



**TERMS AND CONDITIONS ADDENDUM A
FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE FEDERAL
ACQUISITION REGULATION SUPPLEMENT (DFARS) FLOWDOWN
PROVISIONS**

Refs: Code of Federal Regulations (CFR); Federal Acquisition Regulation (FAR); Department of Defense FAR Supplement (DFARS); et al.

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ADDENDUM A - PURCHASE ORDER TERMS AND CONDITIONS FOR GENERAL AND RAW MATERIALS

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1. DEFINITIONS

1.1 The following words and expressions shall have the meaning hereby assigned to them for the purposes of this PURCHASE ORDER (P.O.) except where otherwise specifically stated or the context so requires:

- (a) "Authorized Purchasing Representative" means the person authorized by the Buyer's cognizant purchasing organization to administer and/or execute this Order and who has authority to make contractual commitments, to provide contractual direction, and to change contractual requirements of the Order on behalf of the Buyer.
- (b) "Buyer" shall mean Bath Iron Works (BIW) having its principal place of business in Bath, Maine.
- (c) "Contracting Officer" means the Government contracting officer(s) for the Prime Contract, except as noted under Clause 38 herein.
- (d) "Contractor" means Buyer in its capacity as the legal entity which contracts with the Seller by this P.O., except as noted under Clause 38 herein.
- (e) "Covered defense information" means unclassified controlled technical information or other information (as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>) that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is—
 - (i) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or
 - (ii) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract
- (f) "Controlled Unclassified Information" (CUI) is information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls.
- (g) "Cure Notice" refers to notification given by Buyer informing Seller of a possible default situation.
- (h) "Days" means calendar days unless otherwise stated.
- (i) "Delivery" or "Delivered" means the receipt at the F.O.B. Point of all Supplies ordered under the P.O., including all submittals, certifications, documentation and any other Supplies to be furnished under the terms of this P.O.
- (j) "Delivery Date(s)" shall mean the date(s) as set forth in the P.O., or any modification thereto for the Delivery of the Supplies or performance of the Services specified in this P.O.
- (k) "Dispute" refers to any situation where the Buyer and Seller disagree on an issue involving this P.O.
- (l) "F.O.B." means F.O.B. Destination, unless otherwise stated.
- (m) "Government" refers to the Government of the United States.
- (n) "Material Ordering Catalog" or "Specifications" means Buyer's statement of specifications for the Supplies or Services being acquired.
- (o) "National Stock Numbers" Whenever the term Federal Item Identification Number and its acronym FIIN or the term Federal Stock Number and its acronym FSN appear in the P.O. or their cited specifications and standards, the terms and acronyms shall be interpreted as National Item Identification Number (NIIN) and National Stock Number (NSN) respectively which shall be defined as follows:
 - 1. National Item Identification Number (NIIN). The number assigned to each approved Item Identification under the Federal Cataloging Program. It consists of nine numeric characters, the first two of which are the National Codification Bureau (NCB) Code. The remaining positions consist of a seven digit non-significant number.
 - 2. National Stock Number (NSN). The National Stock Number (NSN) for an item of supply consists of the applicable four position Federal Supply Class (FSC) plus the applicable nine position National Item Identification Number (NIIN) assigned to the item of supply.
- (p) "Party/Parties" means Buyer and Seller individually/collectively.
- (q) "P.O. Price" means the total sum of the Supplies or Services prices which individually may be called unit price(s).
- (r) "Prime Contract" refers to the Program contract agreement between the U.S. Government and BIW.
- (s) "Purchase Order (P.O.)" or "Subcontract" refers to these terms and conditions, the Purchase Order, other special terms or attachments, and any changes and/or modifications hereto.
- (t) "Seller" or "subcontractor" means the legal entity who sells or contracts to sell Supplies or Services to Buyer by this P.O.
- (u) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
- (v) "Sellers' Prices" means the F.O.B. prices for the Supplies.



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- (w) "Supplier" means sub-tier subcontractor to the Seller.
- (x) "Supply" or "Supplies" shall mean all or any part of the Supplies, articles, goods, or products contracted for by Buyer through this and any subsequent P.O.

2. ASSIGNMENT

- 2.1 Neither this P.O. nor any interest herein, may be assigned in whole or in part by the Seller without the prior written consent of Buyer. Any assignment or attempted assignment by the Seller without said prior written consent shall be null and void; provided, however, Seller may assign its rights to be paid amounts due as a result of performance of this P.O. to a bank, trust company, or other financing institution.
- 2.2 Nothing contained in this Clause shall prohibit any Party to this P.O. from assigning any or all of its respective rights, title and interest in and to this P.O. to the assigning Party's successor-in-interest by way of corporate merger, consolidation or acquisition, or assignment by operation of law. Such successor expressly assumes, agrees to be bound by, and undertakes to perform each and every one of the provisions of this P.O., and further assumes all obligations and liabilities hereunder of the original Party to this P.O.
- 2.3 All rights of the Buyer with respect to this P.O. may be assigned by the Buyer to the Government, or to such other party as the Government may designate without change in the P.O. price except for any equitable adjustment that may arise due to changes in the place of delivery, or to any other party, without the Seller's consent.

3. CHANGES

- 3.1 Buyer's Authorized Purchasing Representative may at any time, by written notice to Seller, make changes within the general scope of this P.O. in any one or more of the following: (a) drawings, designs or specifications; (b) description of supplies or services (c) method of shipping or packing; (d) place of inspection, acceptance, or point of delivery; and (e) delivery schedule.
- 3.2 If any such change causes an increase or decrease in the cost of performance, or the time required for performance of the work under this P.O., an equitable adjustment shall be made in the P.O. price or Delivery schedule, or both, and this P.O. shall be modified in writing accordingly. Any claim for adjustment shall be unconditionally waived unless: (a) asserted in writing and delivered to Buyer within fifteen (15) days of the date of the written change order and (b) fully supported in a proposal delivered to Buyer's Authorized Purchasing Representative.
- 3.3 Where the cost of property made obsolete or excess as a result of the change is included in the settlement of Seller's proposal for adjustment, Buyer shall have the right to prescribe the manner of disposal of such property to include the right to acquire that Product for cost claimed.
- 3.4 No change will be binding unless issued in writing by the Buyer's Authorized Purchasing Representative (rather than Buyer's engineering or technical representatives) and received by Seller.
- 3.5 Upon Seller's receipt of the written change order, nothing contained in this Clause shall relieve Seller from proceeding without delay in the performance of this P.O. as changed.

4. COMPLIANCE WITH LAWS

- 4.1 Seller warrants that in the performance of this P.O., Seller shall comply with all applicable Federal, State and local laws, orders, rules, regulations, and ordinances, whether or not such provisions are referenced elsewhere in this P.O., and including, without limitation, the Procurement Integrity Act (41 US Code 2101-2105) and its implementing regulations.
- 4.2 Seller also agrees to indemnify and hold Buyer and its assignees harmless from, any and all loss, costs, damages, expenses or liability (including reasonable attorney's fees) incurred by Buyer and its assignees, by reason of Seller's violation of this warranty, or as a result of any failure of Seller to comply with any such laws and regulations.
- 4.3 Seller shall maintain environmental, health and safety management systems as appropriate to ensure compliance with applicable federal, state and local requirements, including, without limitation those promulgated or prescribed pursuant to the Occupational Safety and Health Act of 1970, and any amendment thereto. Seller further agrees to continuously promote a safe and healthy workplace and a sustainable environment related to water and air quality, water and energy conservation, greenhouse gas emission reductions, solid and hazardous waste reductions. Seller shall convey the requirement of this clause to its suppliers.
- 4.4 Seller agrees to comply with any applicable provisions of the Rehabilitation Act of 1973, the Veteran's Readjustment Act of 1974, , and implementing regulations of the U.S. Department of Labor, which embody governmental policy on equal employment opportunity. **To the extent applicable, Buyer and Seller shall abide by the requirements of 41 CFR 60-300.5 (a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veteran sand qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.** Seller also agrees that in connection with activities under this P.O. it shall not make or promise to make any improper payments, or provide or offer to provide anything of value, directly or indirectly, to government officials or other parties in violation of applicable anti-bribery laws, including the Foreign Corrupt Practices Act.



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5. CONFIDENTIALITY

- 5.1 The Seller and Buyer recognize that information disclosed to and/or acquired by each other hereunder may be confidential and/or proprietary to the disclosing Party, the disclosure of which to third Parties could result in irreparable harm to the Party furnishing such information. The Parties agree that each Party has the right to seek and obtain temporary, preliminary and permanent injunctive relief to restrain any unauthorized use or disclosure of its proprietary information in addition to all other remedies available to that Party in law or equity.
- 5.2 All information of a proprietary nature disclosed by one Party to the other Party hereto in connection with this P.O. and designated by the disclosing Party by an appropriate stamp, marking, or legend as being proprietary to the disclosing Party, shall be held in strict confidence by the receiving Party and shall not be duplicated, used or disclosed in whole or in part for any purpose except by the Seller under equivalent conditions of confidentiality, and to the extent strictly necessary to obtain Supplies or Services in the normal course of trade for the performance of this P.O. and to comply with other terms of this P.O.; and except by Buyer to the extent strictly necessary for its intended use as required by the Government under the Prime Contract. Buyer may disclose such information subject to equivalent conditions of confidentiality to their Sellers or prospective Sellers to the extent necessary for defining interface characteristics of Supplies to be delivered hereunder provided that they make such disclosure and restrictions on use as contained in this Clause.
- 5.3 Special rules apply to protecting "Controlled Unclassified Information" or "CUI" and "Personal Information" or "Personally Identifiable Information" ("PII"). If CUI or PI/PII is collected, developed, received, transmitted, used, or stored by or on behalf

of the Seller in support of the performance of this P.O., the Seller agrees to be bound by all applicable Federal, State, and local laws, as well as any applicable international laws.

- 5.4 The information to be held in confidence as provided in Paragraphs 5.1 and 5.2 hereof shall not include:
- (a) any information that is in the public domain at the time of disclosure to the receiving Party or thereafter comes into the public domain other than by breach by the receiving Party of this P.O.; or
 - (b) any information in the possession of the receiving Party prior to its receipt from the disclosing Party (except through prior disclosures in confidence), or which is independently developed by the receiving Party without resort to the disclosed proprietary information; or
 - (c) any information which the receiving Party rightfully obtains from a third Party without restriction; or
 - (d) any information for which the disclosing Party by written agreement authorizes its restricted use or disclosure.

If any portion of the Party's information falls within any one of the above exceptions, the remainder shall continue to be subject to the restrictions of this Clause.

- 5.5 To the extent reasonably necessary for the purpose of this P.O. or the Prime Contract, a Party may disclose the information described in paragraphs 5.1 – 5.2 of the other Party to the Government provided that the disclosing Party makes such disclosure with the appropriate restrictive legends and such other marking of an industrial property right as the Party owning the information may require, provided that such marking is not disallowed under the provisions of the Prime Contract. Buyer may furnish to the U.S. Government form, fit and function data, manuals and instructional materials to the extent required under the Prime Contract.
- 5.6 Nothing contained herein shall be construed to prevent either Party from complying with the requirement of a court or other quasi-judicial or regulatory body acting within its jurisdiction to compel disclosure, provided that in the event that either Party receives a demand for compulsory disclosure of the other Party's information, it shall promptly so advise the other Party, in writing, and before disclosure. In all cases, the Parties should limit the disclosure to the minimum necessary to comply with the requirements of such demand or process as required by law.

6. CONFLICT MINERALS DISCLOSURE

- 6.1 Seller certifies that, regardless of whether Seller is publicly traded or not, Seller does not procure Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. (the "Rule").
- 6.2 Seller certifies and warrants that all products that will be delivered to Buyer by Seller under this Order are DRC Conflict Free, as defined by and consistent with the Rule.
- 6.3 Seller agrees that, if required by the Rule, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to Buyer pursuant to this Order originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to Buyer pursuant to this Order, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict Mineral. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.



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- 6.4 Seller agrees that it shall require its own subcontractors and suppliers (at any tier in the supply chain for a product delivered to Buyer under this Order) to furnish information to Seller necessary to support Seller's obligations under this Section.
- (a) Seller will maintain records reviewable by Buyer to support its certifications above.
 - (b) Seller acknowledges that Buyer may utilize and disclose Conflict Minerals information provided by Seller in order to satisfy its disclosure obligations under the Rule.
 - (c) If Buyer determines that any certification made by Seller under this Section is inaccurate or incomplete, Buyer may terminate this P.O. for Default.

7. COUNTERFEIT PARTS PREVENTION

- 7.1 Seller shall strictly adhere to and fully comply with DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System. And 252.246-7008 Sources of Electronic Parts.

8. DEFAULT

- 8.1 Buyer may terminate this P.O. in whole or in part by written notice of default, if the Seller:
- (a) fails to deliver the Supplies or to perform the Services within the time specified in the P.O. or any written extension authorized by Buyer's Authorized Purchasing Representative; or
 - (b) fails to make progress so as to endanger performance of this P.O.; or
 - (c) fails to perform any of the other provisions of this P.O.; or
 - (d) fails to cure (a)-(c) above to Buyer's satisfaction within 10 days after receipt of notice from Buyer specifying the failure; or
 - (e) declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors.
- 8.2 Buyer shall pay for completed Supplies and Services delivered and accepted in accordance with the prices set forth in the P.O. Buyer and Seller shall agree on the amount of payment for in process materials, title to which has been transferred and delivered to Buyer. Failure to agree shall be a dispute and shall be settled under the Disputes Clause herein. Seller must submit all claims within sixty calendar days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the P.O. price. The rights and remedies provided Buyer in this clause are in addition to any other right or remedies provided by law or in equity.
- 8.3 If Buyer terminates this P.O. in whole or in part by reason of Seller's default, Buyer may acquire (re-procure) under the terms and conditions and in the manner Buyer considers reasonable and appropriate such similar Supplies or Services to those terminated. The Seller shall be liable to Buyer for any excess costs for Supplies or Services so acquired, it being understood that the Seller shall continue to work on that portion not terminated.
- 8.4 Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this P.O., all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

9. DISCONTINUANCE OF MANUFACTURE

Should Seller decide to discontinue manufacture of the Supplies purchased by Buyer under this P.O., Seller: (1) shall provide written notice to Buyer of the intended supply discontinuance; and (2) shall provide Buyer a minimum of twelve months from the written notification date to allow Buyer to place final "lifetime buy" P.O.s for the Supplies at a unit price to be negotiated, but in no event higher than the unit price provided in this P.O. In the event one or more "lifetime buy" P.O.s are made during such twelve month period, Seller shall deliver the purchased Supplies to Buyer no later than six months after the end of the "lifetime buy" period. Seller's obligations under this clause shall extend for two years beyond the effective date of this P.O. irrespective of whether the P.O. is completed/terminated within the two year period.

10. DISPUTES

- 10.1 Disputes:



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- (a) "Dispute" as used herein shall mean any and all claims or disputes that in any way arise out of or relate to this P.O., the negotiation or execution thereof, its performance, or the breach or enforcement thereof. Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, unfair competition, unfair trade practices, or other tort law claims. The foregoing notwithstanding, the parties also intend and agree that, because of the nature of such matters, the following claims are not subject to the agreement to negotiate set forth herein: (1) claims regarding ownership, validity, infringement, or misappropriation of either party's intellectual property; (2) claims regarding a breach of obligations relating to the Nondisclosure Agreement(s), if any, or Confidentiality clause herein.
 - (b) This P.O. shall be interpreted and the rights and obligations of the Parties shall be determined in accordance with the laws of the State of Maine without reference to that state's conflicts of laws. Except for the right of either party to apply to a court of competent jurisdiction for equitable relief necessary to preserve the status quo or prevent irreparable harm as established below, the parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any dispute, controversy or claim arising out of or in connection with this P.O., including without limitation any dispute regarding the enforceability of any provision, which cannot be resolved through good faith negotiations within sixty (60) days or such longer period of time as may be mutually agreed between the Parties, shall be submitted to and finally resolved by a court of competent jurisdiction in the State of Maine.
 - (c) Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this P.O. unless otherwise directed by Buyer in writing. Each party acknowledges that the other party will suffer irreparable harm and that there is no adequate remedy at law if, pending settlement or any controversy or claim, the other party fails to diligently perform its obligations under this P.O. The non-breaching party shall be entitled to interim equitable relief or injunctive relief. In such an event, both parties hereby expressly consent to the jurisdiction of the courts in the State of Maine.
 - (d) Buyer's rights under the terms and conditions of this P.O. are cumulative and in addition to any other rights available at law or equity.
 - (e) This provision is not applicable to, and does not in any way limit any remedies available to a party with respect to, any dispute between either party to this P.O. and a third-party.
- 10.2 Disputes Related to Prime Contract:
- (a) Except for changes identified as such in writing and signed by Buyer, the Seller shall notify Buyer, in accordance with the Notices requirement, in writing promptly, within forty-five (45) days from the date that the Seller identifies any conduct (including actions, inactions, and written or oral communications) on the part of the Buyer that Seller regards as a change to or inconsistency with the contract terms and conditions.
 - (b) Notwithstanding paragraphs 8.1(b) and 8.2(a), any Dispute arising under or related to this P.O., which Buyer could include in a claim or other demand under the disputes provisions of the prime contract, shall be resolved in accordance with 8.2(a) above, and as follows: (i) Seller shall provide Buyer with a fully supported written claim, properly certified as prescribed by FAR 33.207, within sixty (60) days after the claim accrues; (ii) Seller shall cooperate with Buyer in prosecuting Seller's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and (iii) Seller shall pay its proportional costs in pursuing the claim. If Seller fails to provide Buyer with a written claim for any Dispute within the time frame prescribed hereunder, Seller is deemed to have waived the claim.
 - (c) Buyer's entire liability to Seller with respect to any matter prosecuted under the prime contract disputes clause shall be limited to the recovery obtained against the Government for Seller's claim, exclusive of Buyer's related markups. If Seller is affected by the resulting decision and Buyer elects to appeal, Seller shall pay to Buyer Seller's proportion of the appeal costs. If Buyer elects not to appeal the decision, Buyer shall notify Seller of that decision within ninety (90) days. If Seller submits a timely request to Buyer to appeal such decision, Buyer shall file and sponsor Seller's appeal, at Seller's sole cost, if Buyer may do so in good faith. Buyer has the right to review, prior to submission, any pleadings or other papers Seller may file in such appeal. Seller agrees to delete any



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admissions or statements in the pleadings or papers to which Buyer objects. If Buyer appeals such decision, whether or not at Seller's request, any decision regarding such appeal shall be binding on Buyer and Seller as it relates to this P.O. The choice of law specified in the prime contract shall not apply to Disputes and appeals prosecuted under the prime contract.

- (d) Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this P.O. unless otherwise directed by Buyer in writing.

11. ENVIRONMENT, SAFETY, AND HEALTH

The Seller shall provide Supplies and Services for any Buyer program in accordance with the P.O. scope of work that ensures the Supplies or Services can be tested, operated, maintained, repaired, and disposed of in accordance with Environmental, Safety, and Occupational Health (ESOH) statutes, regulations, policies, and, as applicable, environmental treaties and agreements (collectively termed regulatory requirements). The Seller shall review regulatory requirements and, where applicable, establish a program to identify and evaluate environmental impact, safety and health hazards, including pollution prevention explosives safety, and appropriate use and disposal of the Supplies or Services. The Seller shall establish a hazardous materials management program to consistently reduce or eliminate the use of hazardous materials in Supplies or Services processes and products (Executive Order 13148).

12. EXCUSABLE DELAY

- 12.1 Notwithstanding any other provision in this P.O. to the contrary, the Seller shall not be liable for failure to perform any of its obligations under this P.O. arising out of unforeseeable causes beyond its reasonable control without Seller's fault or negligence, including, but not limited to, acts or omissions on the part of Buyer; acts of God; civil strife; labor strikes; actions on the part of the Government or sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; or freight embargoes. Unforeseeable causes does not include known and foreseeable COVID-related impacts at the time Seller provides a price. "Known and foreseeable COVID-related impacts" are those related to the Sever Acute Respiratory Syndrome-Coronavirus Disease 2019 (COVID-19) pandemic, recognized as a national emergency on March 13, 2020, that could impact cost, schedule, or performance, and that are actually known or a reasonable person in Seller's position would know at a given point in time.
- 12.2 If delay or failure arises out of causes beyond the reasonable control of both the Seller and the Seller's subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for damages occasioned by delays in Delivery unless the Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other known sources in sufficient time to permit the Seller to meet the required Delivery schedule.
- 12.3 In the event of an excusable delay under this Clause, the time of performance shall be extended by such period as may be deemed reasonable by the Buyer.
- 12.4 If and whenever it becomes apparent that progress in the furnishing of Supplies and Services is being or is likely to be delayed (whether or not such delay is excusable), the Seller shall immediately give written notice to Buyer of the material circumstances including the cause or causes of the delay and shall give particulars of the expected effects thereof and estimate the extent of the expected delay. Seller shall give such further written notices to Buyer as may be necessary or as Buyer may reasonably require to maintain awareness on the status of the delay in order to mitigate impact of the delay to Buyer's operation.

13. MAINTENANCE OF RECORDS

- 13.1 Seller agrees that Buyer, the Contracting Officer or other duly authorized Government Representative shall, until the expiration of three (3) years after final payment under this P.O., have access to and the right to examine any directly pertinent books, documents, papers and records involving transactions pertaining to this P.O.
- 13.2 The periods of access to and right of examination of records which relate to (i) Buyer's appeals under the "Disputes" Clause of the Prime Contract, (ii) litigation or settlement of claims arising out of the Prime Contract, or, (iii) cost and expenses of the Prime Contractor this P.O. shall continue until such appeals, litigation or claims have been finally disposed of.

14. EXPORT & IMPORT COMPLIANCE

- 14.1 Seller shall comply with all applicable U.S. export control and sanctions laws and regulations, specifically including, but not limited to, the requirements of the International Emergency Economic Powers Act, as amended, 50 U.S.C. 1701-1706, and other sanctions laws and regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC); the Arms Export Control Act, 22 U.S.C.2751-2794 and the International Traffic in Arms Regulation (ITAR), 22



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C.F.R. 120 et seq.; and the Export Control Reform Act of 2018, 50 U.S.C. 4801-4852 and the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any registration, export license or agreement, if applicable. Without limiting the foregoing, Seller shall not transfer any export controlled item, software, technical data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

14.2 Import Compliance: Seller shall comply with all U.S. Customs laws and regulations (e.g., 19 C.F.R.) and all other applicable

U.S.G. regulations pertaining to importations of Products and materials into the U.S. for domestic Orders (Orders issued to entities addressed in the U.S.): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, U.S. Customs clearance, and payment of duty, taxes, and fees for Products entering into the U.S. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for Products procured through a domestic Order.

15. GOVERNING LAW

The laws (both substantive and procedural) of the State of Maine, in effect at the time of the execution of this P.O. shall apply without regard to the State's conflict of laws principles. Any action by either Party against the other shall be brought before any Court in the State of Maine, as applicable. Federal Common Law and Contract Law as applied by the Federal courts, boards of contract appeals and other administrative and quasi-judicial bodies of the Federal Government shall be used to interpret federal law, including federal procurement laws and regulations.

16. GRATUITIES

Seller warrants and agrees that it will comply with Buyer's policy providing that Buyer's employees and agents accept no gratuities or gifts from its vendors. Seller also warrants and agrees that it will comply with the Anti-Kickback provisions of 41 U.S.C. §§ 51-58. In addition to its other remedies provided by law or this P.O., Buyer shall have the right to deduct from this P.O. price the full amount of any gift or contingent fee made by Seller in breach of these warranties and may terminate this P.O. for default for breach of these warranties by Seller. Seller also agrees to indemnify and hold harmless Buyer for any claims, loss, damage or expense (including, without limitation, attorneys' fees), resulting from a breach of these warranties by Seller.

17. INSPECTION

For the purposes of this Clause the term "Supplies and Services" includes without limitation raw materials, components, intermediate assemblies, and end products.

17.1 Inspection Authority

- (a) Buyer may designate an individual as the Quality Assurance Representative (QAR) to whom all matters concerning Buyer's quality requirements on each P.O. shall be referred by the Seller. The designated QAR and his or her QAR staff shall possess the necessary Governmental and Company security clearances to be admitted to Seller's facilities and to inspect and test Supplies and review related quality assurance documentation.
- (b) If required, deliverable Supplies will be tested and approved for shipment at the location specified in the P.O.

17.2 Notice of Testing

Seller shall inform the QAR by written notice the date of any testing required by this P.O. Such notice shall be provided at least thirty (30) days prior to the actual test date.

17.3 Inspection

- (a) All Supplies shall be subject to inspection and test by the QAR (and/or the Government) at all reasonable times



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including the period of manufacture and performance and, in any event prior to Acceptance.

- (b) In case any Supplies and Services or lots of Supplies or Services are defective in material or workmanship or otherwise not in conformity with the requirements of this P.O., the QAR shall have the right to reject them, to require their correction or, in the case of Services, their re-performance.
- (c) All inspections and tests by the Buyer at Seller's facilities shall be performed in such a manner as not to unduly delay the work. Should the performance of such inspection or test unduly delay the work of Seller, such delay shall be excusable within the meaning of the Clause entitled "Delivery Date and Excusable Delays," and Seller shall be entitled to an equitable adjustment in price and/or Delivery pursuant to the Clause entitled "Changes." Buyer reserves the right to charge to the Seller any additional cost to Buyer for inspection and testing when Supplies and Services are not ready at the time stipulated for such inspection or test by Seller's aforementioned notice or if re-inspection or retest is necessitated by prior rejection.
- (d) Final acceptance or rejection of the Supplies or Services shall be made as promptly as practicable, but no later than sixty (60) days after Delivery of the Supplies or Services to the F.O.B. Destination point; or performance and inspection of the Services as applicable. Failure by Buyer to inspect and accept or reject Supplies or Services shall not relieve the Seller of responsibility for supply of such Supplies or Services in strict accordance with the P.O. requirements.
- (e) The inspection or test by the Buyer of any Supplies or Services or lots thereof does not relieve the Seller from any responsibility regarding defects or other failures to meet the requirements of this P.O. which may be discovered prior to final acceptance. Except as otherwise provided in this P.O., final acceptance shall be conclusive except in regard to latent defects, fraud, or such gross mistakes as amount to fraud or negligence.
- (f) The Seller shall provide and maintain an inspection system in accordance with the Specifications covering the Supplies and Services hereunder. Records of all inspection work by the Seller shall be kept complete and available to the designated QAR during the performance of this P.O. and for such longer period as may be specified elsewhere in this P.O.
- (g) Notwithstanding the requirements for any inspection and test contained in Specifications applicable to this P.O., except where inspections or tests are specified for performance solely by the Buyer, the Seller shall perform or have performed the inspection and test required to substantiate that the Supplies and Services provided under this P.O. conform to the drawings, Specifications and P.O. requirements listed herein.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 Seller represents and warrants that the Supplies and Services will not infringe or otherwise violate any intellectual property rights of any third party. Seller agrees to defend, indemnify, and hold harmless Buyer and its representatives and customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Supplies or Services infringe or otherwise violate the intellectual property rights of any person or entity. If Seller becomes aware of any claims that the Supplies or Services infringe or otherwise violate the intellectual property rights of any third party, Seller will promptly notify Buyer in writing.
- 18.2 Each Party shall retain its intellectual property rights in any specifications, drawings, other works of authorship, information and inventions created or conceived independently of this P.O. ("Background IP"). Seller grants Buyer and its customers a nonexclusive, worldwide, royalty-free license to practice rights in Seller Background IP in connection with their use of Supplies and Services purchased from Seller and to authorize their contractors to do the same. If Buyer provides Seller any Buyer Background IP in connection with this P.O., Seller shall use the same only for the performance of this P.O. Seller shall not otherwise practice rights in Buyer Background IP or seek intellectual property protection for any item using or based on Buyer background IP.
- 18.3 Buyer shall own all intellectual property rights with respect to any specifications, drawings, other works of authorship and inventions created or conceived in the performance of this P.O. ("Foreground IP"), and Seller shall use Foreground IP only for the performance of this P.O. Works of authorship that are Foreground IP shall be considered works made for hire commissioned by Buyer. To the extent that Seller has rights in or to Foreground IP notwithstanding the foregoing, Seller hereby assigns all such rights to Buyer. Seller agrees to give Buyer or its designees all assistance reasonably required to perfect such rights.

19. INVOICES AND PAYMENTS

- 19.1 **Invoices:** An invoice is a written request for payment under this P.O. for Supplies or Services provided by the Seller. In order to be properly prepared and valid, an invoice must include (as applicable)
 - (a) Invoice date and Seller's invoice number;
 - (b) Name of Seller;
 - (c) P.O. number, line item number, description of Supplies and Services, quantity, unit of measure, unit price, and extended total for the Supplies or Services being invoiced;
 - (d) Shipment number, date of shipment and shipping point for the Supplies or Services being invoiced;



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- (e) Name and address to which payment is to be sent in accordance with the terms specified in this P.O.;
- (f) Name, title, phone number and address of person to be notified in the event of a defective invoice;
- (g) Any other information or documentation required by other provisions of the P.O.;
- (h) Any prompt payment discounts available; and
- (i) Invoiced amounts for individual Supplies shall be shown separately on any invoice.
- (j) Invoices shall be prepared and submitted via email to biwap@gdbiw.com.

19.2 **Payments:** Buyer shall pay the Seller, upon the submission of properly prepared and valid invoices, the prices stipulated in this P.O. as may be adjusted. Seller's valid invoices are payable by Buyer no later than sixty (60) days after receipt thereof. The invoice will be deemed to have been received five (5) days after the invoice date. Payment shall be considered to have been made on the date which appears on the payment check. Payment shall not be considered as an indication of the acceptability of the Supplies or Services for which payment is made.

20. INDEMNIFICATION

Seller shall save harmless and indemnify Buyer from and against all claims, suits (including counsel fees and other expenses of suits, whether groundless or not), judgments and awards on account of any damage to property or injury (including death) to persons (including any damage or injury to the property or person of any employee of Seller or of Buyer) which may occur or be alleged to have occurred due to the negligence or other fault of Seller however arising out of or in connection with the performance of this P.O. on part of Seller. Seller shall also save harmless and indemnify Buyer from and against any and all costs, damages, fines, penalties and liabilities incurred by Buyer (including counsel fees and other expenses) as a result of Seller's or any of Seller's subcontractors' failure to comply with the provisions of this P.O. and with all applicable laws or regulations as set forth in this P.O. The obligations under this clause shall not be subject to Clause 42, Limitation of Liability.

21. LIABILITY INSURANCE

21.1 When Seller and/or its Suppliers are performing on Buyer's premises or on a vessel in which the Seller's Supplies and Services are being used, Seller shall purchase and maintain such insurance as will protect Buyer from claims which may arise out of or as a result from Seller's or its Suppliers operations under this P.O., whether such operations be by Seller or by any of Seller's Suppliers or by anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable. Said coverage shall include, but not be limited to any insurance required by State, Federal, and local laws, and contractual coverage and completed operations coverage and: (i) Statutory Workers' Compensation as may be required by the locality where the work is being performed, including Longshoremen's and Harbor Worker's Compensation Act; (ii) Employers' Liability - \$1,000,000 per occurrence; (iii) Commercial General Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Personal & Bodily Injury and Property Damage combined single limit per occurrence; and (iv) Automobile Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Bodily Injury and Property Damage combined single limit per occurrence.

21.2 As respects policies under (i), (ii) and (iii) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide 30 days advanced written notice of any coverage suspension or material changes, must be written by carriers with A.M. Bests rating of "A-, VII", and licensed to do business in the state where services are to be performed, and shall be primary as respects any coverage which Buyer may carry.

22. MARKING, PACKING, AND PACKAGING

22.1 All packing and packaging shall be in accordance with the Specifications. Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping on pallets, material or equipment must be adequately secured to meet ASTM Designation D3951-98, Part 5.1.5, Unitization.

22.2 All shipments shall be marked with the following information:

- (a) Buyer P.O. number for the product being shipped



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- (b) Buyer line item number for the product being shipped
- (c) Buyer catalog number (or NSN, if applicable) for the product being shipped
- (d) Quantity shipped for the product being shipped
- (e) SDS # (if applicable) for the product being shipped
- (f) QPL Source (if applicable) for the product being shipped
- (g) Shelf Life (if applicable) for the product being shipped Markings shall be on the face of each container (i.e., crates, boxes, cartons, etc.) or securely tagged to soft-sided containers.

22.3 All packing lists shall minimally contain the information in paragraph 22.2. The packing list shall be secured to the external surface of each container, or readily accessible upon entry to each container.

The Seller's commercial shipping document/packing list for P.O. items shall include proof that Government Source Inspection has been performed (if required) and the following Procurement Quality Audit (PQA) statement beneath Seller's statement:

Required PQA of listed items has been performed.

**Signature of Auth. Seller Representative, Date
(Typed name)**

22.4 Tagging, Labeling & Other Directions

- (a) Tags and labels, when required, shall be Seller's tags or labels conforming to the requirements of the Specification MIL-STD 129. Labels are authorized to be used on metal containers. Supplies requiring special certification shall be annotated on inner and outer container tags or labels indicating special certification compliance. Where the size of the shipping container allows, four address labels must be attached to the containers at the following location: (i) one (1) each on top of container, (ii) one (1) each on each side of the container, and (iii) one (1) each on front of container. For the purposes of this Clause the top, bottom, front and back of the container are not considered sides.
- (b) Within each container, each Buyer catalog number (or NSN, if applicable) shall be segregated (i.e., bagged, boxed, layered or partitioned) and readily identifiable with tags/labels reflecting information stated in paragraph 18.2 above. If multiple loose Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 18.2 above and mark all remaining Supplies as "part of" the Buyer catalog number.
- (c) Multiple orders shall not be shipped within a single container.
- (d) Multiple shipments to one (1) specified delivery location on any given day shall be consolidated under one (1) Bill of Lading.
- (e) Where different delivery locations are specified by the Buyer, each container shall include only material for one delivery location. Multiple delivery locations require separate Bills of Lading.

22.5 SDS Requirements

- (a) General
 1. The Seller shall provide information for each item of Hazardous Material to be delivered pursuant to this P.O. in the form of a current, updated Safety Data Sheet (SDS) in accordance with 29 CFR 1910.1200 Hazard Communication Standard, to the Buyer prior to P.O. award and in advance of any shipment. The SDS Sheet shall include a statement (if applicable) that the product contains a toxic chemical or chemicals, by name, subject to the reporting requirements of EPCRA Section 313 (40CFR372).
 2. In addition, each Safety Data Sheet provided by the Seller must contain specific disposal procedures for hazardous waste pursuant to and in accordance with all Resource Conservation Recovery Act (RCRA) Laws and Environmental Protection Agency/Department of Environmental Protection (EPA/DEP) Regulations.
 3. Buyer will then provide Seller with an SDS number. The SDS Number must appear on all packing slips, containers and packing containers and must be written as:

SDS Number #####

- 4. The use of Buyer provided SDS Labels (Fluorescent Orange) is mandatory. Labels shall be applied directly to the product.
- (b) Changes: For any change in the product the Seller shall submit a revised/updated SDS Sheet to Buyer in advance of any shipment.
- (c) Reporting Requirements for 313 Chemicals:
 1. On an annual basis (not later than 30 September of each calendar year) the Seller must provide either an updated SDS Sheet with any changes or a Certification Statement that the current SDS Sheet is accurate and complete.



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2. At a minimum the following must be included in each annual submittal: Name of each chemical substance, the Chemical Abstracts Service Registry Number (CAS#); and the percentage of weight of each hazardous substance or chemical in the mixture or trade name product.
3. Notification is also required within 30 days of the following events if the Supplier; (1) changes a mixture or trade name product by adding, removing, or changing the percentage by weight of a listed toxic chemical; or (2) discovers that previous notification did not properly identify the toxic chemicals in the mixture or correctly indicate the percentage by weight.
4. The reports shall be forwarded to:

Ideal Tridon Clamp Products
8100 Tridon Drive
Smyrna, TN 37167

Attn: EH&S

5. The shipment of all material or equipment to Buyer or another Buyer designated destination must comply with the Hazardous Materials Transportation Act (Title CFR 49 Parts 170 178).

23. NOTICES

Whenever any notice is required or authorized to be given hereunder by either Party, such notice shall be sent by email or registered mail or confirmed receipt to the respective individuals identified in the P.O.

24. NOTIFICATION OF CHANGES

- 24.1 The purpose of this Clause is to provide Buyer with the prompt reporting of any conduct which the Seller considers would constitute a change to this P.O. and/or Buyer's Prime Contract. The Parties acknowledge potential changes are to be identified and resolved as they arise. Therefore, except for written change orders issued by Buyer, Seller shall notify Buyer of any conduct which Seller considers constitutes or requires a change to this P.O. and/or Buyer's Prime Contract. Such notice shall be provided promptly and in any event within twenty (20) calendar days from the date the Seller identifies any such conduct. As used in this Clause, the term "conduct" includes both actions and failures to act, and the furnishing of, or the failure to furnish, any Supply under any provision of this P.O. The notice shall be written and shall state, on the basis of the most accurate information available to the Seller:

- (a) the date, nature and circumstances of the conduct regarded as a change;
- (b) the name, function and activity of the individuals directly involved in or knowledgeable about such conduct;
- (c) the identification of any documents and the substance of any oral communication involved in such conduct;
- (d) the particular elements of P.O. performance for which the Seller might seek an equitable adjustment under this Clause, including:
 1. what Supplies and Services have been or might be affected by the potential change;
 2. to the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
 3. to the extent practicable, the Seller's preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
 4. what and in what manner are the particular technical requirements or P.O. requirements regarded as changed.

- 24.2 Except as provided in Paragraph 20.5 below, following submission of notice the Seller shall take no action to implement a potential change until advised by Buyer in writing as provided in Paragraph 20.3 below, unless the potential change was previously directed by Buyer, in which case the Seller shall conform therewith. Nothing in this Clause shall excuse the Seller from proceeding with P.O. work in accordance with directions issued by Buyer.

- 24.3 Buyer shall promptly, and in any event within twenty (20) calendar days after receipt of notice, respond thereto in writing. In



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such response, Buyer shall either:

- (a) confirm that the conduct of which the Seller gave notice would constitute a change, and when necessary, direct the mode of further performance, or;
- (b) countermand any conduct regarded by Seller as a change, or;
- (c) deny that the conduct of which Seller gave notice would constitute a change and, when necessary, direct the mode of further performance, or;
- (d) in the event Seller's notice information is inadequate to make a decision under (a), (b), and (c) above, advise Seller what additional information is required.

Failure of Buyer to respond within the time required above shall be deemed a countermand under Paragraph 20.3(b).

- 24.4 Equitable adjustments for changes confirmed by Buyer shall be made in accordance with the Clause entitled "Changes" or any other provision of this P.O. which provides for an equitable adjustment.
- 24.5 Paragraph 20.2 above provides that Seller is to take no action to implement a potential change pending Buyer's response to Seller's notice of the potential change except where specifically directed by Buyer. In special situations, however, where:
 - (a) the circumstances do not allow sufficient time to notify Buyer of the facts prior to the need to proceed with the work, and;
 - (b) the work must proceed to avoid hazards to personnel or property or to avoid additional cost to Buyer, Seller may proceed with work in accordance with the potential change. In such special situations, Seller shall advise Buyer in writing within five (5) days of the conduct giving rise to the potential change that Seller has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within twenty (20) days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 20.1 above. Buyer shall respond as set forth in Paragraph 20.3 above. If Buyer determines that the conduct constitutes a change and countermands it, Seller shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.
- 24.6 When Seller identifies any conduct, which may result in delay of delivery of the Supplies and Services, Seller shall promptly so inform Buyer thereof prior to providing the notice required by Paragraph 20.1 above.

25. ORDER OF PRECEDENCE & SEVERABILITY

- 25.1 In the event of any inconsistency between provisions of this P.O., the inconsistency shall be resolved by giving precedence in the following order:
 - (a) any special Provisions of this P.O.;
 - (b) standard Terms and Conditions of this P.O.;
 - (c) Attachments (excluding the Specifications/Buyer Material Ordering Catalog and Statement of Work); and,
 - (d) Buyer Material Ordering Catalog, Specifications, and/or Statement of Work
- 25.2 This P.O. contains and constitutes the entire understanding and agreement between Buyer and the Seller, and supersedes all previous understandings and agreements relative to the subject matter contained herein.
- 25.3 If any provision of this P.O. is declared or found to be illegal, unenforceable or void, then the Parties shall be relieved of all obligations under that provision. In such case the remainder of this P.O. shall be held in full force and effect.

26. OFFSETS

Offsets are industrial compensation practices that foreign governments or companies require U.S. firms to enter into as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act (22 USC § 2751, et seq.) and the International Traffic in Arms Regulations (22 CFR §§120-130). Should all or part of the item(s) supplied under this P.O. be provided by sources outside the United States or its territories, Seller must inform Buyer of the country of origin and percentage of foreign content. Buyer reserves exclusive right to apply the equivalent value of foreign content in the item(s) provided by the Seller to the Offset Program of the Buyer's choice. Buyer may, at Buyer's discretion, provide written notice waiving its claim to offset credits accruing from this P.O., thereby allowing Seller use and discretionary application of such credits. Seller agrees to assist Buyer in securing Offset Credits from respective foreign government authorities in an amount equal to the value of foreign content in the item(s) provided.



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27. PERFORMANCE

The Parties acknowledge that Seller has special skills, knowledge and ability in the work to be performed under this P.O., and that Buyer is relying on Seller's skills, knowledge and ability in all matters related to Seller's Delivery of the Supplies and Services ordered under this P.O. Seller will use such skills, specific knowledge, ability, best efforts, ingenuity, and due diligence in delivering the Supplies and Services in accordance with the requirements of this P.O.

28. PRIORITY RATINGS

The Department of Defense may prioritize certain products for delivery under the Defense Production Act. Buyer may be subject to different priority ratings based on DoD's needs, and will flow down those priority ratings to its Sellers. "DO" rated orders must be given production preference over unrated (commercial) orders, and "DX" rated orders must be given preference over DO-rated orders and unrated orders. The priority rating for the Supplies and Services to be delivered under this P.O. is DO-A3, unless otherwise indicated in the upper right hand corner of this P.O. where it states "DPAS Rating." The priority rating identified on this P.O. will apply with respect to all work of the Seller performs in the United States. Seller shall follow the provisions of Defense Materials System Regulation 1 or Defense Priorities and Allocations System (DPAS) Regulation 1 (see 15 C.F.R. Part 700) and all other applicable regulations and orders of the Office of Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fulfill this P.O.

29. PROBLEM IDENTIFICATION REPORTS

Problem Identification Reports (PIR) shall be used by Seller to alert Buyer to actual or potential problems and to establish an early dialogue between Seller and Buyer with regard thereto. As used in this Clause, a problem is a fact or circumstance of which Seller is aware that does, will, or may (1) have an impact on the Delivery Schedule, completion or performance for the cost of this P.O. (increase or decrease), or (2) require a modification of this P.O. Seller shall provide Buyer with a written report of each problem within ten (10) days after Seller identifies such problem. Each PIR shall be dated, reference this P.O., and describe the nature of the problem; the date the problem arose; and, anticipated effects of the problem including, but not limited to, Delivery, and cost of performance, and Seller's recommended resolution of the problem.

30. PUBLICITY

Seller shall not, without first obtaining Buyer's written permission, in any manner imply any relationship or connection with Buyer, or advertise, promote, or publish the fact that it has furnished or has contracted to furnish Buyer with the Supplies herein ordered, nor disclose any of the details connected with the P.O. to any third party.

31. QUALITY ASSURANCE REQUIREMENTS

31.1 Seller shall establish and maintain a Quality Assurance Program which is subject to audit and approval of Buyer. All Supplies provided under this P.O. shall be inspected by Seller as part of such Program prior to submission for Government inspection and/or prior to shipment to verify conformance with all requirements and specifications. Seller shall comply with Quality Program Requirements of MIL-Q-9858A or the Inspection System Requirements of MIL-I-45208A when such requirements are invoked by the Specification applicable to the Supplies being purchased. If a Purchase Specification is invoked on this P.O., Seller shall examine the Purchase Specification for quality program requirements

31.2 Seller shall establish and maintain, subject to Buyer's right to audit, a system of material identification that ensures the use



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of specified materials and components. Supplies shipped shall be in such a manner as to permit verification of the use of such specified materials and components upon receipt by Buyer. Raw materials used by Seller in the fabrication or processing of the Supplies shall conform to the physical, chemical and other technical requirements of the applicable material Specification and Seller shall employ laboratory testing as necessary to confirm the identity of raw materials.

- 31.3 Government Procurement Quality Assurance (PQA) or Government Source Inspection (GSI). The Government reserves the right to inspect all Supplies. If Government Source Inspection is invoked by the P.O., Government inspection is required prior to shipment of the Supplies by Seller. Upon receipt of this notification, Seller must promptly notify and furnish a copy of the P.O. to the Government Representative who normally services Seller's plant. If Seller's plant does not have a Government Representative, Seller must notify the nearest Army, Navy, Air Force or Defense Supply Agency inspection office. In the event the representative or office cannot be located, Buyer should be notified immediately. When the P.O. invokes Government Procurement Quality Assurance, it is by authority of the Supervisor of Shipbuilding, Conversion and Repair; Bath, Maine, and Seller is required to furnish to the Government Representative at Seller's facility any subsequent modifications to the P.O. and to make available all referenced data applicable to the P.O..
- 31.4 When specified by the P.O., Buyer's Certification of Compliance (Form E99) must be completed and attached to the packing slip. When the Certificate is required, inspectors at the Supplies' destination cannot release material for use until the Certificate of Compliance is received. Payment of invoices will be withheld pending receipt of the certificate. When specified by the P.O., Seller shall furnish verifiable test data, including the names of witnessing inspectors and present any other verifiable quality data required by the P.O. or at any time up to and after final payment under the P.O.
- 31.5 Documentation and Other Verifiable Data. Quantitative, semi-quantitative or functional test results must be forwarded to Buyer when specified by the P.O. and/or invoked by Military or Purchase Specifications. Documentation must reflect actual test results and not merely that the minimum requirements of the P.O. or Military Specification have been met. Seller must retain a copy of such documentation for a minimum period of three (3) years after final acceptance of the Supplies.
- 31.6 Non-Conforming Products. Supplies which are received by Buyer and are found to be nonconforming by virtue of the fact that they are not in accordance with this P.O. or that the documentation or verifiable data are missing, incomplete or incorrect, may be returned to Seller at Seller's expense. Prior to returning the non-conforming Supplies, Buyer will notify Seller of the nature of the discrepancy such that, if possible, the discrepancy may be rectified at Seller's expense without returning the material to Seller.
- 31.7 Welding and Inspection of Piping. Seller shall comply with ABS Naval Vessel Rules (NVR) 8-3-3. NVR 8-3-3 invokes NAVSEA S9074-AR-GIB-010/278 and sub-tiers to such as follows:
 - (a) T9074-AS-GIB-010/271 – VT & NDT procedure and personnel qualification;
 - (b) MIL-STD-2035A – VT & NDT acceptance criteria;
 - (c) S9074-AQ-GIB-010/248 – Weld procedure and welder qualification; and
 - (d) NAVSEA 0900-LP-001-7000 – Brazing standard.

Seller shall be responsible to meet the latest revisions of above.

32. RECOGNITION OF ELECTRONIC DELIVERABLES

Data required to be delivered under the Subcontractor Data Requirement List (SDRL) of this P.O., that would be deemed Technical Data under DFARS 252.227-7013, if it were delivered in written form, shall not lose its status as Technical Data because access by the Buyer or Government, or delivery by the Seller, is by electronic means. The rights of the Parties in said Technical Data shall be as specified in DFARS 252.227-7013.

33. REPRESENTATIONS

- 33.1 Seller warrants that the prices, terms of payment, warranties and support services extended under this P.O. are no less favorable to Buyer than those extended to any other Seller customer as in effect on the date of this Order for substantially similar Supplies and quantities.
- 33.2 Seller certifies that all Supplies, except those listed below in this provision, are manufactured in the United States. (List each product manufactured Outside the United States. If none, say NONE.)
- 33.3 Seller hereby incorporates by reference any representations and certifications submitted via SAM or to the Buyer under annual certifications or in response to Buyer's request for these Supplies or Services.

34. RISK OF LOSS AND INSURANCE

- 34.1 **F.O.B. Destination:** Risk of loss of or damage to Supplies shall remain with Seller until, and shall pass to the Buyer upon, Delivery of the Supplies to the F.O.B. Destination point specified in the P.O. and the Buyer's acceptance of the Supplies, regardless of whether that acceptance is conditional or final.



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- 34.2 The Seller shall not be liable for loss of or damage to Supplies caused by the negligence of officers, agents, or employees of the Buyer acting within the scope of their employment.
- 34.3 **Delays:** Seller understands that Buyer depends upon prompt delivery by Seller at the time specified in the schedules furnished by Buyer in order to comply with Buyer's contractual obligations to third parties. Because time is of the essence, if delivery of the Supplies or Services is not made in the quantities and at the time and manner specified, Buyer shall have the right without liability, and in addition to its other rights and remedies under this P.O. and the law, to take any of the following actions: (1) direct expedited delivery of Supplies for which Seller shall bear all premium transportation charges and risk of loss; (2) direct acceleration of work for which Seller shall bear all premium labor costs and other acceleration costs; (3) delay payment for a period of time equal to the lateness of such delivery or performance; and/or (4) terminate this Order by written notice effective when received by Seller as to the Supplies or Service not yet delivered, and purchase substitute Supplies and Services elsewhere and charge Seller with any loss incurred. Seller shall, in the event of delay or threat of delay, due to any cause, in the production, delivery of Supplies or Services hereunder, immediately notify Buyer in writing of the delay. Seller's notice shall include all relevant information with respect to such delay or threatened delay. Seller shall be liable for any damages resulting from failure to make delivery within the time called for by this P.O. or by any written instructions of Buyer, except where such delay in delivery was due to causes beyond the reasonable control of Seller and Seller notified Buyer as required by these terms. Seller agrees to add the substance of this Section to each Order issued by Seller hereunder.
- 34.4 **Advance Shipments:** If, without written authorization from Buyer, Seller ships Supplies so as to arrive more than five business days in advance of schedule, Buyer may return the Supplies to Seller and Seller shall be liable for transportation charges and risk of loss for the return of the Supplies as well as for the shipment of the Supplies. Seller shall not invoice Buyer for payment prior to the scheduled delivery date. Invoices covering Supplies shipped in advance of the delivery schedule will not be paid until normal maturity after the specified date of delivery.
- 34.5 **Insurance:** The Seller shall bear the risk of loss or damage to any property of the Buyer in Seller's possession or care, and shall maintain adequate insurance so as to cover any such loss or damage, and shall name the Buyer as the additional insured and beneficiary of any payments therefrom with waiver of any right of subrogation.

35. SAFETY AND SECURITY

- 35.1 When the Seller or its Suppliers is performing any of its obligations on Buyer's premises or on a vessel in Buyer's care or custody, the Seller and its Suppliers shall comply with all Buyer plant rules and regulations and Buyer Safety and Security policies and procedures including, but not limited to, the use of personal protective equipment as required. At a minimum, the Seller and its Suppliers shall have in their possession a suitable hardhat, safety glasses with side shields, hearing protectors, and ANSI Z41 approved steel-toed safety shoes. A copy of Buyer's Environmental, Health and Safety Regulations Handbook outlining said policies and procedures can be located at GDBIW.com; select Purchasing, then Forms/Appendices, then Safety Regulations.
- 35.2 If Seller's or its Suppliers' personnel are to have access to classified material or classified vessel compartments, such personnel will be required to obtain all necessary security clearances prior to their access to such material or compartments.
- 35.3 Seller and its Suppliers shall utilize only U.S. citizens in execution of its obligations on Buyer property or on a vessel in Buyer's care or custody unless specific prior approval from Buyer is obtained.
- 35.4 By accepting this P.O., the Seller acknowledges that the following is applicable to any work performed on this P.O:
- (a) Only trained authorized personnel will operate or service equipment, and then only in accordance with manufacturer's recommendations,
 - (b) Seller and its Suppliers are responsible for properly managing hazardous waste generated by Seller or its Suppliers in accordance with applicable Federal, State and local regulations. Disposal of hazardous waste shall be coordinated and approved through the Buyer's Environmental Operations Department, and
 - (c) Seller and any relevant Suppliers have reviewed the Environmental, Health and Safety Regulations Handbook referenced above, and have duly disseminated it to any applicable personnel performing work on Buyer's property or vessels.

36. SHIPPING AND DELIVERY

- 36.1 Delivery of each item or group of items ordered shall be made no later than the last day of the Delivery time(s) set forth in the P.O. No deliveries shall be made earlier than the designated Delivery time(s) unless authorized in writing by the Buyer's Authorized Purchasing Representative.
- 36.2 Supplies shall be delivered to the locations indicated on the P.O., F.O.B. Destination, unless otherwise specified.
- 36.3 Freight Collect
- (a) If the P.O. indicates that Supplies are to be shipped "Freight Collect", Buyer will pay all freight charges and no amount covering these charges shall be included in the selling price for an item.
 - (b) Various shipment methods may be required by Buyer, depending on applicable factors, including but not limited



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to, weight, distance, shipping requirements, etc., Buyer reserves the right to require partial shipments, including components thereof, in support of Program requirements. At least five days prior to the time an item(s) is ready for shipment under this P.O., the Seller shall notify Buyer's Traffic Manager at 207-442-1266 as to when the item(s) will be ready for shipment. The Seller will then be given and shall comply with any special instructions concerning the shipment.

**(c) THE SELLER IS OBLIGATED TO OBTAIN AND FOLLOW SHIPPING INSTRUCTIONS
FROM BATH IRON WORKS CORPORATION PRIOR TO RELEASE OF MATERIAL
FOR SHIPMENT. THE SELLER SHALL**

REFER TO BIW LOGISTICS ROUTING GUIDE LOCATED AT: [Logistics Routing Guide – General Dynamics – Bath Iron Works \(gdbiw.com\)](#)

37. STOP WORK

Seller shall stop Work for up to ninety (90) days in accordance with any written notice received from Buyer, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

Within such period, Buyer shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

38. TERMINATION FOR CONVENIENCE

38.1 This P.O. and any and all rights granted and obligations assumed hereby may be terminated in whole or part by Buyer giving written notice to Seller. Upon receipt of a notice of termination, and except as otherwise directed by Buyer, Seller shall immediately, as to the terminated portion of this P.O. and regardless of any delay in determining or adjusting any amounts due under this clause, promptly stop work, notify subcontractors to stop work, and protect property in Seller's possession in which Buyer has or may acquire an interest.

38.2 Seller shall submit a termination settlement proposal within sixty (60) days after the effective date of termination. Buyer shall determine the amount due Seller on the Termination in accordance with FAR 52.249-2. Seller and Buyer shall agree upon the whole or any part of the amount to be paid because of the termination and the P.O. shall be amended and Seller paid the agreed amount. In no event shall Buyer be obligated to pay Seller any amount in excess of the total P.O. price. Seller shall continue as reduced by the amount of payments previously made and the P.O. price of work not terminated.

39. TITLE

Unless otherwise stated in the Clause entitled "Progress Payments", if applicable, title to the Supplies covered by the P.O. shall pass from the Seller to the Buyer upon the Buyer's acceptance of the Supplies at the F.O.B. Destination point.

40. WAIVER

Buyer's failure to enforce any provision of the P.O. or to protest any breach or default of the P.O. by Seller shall not be construed as evidence of (or evidence to interpret) the rights or obligations of the parties, or as a waiver of any Seller obligation or Buyer right provided under the P.O. or by law. No right or remedy of Buyer shall be deemed waived or released unless such waiver or release is in writing and signed by Buyer's Authorized Purchasing Representative. No waiver by either Buyer or the Seller, whether written or oral, expressed or implied, of any rights under or arising from this P.O. shall be binding on any subsequent occasion and no concession by either Buyer or the Seller shall be treated as a variation of this P.O. unless specifically agreed in writing.

41. WARRANTY

The Seller warrants that all Supplies and Services furnished under this P.O. will be in accordance with all contract requirements and free from defects or inferior materials, equipment, and



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workmanship for twelve (12) months after Final Acceptance of the Supplies and Services as provided in the "Inspection" clause of this P.O.

- 41.1 If, within the warranty period, the Buyer finds that the warranted Supplies or Services need to be repaired, changed or reperformed because of the use of materials, equipment or workmanship which, in its opinion, are inferior, defective or not in accordance with the terms of the P.O., insofar as it is practicable, the Buyer shall so inform the Seller in writing and the Seller, if so directed, shall promptly and without additional expense to the Buyer:
- (a) place in satisfactory condition the warranted work;
 - (b) satisfactorily correct direct damage to equipment, the site, the compartment or contents thereof, which is the result of such unsatisfactory warranted work;
 - (c) satisfactorily correct the work, materials and equipment that are disturbed in fulfilling the warranty, including the disturbed work, materials and equipment that may have been warranted under another contract; or
 - (d) furnish such materials or parts and installation instructions as may be required to successfully accomplish the required correction or replacement. The Seller shall also prepare and furnish to the Buyer data and reports applicable to any correction or replacement required under this Clause.

The decision as to whether the Seller or Buyer will perform the warranty work shall be at the discretion of Buyer provided, however, that insofar as is practicable, the Seller shall be afforded a reasonable opportunity to inspect and correct the questioned materials, equipment or workmanship prior to the performance of the warranty work by the Buyer. When the Buyer directs the Seller to perform the warranty work, if the Seller fails to proceed promptly in accordance with the warranty, Buyer may have such work performed at the expense of the Seller.

- 41.2 Any Supplies, Services or parts thereof corrected, repaired, replaced or otherwise placed in a satisfactory condition shall also be subject to the conditions of this Clause to the same extent as the Supplies or Services initially accepted. The warranties for such Supplies, Services or parts thereof shall be for twelve (12) months to run from the date of Buyer's final acceptance of such corrected, repaired or replaced Supplies or Services or until expiration of the original warranty period, whichever is longer.
- 41.3 The Buyer and/or the Government shall have the right to purchase parts for installation, either from the Seller, or directly from the Actual Parts Manufacturer (APM), without voiding this warranty. Any special warranty that may be required under this P.O. shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special warranties.
- 41.4 Seller shall obtain each transferable guaranty or warranty of equipment, material or installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's or installer's business or trade. In addition, the Seller shall obtain and furnish to the Buyer all information which is required in order to make any such guaranty or warranty legally binding and effective, and shall submit both the information and the guaranty or warranty to the Buyer to meet any time limit requirements specified in the guaranty or warranty, or if no time limit is specified in the guaranty or warranty, prior to completion and acceptance of all work under the P.O.
- 41.5 Any limitations to Seller's warranty obligations expressed in this Clause shall not apply when the defects or deficiencies in such Supplies or Services or the Buyer's final acceptance of such Supplies resulted from the willful misconduct or lack of good faith on the part of the Seller's QA representatives, or its officers, directors, managers or other equivalent representatives who had supervision or direction of production and/or inspection of such Supplies or Services.
- 41.6 No commercial warranty is given hereunder. All implied warranties of "merchantability" and "fitness for a particular purpose" are excluded from any obligation contained in this P.O.
- 41.7 Disputes arising under this Clause shall be resolved in accordance with the Clause entitled "Disputes."

42. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING FROM ANY PROVISION OF THIS P.O., SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, INCOME OR PROFITS, OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOSS OF DATA OR SYSTEM USE. OBLIGATIONS ARISING UNDER SECTIONS 8.3 AND 20 ARE NOT CONSIDERED INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES AND SO THIS SECTION SHALL NOT APPLY TO THOSE OBLIGATIONS.



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43. GOVERNMENT "FLOW-DOWN" CLAUSES

Pursuant to Buyer's Prime Contract with the U.S. Government and Buyer's acquisition policies, the following clauses are included in this P.O. "FAR" refers to the clauses in Part 52 of the Federal Acquisition Regulation (FAR), Chapter 1, Title 48 of the Code of Federal Regulations (CFR). "DFARS" refers to the clauses at Part 252 of the DOD FAR Supplement (DFARS), Chapter 2, Title 48 of the CFR. "NAPS" refers to the clauses at Part 5252 of the Navy Acquisition Procedure Supplement (NAPS), Chapter 52, Title 48 of the CFR. The FAR/DFARS/NAPS clauses incorporated herein are those in effect as of the effective date of this P.O., unless a date notation appears in the clause title. When the date is so indicated, the clause in effect on that date is incorporated into the P.O.

In the FAR, DFARS and NAPS Clauses incorporated herein, the cited terms shall have the following meanings: the term "Contractor" shall be deemed to refer to the Seller; the term "Subcontractor" shall be deemed to refer to the Seller's subcontractors; the "Contracting Officer" shall be deemed to refer to Buyer; and the term "Contract" refers to this P.O. except where the context of such clauses demand otherwise. Unless otherwise stated the FAR, DFARS and NAPS Clauses incorporated herein shall be those in effect on the issuance award date of this P.O., and they shall be interpreted in accordance with the definitions set forth at FAR 2.1 and DFARS 202.1.

In the event additional or revised "Flow-Down" clauses are invoked into Buyer's Prime Contract, they shall be flowed down as applicable to Seller, and deemed acceptable by both Parties as if set forth fully herein.

Some Clauses in the list below may not be applicable to specific orders due to factors such as the type of subcontract/purchase order to be issued, dollar thresholds, or other requirements of the FAR/DFARS, Public Laws, or Mandatory Flow Down Requirements of a particular Prime Contract. For example, Any Cost Reimbursement Clauses included herein shall only be applicable to Cost Reimbursement type P.O.s.

Clauses shall not be removed from the list. Instead, those clauses that are not applicable are deemed to be self-deleting and will be considered by the Parties to be without force and effect. Otherwise all Clauses are incorporated by reference.

<u>FAR Reference</u>	<u>Clause Title</u>
52.203-3	GRATUITIES
52.203-5	COVENANT AGAINST CONTINGENT FEES
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	ANTI-KICKBACK PROCEDURES
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APPLIES IF THIS CONTRACT EXCEEDS \$100,000.)
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT
<u>FAR Reference</u>	<u>Clause Title</u>
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS
52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE



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52.204-19	INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS
52.204-24	REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
52.204-24	REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT
52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.
52.204-26	COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION
52.204-27	PROHIBITION ON A BYTEDANCE COVERED APPLICATION
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.209-9	UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS
52.210-1	MARKET RESEARCH
52.211-5	MATERIAL REQUIREMENTS
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS
52.215-2	AUDIT AND RECORDS – NEGOTIATION
52.215-8	ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT
52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
52.215-11	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA - MODIFICATIONS
52.215-12	SUBCONTRACTOR COST OR PRICING DATA
52.215-13	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (DEVIATION 2022-00001)
52.215-14	INTEGRITY OF UNIT PRICES AND ALTERNATE 1
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (PRB)
52.215-19	NOTIFICATION OF OWNERSHIP CHANGES
52.215-21	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST AND PRICING DATA – MODIFICATIONS, AND ALT II AND ALT III
52.215-23	LIMITATIONS ON PASS-THROUGH CHARGES
52.216-7	ALLOWABLE COST AND PAYMENT AND ALT I
52.216-26	PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION
52.219-8	UTILIZATION OF SMALLBUSINESS CONCERNS
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN
52.219-16	LIQUIDATED DAMAGES-SUBCONTRACTING PLAN
52.219-28	POST AWARD SMALL BUSINESS PROGRAM REPRESENTATION
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
52.222-3	CONVICT LABOR
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION
52.222-19	CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES
52.222-21	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	EQUAL OPPORTUNITY
52.222-29	NOTIFICATION OF VISA DENIAL
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
FAR Reference	Clause Title
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT



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52.222-50	COMBATING TRAFFICKING IN PERSONS
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION
52.223-6	DRUG FREE WORKPLACE
52.223-11	OZONE-DEPLETING SUBSTANCES
52.223-12	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS
52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS
52.223-18	CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-1	AUTHORIZATION AND CONSENT
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.227-10	FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER
52.228-7	INSURANCE – LIABILITY TO THIRD PERSONS
52.229-3	FEDERAL, STATE, AND LOCAL TAXES
52.229-6	TAXES –FOREIGN FIXED PRICE CONTRACTS
52.229-10	STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX
52.230-2	COST ACCOUNTING STANDARDS
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS PAYMENTS
52.232-1	DISCOUNTS FOR PROMPT PAYMENT LIMITATION ON WITHHOLDING OF PAYMENTS
52.232-8	
52.232.9	
52.232-11	EXTRAS
52.232-16	PROGRESS PAYMENTS AND ALT II AND ALT III
52.232-17	INTEREST LIMITATION OF COST
52.232-20	LIMITATION OF FUNDS
52.232-22	
52.232.23	ASSIGNMENT OF CLAIMS AND ALT I PROMPT PAYMENT
52.232-25	PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT
52.232-33	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS
52.232-39	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS
52.232-40	
52.233-1	DISPUTES AND ALTERNATE I PROTEST AFTER AWARD AND ALT I
52.233-3	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM
52.233-4	
52.234-1	INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III PRIVACY OR
52.239-1	SECURITY SAFEGUARDS
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS PRODUCTION PROGRESS REPORTS
52.242-2	
52.242.3	PENALTIES FOR UNALLOWABLE COSTS
52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS
52.242-5	
52.242-13	BANKRUPTCY
52.242-15	STOP - WORK ORDER
52.243-1	CHANGES - FIXED PRICE AND ALTERNATE II
52.243-2	CHANGES – COST REIMBURSEMENT AND ALTERNATE I CHANGE ORDER ACCOUNTING
52.243-6	SUBCONTRACTS
52.244-2	
52.244-5	COMPETITION IN SUBCONTRACTING
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS
52.245-1	GOVERNMENT PROPERTY

DFAR Reference Clause Title



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GOVERNMENT “FLOW-DOWN”

CLAUSES FULL TEXT CLAUSES

Pursuant to Buyer’s Prime Contract with the U.S. Government and Buyer’s acquisition policies, the following Clauses are included in this SUBCONTRACT and/or DELIVERY ORDER in full text. As stated in the definitions clause, “Contractor” shall mean “Seller”, “subcontractor” shall mean Seller’s subcontractor, “Contracting Officer” and “Government” or “Navy” shall mean Buyer and “Contract” refers to this SUBCONTRACT and/or DELIVERY ORDER except where context of Clause otherwise demands and any reference to “Disputes” in these clauses shall be construed to only mean the clause 9 of this document entitled “Disputes”

NAVSEA 5252.227-9113 GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (AUG 1997)

(a) The Contractor shall participate in the appropriate interchange of the Government-Industry Data Exchange Program (GIDEP) in accordance with NAVSEA S0300-BU-GYD-010 dated November 1994. Data entered is retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve the Contractor from complying with any other requirement of the contract.

(b) The Contractor agrees to insert paragraph (a) of this requirement in any subcontract hereunder exceeding \$500,000.00. When so inserted, the word "Contractor" shall be changed to "Subcontractor".

(c) GIDEP materials, software and information are available without charge from:

GIDEP Operations Center
P.O. Box 8000
Corona, CA 91718-8000
Phone: (909) 273-4677 or DSN 933-4677



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FAX: (909) 273-5200

Internet: <http://www.gidep.corona.navy.mil>

ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE (NAVSEA) (JUN 1994)

- (a) Performance under this contract may require that the Contractor 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, the Contractor 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 Contracting Officer. The Government may unilaterally modify the contract to list those third parties with which the Contractor has agreement(s).
- (b) The Contractor 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 Contractor 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 ventures, affiliate, successor, or assign of the Contractor; 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 the Contractor has access in the performance of this contract that contains proprietary or other restrictive markings.
- (d) The Contractor agrees that it will promptly notify the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this contract 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) The Contractor shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a), substituting "subcontractor" for "Contractor" where appropriate.
- (f) Compliance with this requirement is a material requirement of this contract.

**COMPUTER SOFTWARE AND/OR COMPUTER DATABASE(S) DELIVERED TO AND/OR
RECEIVED FROM THE GOVERNMENT (NAVSEA) (APR 2004)**

- (a) The Contractor agrees to test for viruses all computer software and/or computer databases, as defined in the clause entitled "RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION" (DFARS 252.227-7014), before delivery of that computer software or computer database in whatever media and on whatever system the software is delivered. The Contractor warrants that any such computer software and/or computer database will be free of viruses when delivered.
- (b) The Contractor agrees to test any computer software and/or computer database(s) received from the Government for viruses prior to use under this contract.
- (c) Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this contract must be paid-up and perpetual, or so nearly perpetual as to allow the use of the computer software or computer database with the equipment for which it is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise the computer software or computer database does not meet the minimum functional requirements of this contract. In the event that there is any routine to disable the computer software or computer database after the software is developed for or delivered to the Government, that routine shall not disable the computer software or computer database until at least twenty-five calendar years after the delivery date of the affected computer software or computer database to the Government.
- (d) No copy protection devices or systems shall be used in any computer software or computer database delivered under this contract to restrict or limit the Government from making copies. This does not prohibit license agreements from specifying the maximum amount of copies that can be made.
- (e) Delivery by the Contractor to the Government of certain technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery may cause confusion between data rights and computer software rights. It is agreed that, to the extent that any such data is computer software by virtue of its delivery in digital form, the Government will be licensed to use that digital-form with exactly the same rights and limitations as if the data had been delivered as



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hard copy.

- (f) Any limited rights legends or other allowed legends placed by a Contractor on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human readable form on a visible surface of the media carrying the digital-form data as delivered, to the extent possible.

EXCLUSION OF MERCURY (NAVSEA) (MAY 1998)

Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with hardware or supplies furnished under this contract.

INCORPORATION OF REPRESENTATIONS AND CERTIFICATIONS

The Contractor's representations and certifications, submitted in response to the RFP that resulted in award of this contract, including any representations and certifications submitted via SAM are hereby incorporated by reference into this contract.

HIGHER LEVEL CONTRACT QUALITY REQUIREMENT

(a) The Contractor shall comply with the higher-level quality standard(s) listed below.
ANSI/ASQC Q9001:2015

(b) The Contractor shall include applicable requirements of the higher-level quality standard(s) listed in paragraph (a) of this clause and the requirement to flow down such standards, as applicable, to lower-tier subcontracts, in-

(1) Any subcontract for critical and complex items (see [46.203\(b\)](#) and (c)); or

(2) When the technical requirements of a subcontract require-

(i) Control of such things as design, work operations, in-process control, testing, and inspection; or

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

(End of clause)

**QUALIFICATION OF CONTRACTOR NONDESTRUCTIVE TESTING (NDT) PERSONNEL (NAVSEA)
(APR 2004)**

- (a) The Contractor and any Nondestructive Testing (NDT) subcontractor 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, ACN Notice 1 of 16 Feb 99. Documentation pertaining to the qualification and certification of NDT personnel shall be made available to the Contracting Officer for review upon request.
- (b) These requirements do not apply with respect to nuclear propulsion plant systems and other matters under the technical cognizance of SEA 08. Because of health and safety considerations, such matters will continue to be handled as directed by SEA 08.

USE OF NAVY SUPPORT CONTRACTORS FOR OFFICIAL CONTRACT FILES

- (a) NAVSEA may use a file room management support contractor, hereinafter referred to as "the support contractor", to manage its file room in which all official contract files, including the official file supporting this procurement, are retained. These official files may contain information that is considered a trade secret, proprietary, business sensitive or otherwise protected pursuant to law or regulation, hereinafter referred to as "protected information". File room management services consist of any of the following: secretarial or clerical support; data entry; document reproduction, scanning imaging, or destruction; operation, management or maintenance of paper-based or electronic mail rooms, file rooms, or libraries; and supervision in connection with functions listed herein.
- (b) The cognizant Contracting Officer will ensure that any NAVSEA contract under which these file room management services are acquired will contain a requirement that:

1. The support contractor not disclose any information;
2. Individual employees are to be instructed by the support contractor regarding the sensitivity of the official contract files;
3. The support contractor performing these services be barred from providing any other supplies and/or



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services, or competing to do so, to NAVSEA for the period of performance of its contract and for an additional three years thereafter unless otherwise provided by law or regulation; and,

4. In addition to any other rights the contractor may have, it is a third party beneficiary who has the right of direct action against the support contractor, or any person to whom the support contractor has released or disclosed protected information, for the unauthorized duplication, release, or disclosure of such protected information.
- (c) Execution of this contract by the contractor is considered consent to NAVSEA's permitting access to any information, irrespective of restrictive markings or the nature of the information submitted, by its file room management support contractor for the limited purpose of executing its file room support contract responsibilities.
- (d) NAVSEA may, without further notice, enter into contracts with other contractors for these services. Contractors are free to enter into separate non-disclosure agreements with the file room contractor. (Please contact Director, E Business Division for contractor specifics.) However, any such agreement will not be considered a prerequisite before information submitted is stored in the file room or otherwise encumber the government.