will ensure that suspect/counterfeit parts are not incorporated into any Goods. The intentional or unintentional use, incorporation, or delivery of suspect/counterfeit parts is strictly prohibited. This includes a suspect/counterfeit part's being provided either as an end item deliverable or as a component or subcomponent of an end item deliverable under this Purchase Order.

c. Seller represents and warrants that it has policies and procedures in place to ensure that none of the Goods furnished to Buyer under this Purchase Order are or contain "suspect/counterfeit parts." Seller further certifies, to the best of its knowledge and belief, that no "suspect/counterfeit parts" have been or will be furnished to Buyer by Seller under this Purchase Order.

d. If Seller becomes aware or suspects that it has furnished suspect/counterfeit parts or if Buyer determines, including as a result of alerts from the U.S. Government or Buyer's customer, that Seller has supplied suspect/counterfeit parts to Buyer and so notifies Seller, Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer and conforming to the requirements of this Purchase Order. Notwithstanding any other provision of this Purchase Order, Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation all costs incurred by Buyer relating to the removal of such suspect/counterfeit parts, the reinsertion of replacement parts and any testing necessitated by the reinstallation of Seller's Goods after suspect/counterfeit parts have been exchanged. The parties agree that Seller will pay Buyer's actual costs

and Buyer's labor at Buyer's fully-burdened hourly rates (as appropriate) utilizing the then-current Government-approved rate authorized for change-order activity. All such costs shall be deemed direct damages.

e. Buyer may, at its discretion:

i. Remove and/or retain all Goods supplied by Seller that are suspected of being or containing suspect/counterfeit parts pending reporting to the appropriate law enforcement authorities and final disposition of the Goods by them. Seller shall be liable for all costs relating to Buyer's removal and retention of the suspect/counterfeit parts.

ii. Turn over to the appropriate authorities (e.g., without limitation, the Defense Criminal Investigative Service, Naval Criminal Investigative Service, Federal Bureau of Investigation, Offices of the Inspector General, etc.) any Goods suspected of being or containing suspect/counterfeit parts and reserves the right to withhold payment for the Goods pending the results of any investigation or proceedings related to the matter.

f. Seller's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Purchase Order.

g. Seller shall insert a clause containing substantially similar terms of this provision in all subcontracts under this Purchase Order.

9. 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 products. 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 Product(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 Product(s) contain gold, tantalum, tin, or tungsten, Seller agrees to provide the Buyer one of the following completed forms prior to delivery of the Product(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 Product(s) that provides substantively similar information to that requested by the GeSI CMRT.

c. If the status of any Product(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."

10. REFUNDS (SPARES AND SUPPORT EQUIPMENT)

a. In the event that the price of a spare part or item of support equipment delivered under this Purchase Order significantly exceeds its intrinsic value, Seller agrees to refund the difference. Refunds will only be made for the difference between the intrinsic value of the item at the time an agreement on price was reached and the Purchase Order price. Refunds will not be made to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic purchase quantity considerations) or changes in market conditions.

b. For purpose of this clause, the intrinsic value of an item is defined as follows:

i. If the item is one that is sold or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

ii. If there is no comparable item sold in substantial quantities to the general public, intrinsic value is defined as the price an individual would expect to pay for the item based upon an economic purchase quantity as defined in FAR 52.207-4, plus the value of any unique requirements, including delivery terms, inspection, packaging or labeling.

c. At any time up to two years after delivery of a spare part or item of support equipment, Buyer may notify Seller that based on all information available at the time of the notice, the price of the part or item apparently exceeds its intrinsic value.

d. If notified in accordance with subparagraph c above, Seller agrees to enter into good faith negotiations with Buyer to determine if, and in what amount, Buyer is entitled to a refund.

e. If agreement pursuant to subparagraph d above cannot be reached, and Buyer's return of the new or unused item to the Seller is practical, Buyer, subject to Seller's agreement, may elect to return the item to the Seller. Upon return of the item to its original point of Buyer acceptance, Seller shall refund in full the price paid. If no agreement pursuant to subparagraph d above is reached, and return of the item by Buyer is impractical, Buyer may, issue a final decision on the matter, subject to the Disputes Clause.

f. Seller will make refunds, as required under this clause, in accordance with instructions from Buyer.

g. Seller shall not be liable for a refund if Seller advised Buyer in a timely manner that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value and known alternative sources or items, if any, that can meet the requirements.

h. This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition. This clause also does not apply to any spare part or item

of support equipment with a unit price in excess of \$100,000; or in excess of \$25,000 if Seller submitted, and certified the currency, accuracy and completeness of, cost or pricing data applicable to the item.

11. 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 S0300-BU-GYD-010 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.gidep.org.8>.

12. 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.

13. INSPECTION

a. Except as otherwise provided in this Purchase Order, Seller shall maintain an inspection and quality control system acceptable to Buyer to be performed on Goods delivered under this Purchase Order. As part of the system, Seller shall prepare records evidencing all inspections made under the system and the outcome. Buyer or Buyer's customer shall have the right to perform reviews and evaluations as reasonably necessary to ascertain Seller compliance with an inspection or quality control system that is acceptable. The right of review, whether exercised or not, does not relieve Seller of its obligations under this Purchase Order.

b. Buyer or Buyer's customer has the right to inspect and test all Goods to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Buyer assumes no contractual obligation to perform any inspection and test for the benefit of Seller. If Buyer or Buyer's customer performs an inspection or test on the premises of Seller or a subcontractor of Seller, Seller shall furnish, and shall require its subcontractors to furnish, at no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspection and test. Buyer reserves the right to charge to Seller any additional cost of inspection or test by Buyer or Buyer's customer when (1) Goods are not ready at the time such inspection or test is required by this Purchase Order or has been otherwise scheduled by mutual agreement of the parties, or (2) reinspection or retest of the Goods is necessitated by prior rejection.

c. Buyer has the right either to reject or to require correction of nonconforming Goods. Goods are nonconforming when they are defective in material or workmanship or are otherwise not in

conformity with requirements of this Purchase Order. Buyer may reject nonconforming supplies with or without disposition instructions.

d. Seller shall remove Goods rejected or required to be corrected; however, Buyer may require or permit correction in place, promptly after notice, by and at the expense of Seller. Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

e. Seller, at its own expense, shall promptly rectify any defects discovered during any inspection or test.

f. If Seller fails to promptly remove, replace, or correct rejected Goods that are required to be removed or to be replaced or corrected, Buyer may either:

i. Remove, replace, or correct the Product(s) and charge the cost to Seller; or

ii. Terminate this Purchase Order for default.

g. If Buyer elects to correct the deficiencies in the Product(s), then the parties agree that Seller will pay Buyer's actual costs and Buyer's labor at Buyer's fully-burdened hourly rates (as appropriate) utilizing the then-current Government-approved rate set authorized for change-order activity. If Seller fails to correct or replace the Product(s) within the delivery schedule, Buyer may require their delivery with an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

h. Goods that have been reworked or repaired by Seller after having been rejected by Buyer shall be identified as "Resubmitted." Seller shall annotate the packing slip with the words "Resubmitted Material," the reason for the previous rejection, and the Buyer Inspection Report, Discrepancy Report, or Quality Notification Number if known. If the Goods were inspected at source and rejected, such information shall also be annotated on the packing slip.

i. Seller shall flow down the substance of this provision to all of its suppliers engaged for performance under this Purchase Order.

j. Neither Buyer's in-process inspection nor Buyer's approval of any of Seller's drawings, procedures or other submittals shall: (i) constitute acceptance of any work; or (ii) relieve Seller of complying fully with all of the requirements of this Purchase Order.

14. ASSIGNMENT OF WARRANTY. Buyer's rights under the Warranty provision of this Purchase Order shall, at Buyer's option, be assignable to and enforceable by Buyer's successors and customers.

15. INSURANCE

a. During the period of performance of this Purchase Order, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Workers' Compensation insurance coverage as required by the most current laws of the state or foreign jurisdiction in which the work is performed.

b. Seller shall also maintain, at its sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.

c. Whenever performance requires work on a Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:

- i. Comprehensive General Liability – Combined Single Limit \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
- ii. Automobile Liability – Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.
- d. Seller shall, in addition to the above requirements, maintain appropriate coverage under the Longshore and Harbor Workers’ Compensation Act, as well as the Defense Base Act if required by this Purchase Order.
- e. Coverage shall not exclude claims brought in the United States and all insurance required as a part of this Purchase Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- f. General Liability insurance coverage shall name Buyer as an additional insured.
- g. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Purchase Order and Seller shall provide evidence that the required insurance is in place in the form of insurance certificates. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- h. All coverage required hereunder shall be primary and not contributory to any other insurance available to Buyer, and Seller’s insurers shall provide a waiver of subrogation in favor of Buyer for each required coverage hereunder. Seller waives statutory immunity from workers’ compensation as respects the additional insured requirement for general liability only.

16. CHANGES

- a. Buyer, may at any time by written order make changes (a “Change Order”) within the general scope of this Purchase Order including but not limited to the following items:
 - i. drawings, designs, specifications, planning, and/or other technical documents;
 - ii. method of shipment, packaging, or packing;
 - iii. place of delivery;
 - iv. reasonable adjustments in quantities or delivery schedules or both;
 - v. place of inspection;
 - vi. place of acceptance; and, if services are procured with the Goods:
 - vii. description of services to be performed;
 - viii. time of performance (i.e., hours of the day, days of the week, etc.) of the services; and
 - ix. place of performance of the services.

b. If the change causes an increase or decrease in the cost or time required to perform this Purchase Order, the Parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Purchase Order in writing accordingly.

c. Seller must assert its right to an adjustment under this clause within fifteen (15) days from the date of receipt of the written order. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of this Purchase Order.

d. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.

e. Seller shall immediately proceed with the performance of this Purchase Order as changed. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" provision. Seller shall not be entitled to any claim for changes unless authorized in writing by Buyer.

17. EQUITABLE ADJUSTMENTS; WAIVER AND RELEASE OF CLAIMS. Whenever Seller, after receipt of a Change Order made pursuant to the "CHANGES" clause submits any claim for equitable adjustment under the foregoing, such claim shall include all types of adjustments in the total amounts to which the foregoing entitle Seller, including but not limited to adjustments arising out of delays or disruptions or both caused by such change. In support of any Seller request for equitable adjustment brought under the "CHANGES" clause or any other clause of this Purchase Order, Seller shall provide Buyer sufficient detail to reasonably support Seller's proposal for a request for equitable adjustment or which Buyer's customer should require in evaluating such request. Further, Seller agrees that, if required by Buyer, it will execute a release, in form and substance satisfactory to Buyer, as part of the supplemental agreement providing an equitable adjustment. Failure of Seller and Buyer to agree on any proposed adjustment or change claimed by Seller shall not excuse Seller from diligently proceeding with performance of this Purchase Order.

18. TERMINATION FOR DEFAULT

a. Buyer may terminate this Purchase Order in whole or in part at any time without liability to Seller if:

i. If Seller is unable to meet the required delivery schedules for a Product by more than 20 days, other than Force Majeure or a change directed by Buyer; or

ii. Materially fails to perform any of the other provisions of this Purchase Order or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, including the completion of those items within the time set forth elsewhere in this Purchase Order and in either of these two circumstances does not cure such failure within a period of seven (7) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, or

iii. Becomes insolvent or fails to provide additional assurances of financial solvency when it reasonably appears that Seller is or will not be financially solvent and additional assurances are requested by Buyer.

b. If Buyer terminates part of the work under this Purchase Order, Seller shall continue performance of this Purchase Order to the extent not terminated.

c. Refund of Payments. Seller shall, upon termination by Buyer due to default by Seller, return any payments Seller received under this Purchase Order for the terminated work.

d. If, after a default termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer.

e. The rights and remedies of Buyer provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity or otherwise provided under this Purchase Order.

19. TERMINATION FOR CONVENIENCE

a. Buyer may terminate this Purchase Order in whole or in part at any time for its convenience. Buyer will terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination, Seller shall immediately proceed with the following obligations:

- i. stop work as specified in the notice;
- ii. place no further subcontracts or orders (referred to as subcontracts in this clause); and
- iii. terminate all subcontracts to the extent they relate to the work terminated.

b. Buyer's sole obligation to Seller in the event of such a termination for convenience shall be to pay Seller a percentage of the Purchase Order price corresponding with the percentage of the terminated work actually performed prior to the notice of termination, plus Seller's reasonable expenses incurred as a direct result of the termination. No amount will be allowed for anticipated profit on the terminated work. The amount paid shall be reduced by the reasonable resale or salvage value of any undelivered work or uncompleted work in progress. Seller shall submit to Buyer supporting documentation in sufficient detail to justify any termination payments requested from Buyer. Seller will not be paid for any work performed or costs incurred after termination that could reasonably have been avoided.

20. SUSPENSION OF WORK. Buyer may, by written notice, suspend work under this Purchase Order whenever Buyer's customer, at the direction of the U.S. Government, suspends work under the contract between Buyer and its customer that is within the scope of work of this Purchase Order. Upon receipt of such notice, Seller shall immediately comply with its terms and, during the work suspensions, take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the suspension notice. If the suspension of work ordered under this provision results in an increase in the time required for, or in Seller's cost properly allocable to the performance of any part of this Purchase Order, Buyer shall make an adjustment in the delivery schedule or Purchase Order price or both. Seller shall assert its right to an adjustment no later than 15 days after the work suspension is lifted.

21. PROPERTY OF BUYER, BUYER'S CUSTOMER, OR GOVERNMENT

a. If property of Buyer, Buyer's customer, or Government is furnished in conjunction with this Purchase Order, it shall be furnished "as is." Accordingly, Buyer disclaims any warranty of suitability and or serviceability. Unless otherwise noted in this Purchase Order, Seller shall assume the risk of, maintain adequate insurance, and be responsible for, any loss, destruction of or damage to property provided to Seller by Buyer, Buyer's customer, or the Government while such property is in Seller's possession or control. Excluding property authorized to be consumed in the performance of this Purchase Order, Seller shall return such property in as good a condition as when received except for reasonable wear and tear, or in the case of property to be overhauled or repaired, in such better condition as may be required by the terms of this Purchase Order. Seller shall control and maintain Government, Buyer, or Buyers' customer furnished property in accordance with a system that meets the requirements of FAR 52.245-1.

b. Seller shall use Buyer-, Buyer's customer-, or Government-furnished property only for performing this Purchase Order, unless otherwise provided for in this Purchase Order or approved by Buyer. Seller shall not modify, cannibalize, or make alterations to the furnished property unless this Purchase Order specifically identifies the modifications, alterations or improvements as work to be performed.

c. Buyer, Buyer's customer, or Government shall retain title to all furnished property. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer, Buyer's customer, or the Government, nor shall furnished property become a fixture or lose its identity as personal property by being attached to any real property.

d. Seller shall immediately discharge any lien, other than a lien held by Buyer, Buyer's customer, or the Government on furnished property.

e. The requirements related to accounting for furnished property also shall apply to scrap generated from Seller's use of such property, provided, however, that Buyer may authorize or direct Seller to omit such scrap from inventory disposal schedules.

22. PROPRIETARY INFORMATION

a. Proprietary Information for purposes of this Purchase Order, means all knowledge of a confidential or proprietary nature no matter how communicated or stored Buyer furnishes to Seller, including, but not limited to, any item identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking, or stamp identifying the data as Buyer's Proprietary Information, and includes any information marked with a restrictive legend as prescribed in DFARS 252.227-7013 or 252.227-7014 or in FAR 52.227-14.

b. Seller will treat all Proprietary Information transferred in connection with this Purchase Order, all copies of Proprietary Information, and all improvements, modifications, and derivations of Proprietary Information, as Buyer's property regardless of the medium on which such Proprietary Information is stored or communicated. In making copies of Proprietary Information, Seller will preserve any legend, marking, or stamp contained on the Proprietary Information that identifies the data as Buyer's Proprietary Information. Unless otherwise provided in this Purchase Order, Seller further agrees to affix the following legend "Fairbanks Morse Engine Private/Proprietary Level I" on:

i. all improvements, modifications, and derivations of Proprietary Information;
and

ii. any Proprietary Information extracted from Buyer's computer systems or otherwise provided by Buyer to Seller if not already marked.

c. Seller may disclose Proprietary Information to its subcontractors as required for the performance of this Purchase Order, provided each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Purchase Order relating to Buyer's Proprietary Information.

d. If a separate proprietary information or non-disclosure agreement relating to the subject matter of this Purchase Order exists between the Parties, all data, knowledge and information furnished by one Party to the other Party shall be protected pursuant to such proprietary information or non-disclosure agreement.

e. If no separate proprietary information or non-disclosure agreement exists between the Parties, Seller will keep Buyer's Proprietary Information confidential and, except as provided herein, (i) not disclose such Proprietary Information to any other person except to its officers, agents and employees who are under an obligation to keep such Proprietary Information confidential and have a need to know such Proprietary Information to fulfill Seller's obligation under this Purchase Order, and (ii) treat such Proprietary Information with the same degree of care as Seller uses in handling its own proprietary or confidential information and – in all events – with not less than reasonable care. Seller will use Buyer's Proprietary Information only for purposes necessary for performing this Purchase Order and will return Proprietary Information to Buyer upon completion of the work to be performed under this Purchase Order unless Buyer expressly agrees to the contrary in writing.

f. Unless otherwise provided in DFARS 252.227-7013 or 252.227-7014 or 252.227-7015 or 252.227-7016, or in FAR 52.227-14 or if no separate proprietary information or non-disclosure agreement exists between the Parties, no information furnished to Buyer (whether documentary, oral, visual or otherwise) shall be considered confidential or proprietary or require any particular handling or precaution or have any restriction on Buyer's right to use, modify, reproduce, perform, display, release, or disclose such information in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

g. Upon discovery by Seller of any inadvertent or accidental disclosure of Buyer'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.

h. As used herein, Proprietary Information shall not include information that (i) was known by Seller prior to disclosure by Buyer, (ii) is or becomes generally available to the public other than by means of breach by Seller of the terms hereof, (iii) Seller receives from a third party that is not subject to any confidentiality obligation to Buyer, or (iv) that Seller develops on its own without reference to any Proprietary Information. In addition, Seller shall not be deemed in breach of the provisions hereof to the extent it is required to dispose any Proprietary Information pursuant to law or court order (in which Seller shall provide prompt written notice to Buyer of such obligation).

23. PATENT, TRADEMARK, TRADE SECRET, AND COPYRIGHT INDEMNITY

a. In addition to any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will indemnify and hold harmless Buyer, Buyer's parent and affiliates and their respective officers, directors, employees, and customers ("Indemnified Parties") from and against any and all third party claims to the extent relating to claims of patent, copyright, or trademark infringement or allegations of trade secret misappropriation (collectively or individually, "Claim") resulting from the manufacture or sale of any product or service Seller provides to Buyer. Seller shall, at its own cost, defend Buyer against such Claims, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right, at its expense, to conduct such defenses if it so chooses.

b. Notwithstanding the foregoing, when this Purchase Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Purchase Order shall be coextensive with Buyer's liability.

24. 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 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).

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.

25. COMPUTER SOFTWARE AND DATABASES. Seller shall test all computer software and/or databases (including the media it is delivered on), as defined in the clause entitled Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (DFARS 252.227-7014), for computer viruses before delivery of such software and/or databases in any medium or in any system. All software and/or databases delivered by Seller shall contain no known viruses that are detectable with the latest version of commercially available virus detection software. In addition, Seller shall test any software and/or databases received from Buyer or Buyer's customer for viruses prior to use in performing this Purchase Order. Seller shall provide Buyer with immediate written notice of any viruses detected in Buyer-provided software and/or databases. Unless otherwise agreed in writing, any license agreement covering the use of any computer software and/or databases delivered under this Purchase Order must be paid-up and perpetual, shall not contain any routine to disable the computer software and/or databases in the future, and shall permit transfer to Buyer's customer. No copy-protection devices, codes, or systems shall be used that would prevent Buyer or Buyer's customer from copying delivered software and/or data; however, a license agreement or other Purchase Order terms may specify a maximum number of copies that may be made. Any limited rights or other legend(s) permissibly applied under this Purchase Order shall be digitally included on the same media as the delivered software and/or databases, and also displayed in human-readable form on a visible surface of the media carrying the digital software and/or databases.

26. 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.

27. TOXIC SUBSTANCES/HAZARDOUS MATERIAL. Buyer will not accept, store or dispose of any toxic substances or hazardous material except as and to the extent, if at all, expressly provided for in this Purchase Order. In particular, paints, primers, or coatings on Goods required by this Purchase Order that contain the following constituents shall not be shipped without prior written approval by Buyer: arsenic, mercury, methylene chloride, methyl ethyl ketone (MEK), lead, and chromium, their compounds, or organo-metallic material. Materials known or suspected of containing or coming in contact with asbestos, polychlorinated biphenyls (PCBs), or mercury

or mercury containing compounds shall not be provided without Buyer's prior written permission. If invoked specifications and standards permit other materials in lieu of these materials, they shall be used.

28. INDEMNIFICATION - GOVERNMENT REQUIREMENTS. In addition to any other remedies provided for in this Purchase Order, Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates, Buyer's customer, and their respective officers, directors, and employees (collectively, for the purposes of this provision, "Buyer") from and against any and all liabilities, claims, losses and expenses arising out of the failure of Seller, its employees, subcontractors or agents, in conjunction with this Purchase Order:

- a. To furnish complete, accurate or current cost or pricing data when such data were required by law or regulation:
 - i. In the negotiation of this Purchase Order or any modifications thereto; or
 - ii. To comply with applicable laws, regulations incorporated by reference herein, or ordinances.
- b. Seller shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred.

29. 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. Any relief shall be limited to an extension of delivery dates or times of performance to the extent caused thereby.

30. INDEPENDENT CONTRACTOR. Seller is an independent contractor. Seller shall:

- a. Have exclusive control and direction over its employees' performance of the work; and
- b. Be responsible for all payroll functions for its employees. No persons employed by Seller or Seller's subcontractors shall be deemed an employee or agent of Buyer for any purpose.

31. RELEASE OF INFORMATION AND ADVERTISING. 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, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use Buyer's name or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

32. ASSIGNMENT AND USE OF STOCK NUMBERS. To the extent that National Stock Numbers (NSNs) or preliminary NSNs are assigned by the Government or Buyer for the identification of parts, pieces, items, subassemblies or assemblies to be furnished under this Purchase Order, Seller shall use such NSNs or preliminary NSNs in the preparation of provisioning lists, package labels, packing lists, shipping containers and shipping documents as required by applicable specifications, standards or Data Item Descriptions (DIDs) of this Purchase Order or as required by orders for spare and repair parts. Buyer shall be responsible for conveying to Seller such NSNs or preliminary NSNs that may be assigned and that are not already in the possession of Seller.

33. DEPARTMENT OF LABOR OCCUPATIONAL 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.

34. REQUIREMENTS FOR AIR CIRCUIT BREAKERS IN NAVAL VESSELS. Seller agrees that air circuit breakers for naval vessels provided under this Purchase Order shall be manufactured in the United States, Canada, or the United Kingdom.

35. 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.

36. ACCESS TO VESSELS BY NON-U.S. CITIZENS

a. No person not known to be a U.S. Citizen shall be eligible for access to naval vessels, work sites and adjacent areas when said vessels are under construction, conversion, overhaul, or repair, except upon a finding by COMNAVSEA or his designated representative that such access should be permitted in the best interest of the United States. Seller shall establish procedures to comply with this requirement and NAVSEAINST 5500.3 (series) in effect on the date of this Purchase Order.

b. If Seller desires to employ non-U.S. citizens in the performance of work under this Purchase Order that requires access as specified in paragraph (a) of this requirement, approval must be obtained prior to access for each Purchase Order where such access is required. To request such approval for non-U.S. citizens of friendly countries, the Seller shall submit to Buyer, an Access Control Plan (ACP) that shall contain as a minimum, the following information:

i. Badge or Pass oriented identification, access, and movement control system for non-U.S. citizen employees with the badge or pass to be worn or displayed on outer garments at all times while on the Buyer's facilities and when performing work aboard ship.

(1) Badges must be of such design and appearance that permits easy recognition to facilitate quick and positive identification.

(2) Access authorization and limitations for the bearer must be clearly established and in accordance with applicable security regulation and instructions.

(3) A control system, which provides rigid accountability procedures for handling lost, damaged, forgotten or no longer required badges, must be established.

(4) A badge or pass check must be performed at all points of entry to the Buyer's facilities or by a site supervisor for work performed on vessels outside the Buyer's plant.

ii. Seller's plan for ascertaining citizenship and for screening employees for security risk.

iii. Data reflecting the number, nationality, and positions held by non-U.S. citizen employees, including procedures to update data as non-U.S. citizen employee data changes, and pass to cognizant CAO.

iv. Seller's plan for ensuring subcontractor compliance with the provisions of the Seller's ACP.

v. These conditions and controls are intended to serve as guidelines representing the minimum requirements of an acceptable ACP. They are not meant to restrict the Seller in any way from imposing additional controls necessary to tailor these requirements to a specific facility.

c. To request approval for non-U.S. citizens of hostile and/or communist- controlled countries (Listed in Department of Defense Industrial Security Manual, COC 5220.22M or available from cognizant CAO), Seller shall include in the ACP the following employee data: name, place of birth, citizenship (if different from place of birth), date of entry to U.S., extenuating circumstances (if any) concerning immigration to U.S., number of years employed by Seller, position, and stated intent concerning U.S. citizenship. COMNAVSEA or his designated representative will make individual determinations for desirability of access for above group. Approval of ACP's for access of non-U.S. citizens of friendly countries will not be delayed for approval of non-U.S. citizens of hostile communist-controlled countries. Until approval is received, Seller must deny access to vessels for employees who are non-U.S. citizens of hostile and/or communist-controlled countries.

d. Seller shall fully comply with approved ACPs. Noncompliance by the Seller or subcontractor serves to cancel any authorization previously granted, in which case the Seller shall be precluded from the continued use of non-U.S. citizens on this Purchase Order until such time as the compliance with an approved ACP is demonstrated and upon a determination by the CAO that the Government's interests are protected. Further, the Government and Buyer reserve the right to cancel previously granted authority when such cancellation is determined to be in the Government's or Buyer's best interest. Use of non-U.S. citizens, without an approved ACP or when a previous authorization has been canceled, will be considered a violation of security regulations. Upon confirmation by the CAO of such violation, this Purchase Order may be terminated.

e. Seller shall have full responsibility for the proper administration of the approved ACP for all work performed under this Purchase Order, regardless of the location of the vessel, and must ensure compliance by all of its subcontractors, technical representatives and other persons granted access to U.S. Navy vessels, adjacent areas, and work sites.

f. In the event Seller does not intend to employ non-U.S. citizens in the performance of the work under this contract, but has non-U.S. citizen employees, such employees must be precluded from access to the vessel and its work site and those shops where work on the vessel's equipment is being performed. The ACP must spell out how non-U.S. citizens are excluded from access to contract work areas.

g. The same restriction as in paragraph (g) above applies to other than non-U.S. citizens who have access to the Buyer's facilities (e.g., for accomplishing facility improvements, from foreign crewed vessels within its facility, etc.).

37. MARKING AND PACKING LIST(S).

a. Marking. Shipments, shipping containers and palletized unit loads shall be marked in accordance with best commercial practice.

b. Packing List(s). A packing list (DD Form 250 Material Inspection and Receiving Report may be used) identifying the contents of each shipment, shipping container or palletized unit load shall be provided by Seller with each shipment. When a contract line item identified under a single stock number includes an assortment of related items such as kit or set components, detached parts or accessories, installation hardware or material, the packing list(s) shall identify the assorted items.

c. Master Packing List. In addition to the requirements in paragraph (b) above, a master packing list shall be prepared where more than one shipment, shipping container or palletized unit load comprise the contract line item being shipped. The master packing list shall be attached to the number one container and so identified.

d. Part Identification. All items within the kit, set, installation hardware or material shall be suitably segregated and identified within the unit pack(s) or shipping container by part number and/or national stock number.

38. CALIBRATION SYSTEM REQUIREMENTS. The calibration of measuring and testing equipment shall, as a minimum, adhere to the requirements of The Navy and Marine Corps Calibration Audit/Certification Manual dated 1 December 2006.

39. INSPECTION AND TEST RECORDS. Inspection and test records shall, as a minimum, indicate the nature of the observations, number of observations made, and the number and type of deficiencies found. Data included in inspection and test records shall be complete and accurate, and shall be used for trend analysis and to assess corrective action and effectiveness.

40. COST OF QUALITY DATA. Seller shall maintain and use quality cost data as a management element of its quality program. The specific quality cost data to be maintained and used will be determined by Seller. These data shall, on request, be identified and made available for "on site" review by Buyer or Buyer's customer.

41. QUALIFICATION OF SELLER NONDESTRUCTIVE TESTING (NDT) PERSONNEL. Any NDT Seller (as hereinafter defined) shall utilize for the performance of required Nondestructive Testing (NDT) (which includes radiography, magnetic particle, liquid penetrant, eddy current, ultrasonic inspections and visual inspections) shall utilize for the performance of required NDT, only Level I, II and III personnel currently certified in accordance with NAVSEA Technical Publication T9074-AS-GIB-010/271, Revision I of 11 September 2014. Documentation pertaining to the qualification and certification of NDT personnel shall be made available to the Contracting Officer for review upon request. The term "NDT Seller" is defined to be a first tier subcontractor performing NDT in conjunction with the production of materials, components, or equipments for the vessel(s).

42. PERMITS AND RESPONSIBILITIES. Seller shall, without additional expense to the Buyer, Buyer's Customer or Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and Municipal laws, codes, and regulations, in connection with any movement over the public highways of overweight/ overdimensional materials.

43. DELIVERY OF SELLER DATA. All drawings, procedures, manuals, forms, test reports, software (including software documentation) and other data that is required to be delivered under this Purchase Order ("Seller Data") shall comply with the terms of this Purchase Order. Seller Data shall be delivered to Buyer on or before the time specified in this Purchase Order, or if no time is specified, 45 days after receipt of this Purchase Order. Seller shall submit Seller Data to the Buyer address shown on the first page of this Purchase Order unless otherwise specified in this Purchase Order. If no delivery information is specified or Seller is unsure of where to send the Seller Data, Seller shall contact Buyer's authorized purchasing representative for further instructions. Buyer may withhold payment if Seller fails to deliver any Seller Data in a form and quality that is satisfactory to Buyer. When furnished with the shipment, Seller shall enclose all required Seller Data in the first box of the shipment and mark, CERTIFICATES AND/OR TEST REPORTS ENCLOSED.

44. LOGISTIC SUPPORT REQUIREMENT.

a. This requirement applies whenever the contract 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 and 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 and the authorized representative of Buyer's customer 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 Prime Contract number of Buyer's customer.

c. In order to satisfy the requirements of paragraph (b) above, unless Seller or Seller's supplier of the ship components or equipments shall have made arrangements, satisfactory to Seller and approved Buyer and the authorized representative of Buyer's customer, for the manufacture of such repair parts in the United States or Canada, Seller and Seller's subcontractors shall both provide and shall include in all subcontracts for the purchase of ship components or equipments from foreign sources this clause that hereby grants to the United States Government for a period of seven (7) years, "Government Purpose Rights" (as defined in paragraph (a)(13) of the clause of this Order 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.

45. ADJUSTMENTS RELATING TO DEFECTS. In the event of a defect for which Seller is responsible pursuant to the Warranty clause of this Purchase Order that Seller fails to adequately remedy pursuant to the terms of the Warranty clause (after being given the full opportunity to do so) and as a consequence the Government demands the processing of a specification waiver with the Government and/or results in a price adjustment under Buyer's customer's Prime Contract, Seller will be liable to Buyer for the amount of such price adjustment provided that such adjustment is reasonable in light of the nature and severity of the Defect.. Buyer will notify Seller as soon as possible after receipt of notice of any kind from the Navy requiring a repair, correction or Prime Contract withhold or price adjustment relating directly to a Defect, and shall provide Seller with the opportunity to join in any communications or meetings with the Government in respect of any such Defect. Seller agrees to pay any invoice from Buyer to reimburse a Prime Contract price adjustment that Seller is liable for under this paragraph within 10 business days of receipt. Should any repair or correction of such Defect be required, Seller agrees to promptly commence such repairs pursuant to the Warranty clause of this Purchase Order.

46. STANDARDIZATION. Seller shall furnish and/or employ standard components/equipment in accordance with the requirements of this Purchase Order. To the maximum extent possible, Seller shall utilize equipment and components identical to those of the previous LPD 17 SAN ANTONIO Class Ships. Where equipment or components are not reasonably available, Seller shall select hull, mechanical, and electrical components for approval by Buyer in the following order: (1) common within the ship, (2) common for application within the LPD 17 Class, and (3) common with equipment/components currently installed in U.S. Navy ships. If at any time during the performance of this Purchase Order, should Seller believe that the use of non-standard components/equipment is necessary or desirable, it shall notify Buyer immediately, in writing, including the reasons therefore and proposing any consideration that will flow to Buyer or the Government if authorization to use such supplies is granted; provided, however, that non-standard components/equipment shall not be furnished without the prior written approval of Buyer.

47. CONTINUING TERMS AND SEVERABILITY. The "Proprietary Information," "Suspect/Counterfeit Parts," "Indemnification – Government Requirements," "Indemnification – Third Party Claims," "Patent, Trademark, Trade Secret, And Copyright Indemnity," and "Warranty" provisions and the indemnification provisions contained in the "Disputes," and "Export Controls and Economic Sanctions," provisions shall survive termination or cancellation of this Purchase Order. If any provision in this Purchase Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

48. NON-WAIVER. Buyer’s failure at any time to enforce any provision of this Purchase Order shall not constitute a waiver of the provision or prejudice Buyer’s right to enforce that provision at any subsequent time against Seller. No payment made shall be deemed an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Buyer’s right to later reject the same. Any and all of the rights and remedies conferred upon Buyer under this Purchase Order shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller’s breach of contract.

49. BANKRUPTCY. In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, Seller agrees to furnish to Buyer, by certified mail, written notification of the bankruptcy or insolvency proceeding. This notification shall be furnished within five days of the initiation of such proceedings, and shall include the date of filing, the identity of the court in which the petition was filed, and a listing of all of Buyer’s Purchase Orders against which final payment has not been made. This obligation remains in effect until final payment under this Purchase Order. In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, ceases operations, or fails to respond to notices under this Purchase Order, Buyer may, at Buyer’s sole discretion, pay to Seller’s subcontractors at any tier those amounts Seller owes to such subcontractors under this Purchase Order to obtain such subcontractor’s performance owed to Seller in connection with this Purchase Order and Buyer shall be entitled to set-off such amounts Buyer pays to such subcontractors from any amount owed to Seller under this Purchase Order.

50. PROGRAM MANAGEMENT.

a. When requested by Buyer, Seller will develop and maintain in a form acceptable to Buyer, a comprehensive Program Management Plan (“PMP”). At its election, Buyer may provide at no cost to Seller assistance in the development of the PMP.

b. The PMP will contain a comprehensive activity-based schedule for all major software/hardware deliverables required by this Purchase Order. Seller shall update the PMP at regular intervals but no less than monthly to ensure its currency.

c. Seller will make its PMP available to Buyer in a format specified by Buyer for review at reasonable times and places.

51. OBSOLESCENCE. If, during the performance of this Purchase Order, Seller becomes aware that any equipment, assemblies, subassemblies, parts, components, or items sold under this Purchase Order will be going out of production or will no longer be commercially available, Seller shall promptly notify Buyer and specifically identify those items by name or title, part number(s), function, and name and location of manufacturer.

52. 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
52.203-3	Gratuities	APR 1984
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

52.203-10	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
52.209-6	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)	AUG 2013
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	NOV 2016
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	MAY 2014
52.222-19	Child Labor – Cooperation with Authorities and Remedies	OCT 2016
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 \$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
52.222-54	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
52.223-3	Hazardous Material Identification and Material Safety Data	JAN 1997
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
52.227-10	Filing of Patent Applications – Classified Subject Matter (applies to Purchase Orders that cover classified subject matters)	DEC 2007
52.232-17	Interest	MAY 2014
52.234-1	Industrial Resources Developed Under Defense Production Act Title III	SEP 2016
52.242-15	Stop-Work Order (In paragraph (b)(2), the term “30 days” is changed to “15 days”)	AUG 1989
52.244-6	Subcontracts for Commercial Items	JAN 2017
52.247-63	Preference for U.S.-Flag Carriers (applies to Purchase Orders that may involve international air transportation)	JUN 2003
52.248-1	Value Engineering (applies to Purchase Orders with a value equal to or exceeding \$150,000)	OCT 2010

DFARS	Clauses	Date
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DEC 2008
252.203-7002	Requirements to Inform Employees of Whistleblower Rights	SEP 2013
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)	OCT 2016
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	OCT 2016
252.204-7015	Disclosure of Information to Litigation Support Contractors	MAY 2016
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
252.223-7008	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)	DEC 2016
252.225-7002	Qualifying Country Sources as Subcontractors	DEC 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
252.225-7013	Duty-Free Entry	MAY 2016
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools	JUN 2005
252.225-7016	Restriction on Acquisition of Ball and Roller Bearings	JUN 2011
252.225-7019	Restriction on Acquisition of Anchor and Mooring Chain	DEC 2009
252.225-7021	Trade Agreements – Basic (This clause only applies to the spare parts that Seller will be delivering under this Purchase Order)	DEC 2016
252.225-7025	Restriction on Acquisition of Forgings	DEC 2009
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
252.227-7016*	Rights in Bid or Proposal Information	JAN 2011
252.227-7019	Validation of Asserted Restrictions – Computer Software	SEP 2016
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	MAY 2013
252.227-7027	Deferred Ordering of Technical Data or Computer Software	APR 1988
252.227-7037	Validation of Restrictive Markings on Technical Data	JUN 2013
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
252.246-7001	Warranty of Data – Basic	MAR 2014
252.246-7003	Notification of Potential Safety Issues	JUN 2013
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	OCT 2015

	to Purchase Orders of \$150,000 or more)	
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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.