



ARROWHEAD GLOBAL LLC PURCHASE ORDER STANDARD TERMS & CONDITIONS

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1. DEFINITIONS. [\(back to top\)](#)

- A. BUYER means Arrowhead Global LLC.
- B. DFARS means the Defense Federal Acquisition Regulation Supplement.
- C. FAR means the Federal Acquisition Regulation.
- D. ORDER means the instrument of contracting including the order form and all documents it references (including but not limited to these general provisions, plans, specifications, and regulations).
- E. PARTIES means Buyer and Seller collectively.

PRIME CONTRACT means the contracting instrument issued by the U.S. Government for the acquisition of Products

- G. PRODUCT means those goods, supplies, reports, computer software, parts list, data, materials, articles, items, parts, components or assemblies, drawings, procedures, manuals, forms, test reports, and any Services described in the Order. For the purposes of the "Inspection" provision, the term "Product" also includes but is not limited to raw materials, components, and intermediate assemblies that comprise the Product.

- H. SELLER means the party with whom Buyer is contracting.

- I. SERVICES means Seller's time and effort, including any Products, supplies, materials, articles, items, parts, components or assemblies incidental to the performance of the Service.

2. HEADINGS. [\(back to top\)](#)



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The descriptive headings contained in this Order are for convenience or reference only and in no way define, limit or describe the scope or intent of this Order.

3. LANGUAGE AND CURRENCY. ([back to top](#))

All communications and submittals shall be in English and all payments, rebates, credits, other financial transactions or dollar amounts related to or referenced in this Order shall be in United States Dollars.

4. BUYER AUTHORIZATION. ([back to top](#))

- A. Buyer's authorized purchasing representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements defined in this Order.
- B. Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Products hereunder. No such action shall be deemed to be a change under the "Changes" provision of this Order and shall not be the basis for an equitable adjustment.

5. ACCEPTANCE OF OFFER. ([back to top](#))

This Order is Buyer's offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and issued by Buyer's authorized purchasing representative. Seller's acknowledgement, acceptance of payment, or commencement of performance, shall be conclusive evidence of acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in Seller's acceptance.

6. ORDER OF PRECEDENCE. ([back to top](#))

- A. In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:
 - (i) The Order and any modifications or changes thereto exclusive of items (ii) through (vi).
 - (ii) Any ARROWHEAD GLOBAL, LLC supplement or other special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this Order.
 - (iii) These General Provisions including referenced FAR and DFARS clauses.
 - (iv) Statement of Work.
 - (v) Specification/Drawing.
 - (vi) Other documents referenced in this Order.
- B. Seller shall immediately bring any inconsistencies to the attention of Buyer in writing, and any inconsistencies in or among any of the foregoing shall not be the basis for any defense of a breach of contract claim brought by Buyer against Seller for Seller's failure to perform under this Order, nor shall any such inconsistencies be the basis for any claim of any kind by Seller against Buyer unless Seller has first timely brought such inconsistencies to Buyer's attention and Buyer has failed to resolve such inconsistencies.

7. ASSIGNMENT. ([back to top](#))

Neither this Order nor the benefits or obligations thereof shall be assigned by Seller except with the prior written consent of Buyer, such consent not to be unreasonably withheld.

8. ENTIRE AGREEMENT. ([back to top](#))

This Order constitutes written confirmation of the entire agreement between the Parties. The Parties shall not be bound by any other statements or understandings, oral or written, not set forth in this Order.

9. DOD RATED ORDER ([back to top](#))

- A. This Order supports Buyer's work under a Prime Contract with the U.S. Government. Applicable priority rating defaults to "DO," unless otherwise stated on the face of this Order. This is a rated Order certified for national defense use. Seller is required to follow the requirements of the defense priorities and allocation system regulation (15 CFR Part 700) and all other applicable regulations for obtaining controlled Products and other Products and Services needed to fill this Order.
- B. Seller shall include the substance of this provision in all subcontracts Seller places in support of this Order.

10. PACKING AND SHIPPING. ([back to top](#))

- A. Any goods purchased hereunder must be suitably packed and prepared for shipment to secure the lowest transportation rates or appropriately packed to comply with any specific transportation specifications of Buyer, and in all cases, to comply with carrier's regulations. All charges for packing, crating and transportation are included in the price for the goods set forth herein and will be paid by Seller. A Packing List shall accompany each box or package shipment showing the order number specified hereon as well as the item number and a description of the goods. In the event that no such Packing List accompanies any shipment, the count, weight or other measure of Buyer shall be final and conclusive. Buyer shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.
- B. Damage resulting from improper Product packaging will be charged to Seller. Seller will not pack or ship items corresponding to multiple Orders or multiple line items within a single Order unless Seller has separately identified the packing and shipping costs of each line item being shipped.

11. DELIVERY, TITLE. ([back to top](#))

- A. The Freight On Board (FOB) point shall be as designated in this Order. Title shall pass to Buyer upon delivery (except as otherwise specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.



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- B. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Unless otherwise specified in this Order, Seller shall not ship quantities in excess of those specified in this Order. Buyer shall have no obligation to return or pay for any quantities in excess of those specified in this Order. For all other shipments not meeting the requirements of this paragraph, Buyer may return the shipment or store early deliveries at Seller's cost.
- C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer in writing of the reason and estimated length of the delay. This notice shall be informational only, and shall in no way affect the rights or remedies available to Buyer. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible. Any additional cost incurred by Buyer or Seller because of late delivery shall be borne by Seller unless specifically authorized in writing by Buyer.
- D. If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to:
- (i) Terminate this Order, or
 - (ii) Fill this Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer. The rights accorded Buyer pursuant to this paragraph D shall not limit Buyer's rights under the "Termination for Default" provision of this Order.
- E. All Parties expressly agree that time is and shall remain of the essence in performing this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.
- 12. DELIVERY OF SELLER DATA. ([back to top](#))**
- All drawings, procedures, manuals, forms, test reports, software (including software documentation) and other data that is required to be delivered under this Order ("Seller Data") shall comply with the terms of this Order. Seller Data shall be delivered to Buyer on or before the time specified in this Order, or if no time is specified, 45 days after receipt of this Order. Seller shall submit Seller Data to the Buyer address shown on the first page of this Order unless otherwise specified in this 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 accordance with the terms of this Order. When furnished with the shipment, Seller shall enclose all required Seller Data in the first box of the shipment and mark the shipment, *CERTIFICATES AND/OR TEST REPORTS ENCLOSED*.
- 13. LIENS. ([back to top](#))**
- All Products furnished under this Order shall be free of all liens, claims, charges, and encumbrances of any kind. Upon request, Seller shall furnish Buyer with formal releases from Seller's subcontractors. Buyer may discharge any lien, claim, charge, or encumbrance if Seller, at Buyer's request, fails to do so and Seller shall reimburse Buyer for the reasonable costs thereof.
- 14. INSPECTION. ([back to top](#))**
- A. Except as otherwise provided in this Order, Seller shall maintain an inspection and quality control system acceptable to Buyer to be performed on Products delivered under this 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 or regulatory agencies shall have the right to access and 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 Order.
- B. Buyer or Buyer's customer has the right to inspect and test all Products 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 Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspection and test.
- C. Buyer has the right either to reject or to require correction of nonconforming Products. Products are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with requirements of this Order. Buyer may reject nonconforming supplies with or without disposition instructions.
- D. Seller shall remove Products 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 Products 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 Order for default.
- 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.
- G. Products 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 Products were inspected at source and rejected, such information shall also be annotated on the packing slip.
- H. **Seller shall flow down the substance of this provision to all of its suppliers engaged for performance under this Order.**
- I. 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 Order.



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15. TAXES. [\(back to top\)](#)

The price(s) set forth herein shall include all applicable Federal, State and local taxes and duties.

16. INVOICES. [\(back to top\)](#)

Invoices shall contain the following information: order number, item number, description of articles, sizes, quantities, unit prices and extended totals. Invoices submitted hereunder will be paid Net 45 Days after receipt of a proper invoice or acceptance of delivered items by the Buyer, whichever occurs later. Any adjustments in Seller's invoices due to shortages, late delivery, rejections, or other failure to comply with the requirements of this Order may be made by Buyer before payment. Cash discounts will be taken from the date of final acceptance of delivered items, or the date of acceptable invoice, whichever is later. Payment shall not constitute final acceptance. Buyer may offset against any payment hereunder any amount owed to Buyer by Seller.

Note: "Seller may select Automated Clearing House Credits ("ACH funds transfer"), as the means of settlement. With regard to such ACH funds transfer, a payment from Buyer to Seller shall be considered timely with respect to any payment due date contained herein if the ACH funds transfer is completed no later than four (4) business days after such payment due date. Buyer shall not be in breach of these terms and conditions, or suffer any loss of discount or other penalty, with respect to an ACH funds transfer that was initiated properly and timely by Buyer to the extent its completion is delayed because of failure or delay by the ACH funds transfer system, the operation of an ACH funds transfer system rule which could not be anticipated by Buyer, or rejection by the Seller's bank."

17. SUSPECT/COUNTERFEIT PARTS. [\(back to top\)](#)

- A. "Suspect/counterfeit parts" are 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 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 Products. 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 Order.
- C. Seller represents and warrants that it has policies and procedures in place to ensure that none of the Products furnished to Buyer under this 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 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, 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 Order. Notwithstanding any other provision of this 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 Products 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 set authorized for change-order activity. All such costs shall be deemed direct damages.
- E. Buyer may, at its discretion:
 - (i) Remove and or retain or both all Products 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 Products 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 Products suspected of being or containing suspect/counterfeit parts and reserves the right to withhold payment for the Products 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 Order.
- G. Seller shall insert a clause containing all of the terms of this provision in all subcontracts under this Order.

18. REPRESENTATIONS AND CERTIFICATIONS – CONFLICT MINERALS. [\(back to top\)](#)

- A. As of the time of award of this Order, Seller represents that:
 - (i) The Product(s) Seller will be supplying under this Order do not contain any conflict minerals, which are defined as (a) gold or (b) tantalum, tin, or tungsten (derivatives of columbite-tantalite (coltan), cassiterite, and wolframite); or
 - (ii) if the Product(s) contain conflict minerals, Seller has submitted Buyer's Form, "Conflict Minerals Disclosure" (QMS Form 98) which is incorporated herein by reference.
- B. If QMS Form 98 was submitted to Buyer as described in subparagraph A (ii) above, Seller certifies that the representations and certifications on such form are current, accurate and complete as of date of this Order.
- C. If the status of any Product(s) changes during performance of this Order so that the representations and certifications contained in subparagraphs A and B of this clause are no longer accurate, then Seller must complete and submit to Buyer a revised QMS Form 98.
- D. If Buyer determines that any representation or certification made by Seller pursuant to this provision is inaccurate or incomplete in any respect, then Buyer may terminate this Order pursuant to the provision of this Order titled "Termination for Default."

19. WARRANTY. [\(back to top\)](#)

- A. Seller warrants that all Products delivered under this Order will:
 - (i) Be free from defects in materials, workmanship, and manufacturing processes; and

- (ii) Conform to all requirements of this Order.
 - B. The warranty period shall begin upon Buyer's acceptance of the Product and end 12 months after final acceptance by Buyer's customer of the end product incorporating the Product provided by Seller under this Order. In computing the warranty period, there shall be excluded any time that a Product delivered under this Order is prevented from entering service or is taken out of service on account of any Product deficiency.
 - C. For the purposes of this provision, a deficiency occurs when Seller's goods or services fail to meet any of the performance obligations set forth in subparagraphs A(i) through A(ii) of this provision. Seller's notice shall in no way affect the rights and remedies of Buyer.
 - D. For all deficiencies that arise during the warranty period, Seller shall promptly remedy the deficiency at no cost to Buyer. If Seller fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Buyer may, at its option, remedy the deficiency by contract or otherwise and charge to Seller any increased costs incurred by Buyer or Buyer's customer or make an equitable reduction in the price of this Order. If Buyer elects to correct the deficiencies in the Product, 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.
 - E. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.
 - F. Buyer's rights under this provision shall, at Buyer's option, be assignable to and enforceable by Buyer's successors and customers.
 - G. Seller shall immediately notify Buyer of any deficiencies during the performance of this Order and the warranty period. Seller shall promptly provide a written notice to Buyer's authorized purchasing representative describing the deficiency and Seller's plan to remedy the deficiency. For the purposes of this paragraph G, a deficiency occurs when Seller's Product fails to meet any of the performance obligations set forth in paragraph A of this provision. Seller's notice shall in no way affect the rights and remedies of Buyer.
 - H. The rights of Buyer set forth in this provision shall be in addition to, and not in lieu of, any other right Buyer may have under this Order, or in law or equity.
- 20. CHANGES. [\(back to top\)](#)**
- A. Buyer, may at any time by written order make changes within the general scope of this 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 Products:
 - (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 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 Order in writing accordingly.
 - C. Any claim for adjustment shall be unconditionally waived unless asserted in writing and delivered to Buyer within 15 days of the receipt of the written Order; if Seller claims the cost of any property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
 - 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 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.
- 21. [EQUITABLE ADJUSTMENTS; WAIVER AND RELEASE OF CLAIMS. \(back to top\)](#)**
- Whenever Seller, after receipt of a change made pursuant to the "CHANGES" clause or after assertion of a constructive change under the "NOTIFICATION OF 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 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 Order.
- 22. [TERMINATION FOR DEFAULT. \(back to top\)](#)**
- A. Buyer may terminate this Order in whole or in part at any time without liability to Seller if Seller:
 - (i) Fails to make delivery of the Products within the time specified in this Order, or
 - (ii) Fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, including the completion of those items within the time set forth elsewhere in this Order and in either of these two circumstances does not cure such failure within a period of ten 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.If Buyer terminates part of the work under this Order, Seller shall continue performance of this Order to the extent not terminated.
 - B. Refund of Payments. Seller shall, upon termination by Buyer due to default by Seller, return any payments Seller received under this Order for the terminated work.
 - C. 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.
 - D. 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 Order.



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23 TERMINATION FOR CONVENIENCE. [\(back to top\)](#)

- A. Buyer may terminate this Order in whole or in part at any time for its sole 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 a termination for convenience shall be to pay Seller a percentage of the 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 that could reasonably have been avoided.

24 SUSPENSION OF WORK. [\(back to top\)](#)

Buyer may, by written notice, suspend work under this Order at any time. 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 Order, Buyer shall make an adjustment in the delivery schedule or Order price or both. Seller shall assert its right to an adjustment no later than 20 days after the work suspension is lifted.

25 DISPUTES. [\(back to top\)](#)

- A. Any dispute arising under or related to this Order shall be submitted in writing for resolution to equivalent ascending levels of management of the respective Parties up to the Senior Executive of the Supply Chain Management organization placing the Order, and Seller's equivalent executive level.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within 90 days from the date the written dispute is received by the other party in accordance with the notice provisions set forth herein, or such additional time as the Parties agree upon, in writing, either party may only bring suit in the appropriate federal or state court in the state listed as Buyer's address in the Order; said forum selection to be made without regard to said state's conflict of laws principles.
- C. Pending any informal resolution, law suit, appeal, or final decision referred to in this provision, or the settlement of any dispute, Seller shall proceed diligently, as directed by Buyer, with performance of this Order.
- D. Seller shall commence an action for breach or any other dispute arising under or related to this Order within two years after the cause of action accrues, or by the otherwise applicable statute of limitations, whichever period is shorter.
- E. If the Government:
- (i) makes a decision or determination,
 - (ii) takes an action, or, in the case of a claim filed with the Contracting Officer, fails to take an action within the time limits specified in the "Disputes" clause in Buyer's Prime Contract ("deemed denial"), on a matter arising under or related to the Buyer's Prime Contract, and such decision, determination, action or deemed denial relates to or affects the Parties' rights and interests under this Order ("Government Action"), then any dispute between Buyer and Seller as relates to the Government Action shall be resolved in accordance with paragraph F, which shall be Seller's sole remedy for such disputes. Except as otherwise provided in paragraph F, all other disputes between Buyer and Seller will be resolved in accordance with paragraph B of this provision.
- F. Notwithstanding any provisions herein to the contrary, Government Actions shall be final and binding on Seller, and Seller shall have no recourse against Buyer for such Government Action or Buyer's implementation thereof, unless and to the extent Buyer or Seller appeals pursuant to the terms of this provision.
- (i) If Buyer elects to appeal a Government Action pursuant to the "Disputes" clause in Buyer's Prime Contract, whether at Buyer's election or at Seller's request, Seller shall:
 - (a) assist Buyer in every reasonable manner; and
 - (b) be afforded a reasonable opportunity to participate in the prosecution of the appeal to the extent Seller's interest may be affected thereby. Buyer will not enter into an agreement to settle an appeal that affects Seller's interest without Seller's written consent.
 - (ii) If Buyer elects not to appeal a Government Action, Buyer shall notify Seller with reasonable promptness. When Buyer elects not to prosecute an appeal pursuant to this provision, Buyer may, in its sole and absolute discretion, permit Seller to prosecute the appeal of the Government Action for Buyer and in such event, Buyer shall, if requested by Seller, reasonably assist Seller in prosecuting the appeal. Seller shall reasonably keep Buyer informed of the progress of ANY SUCH appeal by, among other things, providing Buyer with copies of all pleadings and other relevant documents. For those pleadings and other documents filed by Seller, Seller shall provide Buyer drafts in advance of the filing date sufficient to afford Buyer with a reasonable time to review.
 - (iii) Any decision on or settlement of an appeal brought pursuant to subparagraphs F(i) or F(ii) of this provision shall be binding upon Seller insofar as it relates to or affects the Parties' rights and interests under this Order and Seller shall have no recourse against Buyer as a result of the decision or settlement or Buyer's implementation thereof. Further, if as a result of any decision or settlement described in the immediately preceding sentence, Buyer is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which Buyer has reimbursed Seller, Seller shall, on demand, promptly repay such amount to Buyer.
 - (iv) Each party shall bear its own costs for prosecuting appeals brought pursuant to subparagraph F(i) of this provision. Seller shall bear the cost of prosecuting appeals brought pursuant to subparagraph F(ii) of this provision (including reasonable attorney fees) and any other costs incurred by Buyer:
 - (a) in assuring itself of the validity of Seller's appeal; and
 - (b) assisting Seller in the prosecution of the appeal.
 - (v) Before submitting a claim that Buyer may approve to be appealed hereunder, Seller shall:
 - (a) certify its claim in the same manner and format as required of Buyer under its Prime Contract with the Government; and
 - (b) provide Buyer with such other assurances as Buyer may require.
 - (vi) Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates and their respective directors, officers, and employees (collectively, for the purposes of this subparagraph, "Buyer") from and against any and all liabilities, claims, losses and expenses arising out of:
 - (a) Buyer's sponsoring a claim on Seller's behalf as provided for in this provision,
 - (b) any misrepresentation of fact or fraud on the part of Seller, its employees, subcontractors or agents in connection with such claim; or
 - (c) a defect in Seller's certification.



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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 subparagraph, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.

- (vii) Nothing in this provision nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

26 INSURANCE. [\(back to top\)](#)

- A. During the period of performance of this 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:
 - (iv) 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.
 - (v) 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 Order.
- E. Coverage shall not exclude claims brought in the United States and all insurance required as a part of this 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 and Automobile 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 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.

27 BUYER OR GOVERNMENT PROPERTY. [\(back to top\)](#)

- A. If Buyer or Government property is furnished in conjunction with this Order, it shall be furnished "as is." Accordingly, Buyer disclaims any warranty of suitability and or serviceability. Unless otherwise noted in this 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 or the Government while such property is in Seller's possession or control. Excluding property authorized to be consumed in the performance of this 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 Order. Seller shall control and maintain Government- or Buyer-furnished property in accordance with a system that meets the requirements of FAR 52.245-1.
- B. Seller shall use Buyer- or Government-furnished property only for performing this Order, unless otherwise provided for in this Order or approved by Buyer. Seller shall not modify, cannibalize, or make alterations to Buyer- or Government-furnished property unless this Order specifically identifies the modifications, alterations or improvements as work to be performed.
Buyer and Government shall retain title to all Buyer- or Government-furnished property. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer or the Government, nor shall Buyer- or Government-furnished property become a fixture or lose its identity as personal property by being attached to any real property.
- C. Seller shall immediately discharge any lien, other than a lien held by Buyer or the Government on Buyer- or Government-furnished property.
- D. The requirements related to accounting for Buyer- or Government-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.

28 REPRESENTATIONS AND CERTIFICATIONS. [\(back to top\)](#)

- A. As of the time of award of this Order, Seller represents and warrants that:
 - (i) Seller has submitted to Buyer annual representations and certifications that are incorporated herein by reference;
 - (ii) Seller's representations and certifications are current, accurate and complete;
 - (iii) Neither Seller nor any of its principals is debarred, suspended, or proposed for debarment by the Government.
 - (iv) If Seller is representing itself as a small disadvantaged business, that:
 - (a) It has been certified by the Small Business Administration (SBA) as a small disadvantaged business consistent with 13 CFR 124, Subpart B, and no material change in disadvantaged ownership, control or net worth qualification has occurred since its certification, and it is identified as a certified small disadvantaged business concern by the SBA (see FAR 52.219-8); or
 - (b) It has submitted a completed application to the SBA or a Private Certifier to be certified as a small disadvantaged business in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and no material change in disadvantaged ownership or control has occurred since its application was submitted.
- B. If Seller's status under any of the applicable representations and certifications has changed, Seller must complete and submit to Buyer revised representations and certifications prior to acceptance of this Order.
- C. If Seller's status under any of the applicable representations and certifications changes during performance of this Order, Seller must complete and submit to Buyer revised representations and certifications.

29 PROPRIETARY INFORMATION. [\(back to top\)](#)

- A. Proprietary Information for purposes of this Order, means all knowledge 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



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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 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 Order, Seller further agrees to affix the following legend "Huntington Ingalls Industries 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 Order, provided each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to Buyer's Proprietary Information.
- D. If a separate proprietary information or non-disclosure agreement relating to the subject matter of this 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 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 Order and will return Proprietary Information to Buyer upon completion of the work to be performed under this 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.

30 PATENT, TRADEMARK, TRADE SECRET, AND COPYRIGHT INDEMNITY. [\(back to top\)](#)

- 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 liabilities, claims, losses and expenses arising out of any allegation of patent, copyright, or trademark infringement or allegation of trade secret misappropriation (collectively or individually, "Claim") resulting from Indemnified Parties' use, manufacture, or sale (including any re-sale) of any product or service Seller provides to Buyer that Seller authorizes expressly or impliedly under this Order. 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 to conduct such defenses if it so chooses.
- B. Notwithstanding the foregoing, when this 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 Order shall be coextensive with Buyer's liability.

31 COMPUTER SOFTWARE AND DATABASES. [\(back to top\)](#)

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 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 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 Order terms may specify a maximum number of copies that may be made. Any limited rights or other legend(s) permissibly applied under this 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.

32 DATE/TIME PROCESSING REQUIREMENT – INFORMATION TECHNOLOGY. [\(back to top\)](#)

- A. All information technology, whether commercial or noncommercial, delivered under this Order that will be required to perform date/time processing involving dates subsequent to December 31, 1999, shall be "Year 2000 compliant with respect to information technology" (as defined at FAR 39.002) if properly installed, operated, and maintained in accordance with the contract specifications and applicable documentation. If this Order requires that specific deliverables operate together as a system, this requirement shall apply to those deliverables as a system. The "proper exchange" of date/time data shall be in accordance with the interface requirements specification(s) of this Order.
- B. "Information Technology" or "IT," as used in this provision, means "information technology" as that term is defined at FAR 2.101, and further including those items that would otherwise be excluded by paragraph (3) of that definition.
- C. For line item deliverables that are commercial items (as defined at FAR 2.101), and that include commercial IT, the terms and conditions of the standard commercial warranty covering such commercial IT shall apply in addition to, and to the extent such terms and conditions are consistent with, this requirement. Any applicable commercial warranty shall be incorporated into this contract by attachment.
- D. Notwithstanding any term to the contrary in any other warranty of this Order, or in the absence of any such warranty(ies), the remedies available to Buyer under this provision shall include those provided in the "Inspection" provision of this Order. Nothing in this provision shall be construed to limit any rights or remedies that Buyer or the Government may otherwise have under this Order.
- E. Unless specified elsewhere in this Order, Seller will also deliver to Buyer a report summarizing any Year 2000 compliance testing that was performed, and the results thereof.
- F. The remedies available to Buyer and the Government for noncompliance with this provision shall remain available for 180 days after acceptance of the last deliverable IT item under this Order (including any option exercised hereunder), whichever is later.



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33. MARKING REQUIREMENTS. [\(back to top\)](#)

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 Order.

34. EXPORT AND IMPORT COMPLIANCE. [\(back to top\)](#)

- A. Export Compliance. Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either:
 - (i) A U.S. Person as that term is defined in the Export Laws and Regulations; or
 - (ii) That it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status.
- B. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.
- C. Foreign Personnel/Persons. Seller shall not give any Foreign Person (including Seller's own non-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph C shall relieve Seller of its obligations to comply with paragraph A of this provision or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A, nor constitute consent for Seller to violate any requirement of the Export Laws and Regulations.
- D. Indemnification. Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates and their respective officers, directors, and employees from and against any and all liabilities, claims losses and expenses arising out of the failure of Seller, its employees, subcontractors, or agents to comply with the requirements of this provision and breach of the warranty set forth in paragraph A. 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. Buyer has the right to conduct such defenses if it so chooses. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this provision shall be a material breach of this Order.
- E. Subcontracts. The substance of this provision shall be incorporated into any lower-tier subcontract entered into by Seller for the performance of any part of the work under this Order.

35. EUROPEAN UNION (EU) SAFE HARBOR. [\(back to top\)](#)

With respect to personal information about Seller's employees located in European Union (EU) countries, Buyer 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.

Buyer.

36. SITE CONDITIONS. [\(back to top\)](#)

If Seller is required to install or supervise the installation of equipment or to perform services at Buyer's or its customer's site, Seller shall inspect the location of the work at Buyer's or its customer's site and be familiar with its condition at the time of award of this Order. In no event shall either Seller's failure to inspect the site prior to the award of this Order, or any circumstance that Seller should reasonably have discovered through such site inspection, constitute a basis for any claim for increased cost or additional time for performance.

37. TOXIC SUBSTANCES/HAZARDOUS MATERIAL. [\(back to top\)](#)

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 Order. In particular, paints, primers, or coatings on products required by this 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.

38. INDEMNIFICATION - THIRD PARTY CLAIMS. [\(back to top\)](#)

Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates, and their respective directors, officers, and employees (collectively, for the purposes of this provision, "Buyer"), from and against any and all liabilities, claims, losses, and expenses, arising from the acts and omissions of Seller, its employees, subcontractors, or agents, in their performance of this Order, except where Buyer is solely negligent. Seller shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer's reasonable attorneys' fees, and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.



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39. INDEMNIFICATION - GOVERNMENT REQUIREMENTS. [\(back to top\)](#)

In addition to any other remedies provided for in this Order, Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates, 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 Order to comply with any laws, regulations or ordinances. 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. Buyer has the right to conduct such defenses if it so chooses.

40. FORCE MAJEURE. [\(back to top\)](#)

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, 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.

41. INDEPENDENT CONTRACTOR. [\(back to top\)](#)

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.

42. RELEASE OF INFORMATION AND ADVERTISING. [\(back to top\)](#)

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this 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.

43. COMPLIANCE WITH LAWS. [\(back to top\)](#)

Seller shall comply with all applicable foreign and United States federal, state and local laws, statutes, rulings, ordinances, orders, and regulations in performing this Order.

44. CHOICE OF LAW. [\(back to top\)](#)

Both Parties agree that, irrespective of the place of performance of this Order, unless otherwise specifically provided herein, this Order will be construed and interpreted according to the laws of the state of Florida except its rules in regard to choice of laws. Venue for adjudication of claims under this Agreement shall not be contested and parties waive any right to contest such. Venue shall be any state court of competent jurisdiction located in Hillsborough County, Florida; and if the jurisdictional prerequisites exist, the United States District Court for the Middle District of Florida shall have sole and exclusive jurisdiction and venue to hear any dispute arising under or concerning this agreement.

45. BUSINESS CONDUCT. [\(back to top\)](#)

Seller shall not offer any gratuity to Buyer's employees, customers or their representatives in a manner inconsistent with the guidance provided in this pamphlet. Furthermore, any falsification, concealment, or alteration of any material fact, or any false, fraudulent or fictitious statement or representation in connection with the work under an order within the jurisdiction of the Federal Government is not only prohibited by Buyer's policy, but may also be punishable under Federal Law.

46. CONTINUING TERMS AND SEVERABILITY. [\(back to top\)](#)

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 And Import Compliance," provisions shall survive termination or cancellation of this Order. If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

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47. NON-WAIVER. [\(back to top\)](#)

Buyer's failure at any time to enforce any provision of this 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 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.

48. BANKRUPTCY. [\(back to top\)](#)

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



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the date of filing, the identity of the court in which the petition was filed, and a listing of all of Buyer's Orders against which final payment has not been made. This obligation remains in effect until final payment under this 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 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 Order to obtain such subcontractor's performance owed to Seller in connection with this Order and Buyer shall be entitled to set-off such amounts Buyer pays to such subcontractors from any amount owed to Seller under this Order.

49. PROGRAM MANAGEMENT. [\(back to top\)](#)

- 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 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.

50. FAR/DFARS CLAUSES/PROVISIONS. [\(back to top\)](#)

- A. The below listed FAR and DFARS clauses are incorporated by reference and made part of this Order with the same force and effect as though set forth in full text.
- B. Unless text in these clauses clearly reserves rights in the Government only or as otherwise noted, the terms "Contractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract contracting officer or duly authorized representative.
- C. Applicable thresholds include Truth in Negotiation Act Threshold (TINA) at \$700,000; Simplified Acquisition Threshold (SAT) at \$150,000; and Micro Purchase Threshold at \$3,000.
- D. Whenever the FAR or DFARS clauses include a requirement for the resolution of disputes between the Parties in accordance with the "Disputes clause," the dispute shall be disposed of in accordance with the provision entitled "Disputes" in this Order.
- E. The full text of a clause may be accessed electronically at <http://farsite.hill.af.mil>.

FAR CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
52.202-1	Definitions <i>("solicitation" means the Buyer's customer's solicitation under which the Order is issued)</i>	(Jul 2004)
52.203-6*	Restrictions On Subcontractor Sales to the Government <i>(applies to Orders over Simplified Acquisition Threshold (SAT)) (ALT I applies to commercial items)</i>	(Jul 1995)
52.204-2*	Security Requirements <i>(applies to Orders that involve access to classified information, delete para. (c))</i>	(Aug 1996)
52.211-5	Material Requirements <i>(the clause's requirement that Contracting Officer approval be obtained before using "surplus property" applies also to residual inventory resulting from terminated Government contracts or purchase orders awarded thereunder.)</i>	(Aug 2000)
52.211-15*	Defense Priority and Allocation Requirement	(Sep 1990)
52.219-8	Utilization of Small Business Concerns <i>(Seller's with Orders over \$650,000 that are large businesses must include FAR 52.219-8 in lower tier subcontracts offering subcontracting opportunities)</i>	(May 2004)
52.222-26*	Equal Opportunity	(Apr 2002)
52.222-35*	Equal Opportunity For Veterans <i>(applies to Orders of \$100,000 or more)</i>	(Dec 2001)
52.222-36*	Affirmative Action For Workers with Disabilities <i>(applies to Orders over \$10,000)</i>	(Jun 1998)
52.222-37	Employment Reports On Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	(Dec 2001)
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues Or Fees	(Dec 2004)
52.222-50*	Combating Trafficking In Persons	(Feb 2009)
52.222-54*	Employment Eligibility Verification <i>(applies to Commercial services and Construction Orders greater than \$3,000 performed in the United States)</i>	(Jan 2009)
52.223-3	Hazardous Material Identification and Material Safety Data	(Jan 1997)
52.223-11	Ozone-Depleting Substances	(May 2001)
52.223-12	Refrigeration Equipment and Air Conditioners	(May 1995)
52.223-15	Energy Efficiency in Energy-Consuming Products	(Dec 2007)



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FAR CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
52.225-13	Restrictions on Certain Foreign Purchases	(Jun 2008)
52.227-1*	Authorization and Consent	(Jul 1995)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement <i>(applies to Orders over the SAT threshold).</i>	(Aug 1996)
52.244-6	Subcontracts for Commercial Items	(Sep 2006)
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels (flow down required in accordance with paragraph (d) of FAR Clause 52.247-64)	(Feb 2006)
52.252-2	Clauses Incorporated by Reference	(Feb 1998)
DFARS CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
252.204-7000	Disclosure of Information	(Dec 1991)
252.211-7003*	Item Identification and Valuation <i>(applies to Orders when any item is listed as requiring unique item identification)</i>	(Jun 2005)
252.223-7001	Hazard Warning Labels <i>(applies to any Order that requires delivery of hazardous materials)</i>	(Dec 1991)
252.223-7008	Prohibition of Hexavalent Chromium <i>(applies to subcontracts for supplies, maintenance and repair services, or construction materials).</i>	(May 2011)
252.225-7014	Preference for Domestic Specialty Metals	(Jun 2005)
252.225-7012	Preference for Certain Domestic Commodities <i>(applies to Orders over the SAT threshold)</i>	(Jun 2004)
252.227-7013	Rights in Technical Data - Noncommercial Items <i>(applies only to technical data any portion of which was developed in any part at Government expense)</i>	(Nov 1995)
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation <i>(applies only to computer software or computer software documentation any portion of which was developed in any part at Government expense)</i>	(Mar 2011)
252.227-7015	Technical Data – Commercial Items <i>(applicable to Orders calling for the delivery of technical data for commercial items developed in any part at private expense)</i>	(Sep 2011)
252.227-7016*	Rights in Bid or Proposal Information	(Jun 1995)
252.227-7019*	Validation of Asserted Restrictions - Computer Software <i>(applies to Orders that will be furnishing computer software during performance of Order)</i>	(Jun 1995)
252.227-7037	Validation of Restrictive Markings On Technical Data <i>(commercial items or components exempt)</i>	(Sep 1999)
252.239-7000	Protection Against Compromising Emanations	(Jun 2004)
252.239-7016	Telecommunication Security Equipment, Devices, Techniques and Services <i>(applies to Orders that require securing telecommunications)</i>	(Dec 1991)
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts) <i>(supplements FAR 52.244-6)</i>	(Nov 2005)
252.246-7003*	Notification of Potential Safety Issues <i>(applies to Orders that Items are identified as: (i) critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)</i>	(Jan 2007)
252.247-7023*	Transportation of Supplies By Sea <i>(applies to Orders over the SAT; below the SAT only paragraphs (a) through (e), and (h), apply)</i>	(May 2002)
252.247-7024*	Notification of Transportation of Supplies By Sea	(Mar 2000)

* Denotes Mandatory Flow Down where applicable.

51. FLOW DOWN PROVISION. [\(back to top\)](#)

Buyer has indicated that certain provisions and FAR/DFARS clauses are required to be included in Seller's subcontracts with its lower tier subcontractors. That a clause or provision is not identified as a mandatory flow down, however, does not relieve Seller of its obligation to include the clause in lower tier subcontracts when required to satisfy Seller's contractual obligations under this Order.

52. EQUAL EMPLOYMENT OPPORTUNITIES FOR VETERANS AND PERSONS WITH DISABILITIES . [\(back to top\)](#)

52.1 Prime and Subcontractor must abide by the requirements of the below cited Federal Regulations, as applicable, and include this language in all subcontracts as may be required by the regulations:



8A & HUBZone Certified, Native American Owned Small Disadvantaged Business

This contractor and subcontractor shall abide by the requirements of 41 CFR 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

52.2 Subcontractor, when required to include this language in its subcontracts, shall ensure the two paragraphs in the section above are included in bold font as required by the Federal Regulations.