

BAE SYSTEMS SOUTHEAST SHIPYARDS JACKSONVILLE LLC
SUBCONTRACT TERMS AND CONDITIONS
(Form sk0811-JK, Rev. 1)

ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

These terms and conditions, the Buyer's prime contract, along with any special provisions or specifications appearing or referenced on the face of any Order constitute the entire agreement between Buyer and Seller, merge and supersede all communications, written or oral, prior to or contemporaneous with any Order, and shall not be subject to variation irrespective of any wording in Seller's acceptance and any additional or different terms appearing in Seller's acceptance are hereby rejected. An Order incorporating these terms and conditions becomes a binding contract when accepted by Seller, either by acknowledgment or commencement of performance.

Seller shall perform the services and provide the materials and supplies described in the Order and shall perform such other services and provide such other materials as may be added to the Order pursuant to the Changes and Notice provisions of these Subcontract Terms and Conditions (hereinafter collectively referred to as the "Work").

ACCESS TO SHIPYARD BY NON-U.S. CITIZENS.

Seller is hereby placed on notice that, at any given time, Buyer may have a United States Navy vessel in its shipyard and, in accordance with Buyer's prime contracts, only U.S. citizens are eligible for access to U.S. Navy vessels, work sites and adjacent areas, and shops where work in the naval vessel's equipment is being performed, unless prior approval is obtained for non-U.S. citizens. Seller warrants that, unless prior approval is obtained for non-U.S. citizens, only U.S. citizens shall have access to Buyer's shipyard.

Seller shall be responsible for ensuring that all personnel it assigns to this Order have all required work permits, appropriate licenses, and security clearances necessary to perform the Work. Seller shall produce such records at any reasonable time upon Buyer's request.

APPLICABLE LAWS

- (a) This Order and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State of Florida, excluding its choice of law rules.
- (b) (1) Seller shall comply with all applicable laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at Seller's expense.
- (2) Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes,

ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) If: (i) Buyer's contract price or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, Buyer may proceed as provided for in subparagraph 2(b)(4) below.

(4) Upon the occurrence of any of the circumstances identified in subparagraph 2(b)(3) above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Order or any other order with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded.

- (c) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

ASSIGNMENT

Seller may not assign this Order or any portion thereof without obtaining Buyer's written consent.

BUSINESS AND ETHICAL CONDUCT

- (a) It is the policy of Buyer that its acquisition and retention of business be conducted in accordance with the highest standards of honesty and integrity. Sales of its products and services must be free from even the perception that favorable treatment was sought or received, or that questionable activities were engaged in or condoned. Purchases of supplies, materials and services from Seller must be conducted with the same high standards. Severe criminal and civil penalties may be imposed on corporations and the individuals involved for violation of laws, federal and state, that affect the conduct of business under this Order.

- (b) The Government has amended the Federal Acquisition Regulations (FAR) to include Clause 52.203-13 Contractor Code of Business Ethics and Conduct. This clause requires: (i) a Code of Business Conduct and Ethics; and, (ii) compliance with mandatory disclosure reporting. Although the FAR flowdown of this clause to Sellers is subject to dollar and performance period thresholds, Buyer requires that all of its Sellers, as defined herein, comply with FAR 52.203-15 regardless of the purchase order value or length of the period of performance. Establishing a Seller Business Ethics and Conduct program is in the best interest of the Seller, Buyer and the Buyer's customer. Seller's Ethics Program can provide guidance for establishing an Ethics program upon request. Point of Contact is Seller's Ethics Officer at 888-306-7330.
- (c) Buyer maintains an ethics program that includes a written code of conduct, training and awareness for all employees, details of which can be found at www.baesystems.com/AboutUs/OurGlobalCodeofConduct/index.htm. Buyer requires all its suppliers to embrace ethical values of a comparable standard (including a method for reporting possible violations). Failure to comply with this requirement shall be a material breach of this agreement and subject to termination under the "Termination for Default" clause below.
- (d) The Seller is hereby on notice that it is Buyer's policy that Buyer's personnel owe complete loyalty to Buyer and are forbidden to accept money or things of value from any supplier of goods or service to Buyer, regardless whether such acceptance would constitute an act prohibited by any Anti-Kickback Covenant included in this Order. Seller for itself and its principal owners, stockholders, and officers warrants and covenants that no employee of Buyer has any financial interest in Seller (except such as has been disclosed in writing to Buyer's purchasing manager), and that Seller has not and will not directly or indirectly give anything to any employee of Buyer. Breach of the foregoing warranty and covenant shall entitle Buyer, in addition to any other rights and remedies, immediately to terminate for default any and all Orders to Seller outstanding at the time that Buyer learns of any such breach, regardless when such breach may have occurred.

CHANGES

Buyer or its prime contract customer may at any time, by written order, make changes within the general scope of any Order. Upon receipt of such a written change order, Seller shall proceed without delay with performance of the Order as changed. If any such change causes an increase or decrease in Seller's cost of, or in the time required for the performance of the Order, an equitable adjustment shall be made in the price or the time for completion, or both, and the Order shall be modified in writing accordingly; Seller's proposal for equitable adjustment shall be submitted to Buyer, in writing, within five (5) days of Seller's receipt of a written change order.

If any change shall have resulted or derived in any way from an act or omission or formal or constructive order by Buyer's prime contract customer, Seller's right to equitable adjustment

shall be contingent on, and the amount thereof shall be determined in accordance with the following:

- (a) Seller shall have provided to Buyer written notice of the facts giving rise to such change and shall have done so in time and in form sufficient to enable Buyer to provide to Buyer's customer notice sufficient to protect Buyer's right to equitable adjustment under Buyer's prime contract;
- (b) Buyer shall be liable to Seller only to the extent that Buyer's prime contract customer accepts liability or is determined to be liable therefore;
- (c) The amount of Seller's equitable adjustment, if any, shall not exceed that allowed or awarded to Buyer from its prime contract customer, less any profit or costs, or both, to which Buyer is entitled.

If the progress of the Work under this Order is delayed without fault or responsibility of Seller, then the time for performance of the Work shall be extended to the extent of the time extension obtained by Buyer under the prime contract for such specific delay, and the performance period and/or progress schedule shall be revised accordingly. Buyer shall not be liable to Seller for any damages or additional compensation as a consequence of delays or disruption, unless Buyer has first recovered the same on behalf of the Seller from the customer, it being understood and agreed by Seller that, apart from such recovery, Seller's sole and exclusive remedy for delay and disruption shall be an extension in time for performance of the Work.

CONFIDENTIALITY

Seller shall, in the course of Work hereunder, be exposed to and have access to information and data, which is considered the proprietary information of Buyer and/or Buyer's customer. Seller agrees that Seller, its agents and/or employees shall not, during the term of this Order or subsequent to the expiration thereof, disclose to any third party any information which Seller may acquire from or about Buyer or its customer or any information related to the business of Buyer or its customer; and Seller shall not use for his own benefit any such information or data. This restriction is not intended to extend to any information that is public knowledge or is made public by Buyer. In the event of a breach by Seller, Buyer shall have the right to bring an action for an immediate injunction (without posting bond) to enjoin the Seller from breaching this Order. Nothing in this clause shall waive any other rights or remedies that the non-breaching party may have against the breaching party.

CONTRACT DIRECTION

- (a) Only the Buyer's procurement or subcontract representatives have authority to make changes in, to amend, or to modify this Order. Such changes, amendments or modifications must be in writing.
- (b) Buyer's program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to

be a change under the "Changes" clause above, and shall not be the basis for equitable adjustment. If Seller believes the foregoing creates an actual or constructive change, Seller shall notify the Buyer Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph (a) above.

CUSTOMER COMMUNICATION

Buyer shall be solely responsible for all liaison and coordination with the Customer or any higher tier contractor(s) as it affects this Order or any Work thereunder or related thereto. Except as required by law, Seller shall not communicate with the Customer, and any higher tier contractor(s), with respect to this Order or any Work thereunder or related thereto, without prior approval of the Buyer's Procurement Representative. Seller shall promptly notify Buyer of any communications, initiated by the Customer or any higher tier contractor(s) that affects this Order or any Work thereunder or related thereto.

DISPUTES

If Buyer's prime contract contains a "Disputes" article or procedure, any claim, demand or request for adjustment of Seller originally derived or resulting in any way from an act or omission or formal or constructive order of Buyer's prime contract customer that is not disposed of by agreement, may, at Buyer's election, be submitted for resolution pursuant to such prime contract "Disputes" article. If Seller is the principal party-in-interest in connection with any such claim or demand, Buyer may authorize Seller to proceed under such Disputes provision in Buyer's name; if such authorization is provided, Seller shall have full responsibility for such proceedings and shall bear all expenses, including attorney's fees in connection therewith, provided however, that such authorization shall not constitute Seller the agent or attorney for Buyer.

Any and all other disputes arising from the making, performance, or termination of this Agreement shall be settled by binding Arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) are to govern this Arbitration. The Arbitration shall take place in the State of Florida. The dispute will be heard by a single Arbitrator. The Arbitrator shall be bound to follow the applicable subcontract provisions and the laws of the State of Florida in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The Arbitrator shall not have the authority to award punitive damages.

ENVIRONMENTAL

- (a) Hazardous Material Identification and Material Safety Data: Without regard to whether Buyer's prime contract is for the federal Government, Seller agrees to identify hazardous material as defined by FAR Clause 52.223-3 subparagraphs (a), (b), and (c), to submit a Material Safety Data Sheet as provided by subparagraph (d)

of that clause, and otherwise agrees to comply with the provisions of that clause as though Seller were in the position of "offeror" and "contractor" and Buyer were in the position of "contracting officer" as those terms are used in that clause.

- (b) Seller shall comply with all federal, state and local laws and regulations regarding the use of any "hazardous substances" (both terms as defined by both federal and state law) generated in the performance of this Order. Seller shall inform Buyer in writing of all hazardous waste expected to be so generated. Seller shall be solely responsible for the consequences of its failure to perform the foregoing obligations and shall defend and indemnify Buyer for all claims and liability, including penalties, resulting from Buyer's failure to so perform, negligent or otherwise.
- (c) If Seller causes, to any extent, the actual or potential release, spill, discharge or other loss of control of a hazardous substance or hazardous waste (an "incident"), such that Buyer's On-Scene Emergency Coordinator is notified to respond through Buyer's existing Environmental Incident Communications Policy and Procedure, Buyer will incur response costs which are extremely difficult and impractical to ascertain. Buyer and Seller agree that the sums set forth herein represent the minimum amount of cost and expenses incurred by Buyer to respond to each Incident. Accordingly, Seller agrees to pay to Buyer for each incident caused by Seller, Buyer's actual response costs, which are agreed to be not less than the sum of one thousand dollars (\$1,000.00). Such payment shall not relieve Seller of the responsibility to pay Buyer the actual costs of Buyer's remediation of an incident caused by Seller, if any, resulting from the incident, and shall not impair or waive Buyer's indemnification rights as set forth herein.

EXPORT CONTROLS

- (a) Seller shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774. Seller shall obtain all required export licenses or agreements necessary to perform Seller's Work, as applicable.
- (b) **If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.**
- (c) **Certification Regarding Registration with the U.S. Department of State, Directorate of Defense Trade Controls:** In compliance with ITAR, Contractor is registered with the United States Office of Defense Trade Controls.

- (d) If the technical data required to perform this Order is subject to the United States International Traffic in Arms Regulations (ITAR), Seller shall comply with the following:
- (1) The technical data shall be used only in performance of Work required by this Order; and
 - (2) The data shall not be disclosed to any other person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by Buyer and to any such data incorporated in documents generated by Seller; and
 - (3) Any rights in the data may not be acquired by Seller or any other Non-U.S. Person; and
 - (4) Seller shall return, or at Buyer's direction, destroy all of the technical data exported to Seller pursuant to this Order upon fulfillment of its terms;
 - (5) Unless otherwise expressly directed by Buyer, Seller shall deliver the Work only to Buyer or to an agency of the U.S. Government.
- (e) Where Seller is a signatory under Buyer's export license or export agreement (e.g. TAA, MLA), Seller shall provide prompt notification to the Buyer's Procurement Representative in the event of changed circumstances affecting said license or agreement.
- (f) Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, 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 a United States Government export license, export agreement, or applicable license exemption or exception.
- (g) Seller agrees to notify Buyer if any Articles or service to be delivered under this Purchase Order is restricted by export control laws or regulations.
- (h) Seller shall immediately notify Buyer's Purchasing Representative if Seller is listed in the Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (i) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act. **In compliance with 22 C.F.R. 130, Seller for itself, its principals, and its subcontractors warrants and covenants that neither Seller or its Subcontractor or any of their respective principals has paid, offered or agreed to pay, or will pay or offer to agree to pay, in respect to the Work which is to be provided to Buyer**

under any Order or Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.

- (j) For the purpose of this Article, “Foreign Persons” shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3) (i.e. persons granted asylum by the Government of the United States). It also means any Foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions). Further, United States Citizens, lawful permanent residents, or protected individuals who are employed by such foreign organizations shall be deemed “Foreign Persons” for the purpose of this Article.
- (k) All consultants, independent contractors and suppliers, who deliver material or provide services to the Buyer’s site will confirm in writing that they or their agents or employees meet one of the following criteria:
- (1) A citizen of the United States, or
 - (2) A lawful permanent residents as defined by U.S.C. 1101(b)(20), (i.e. Green Card Holders”), or
 - (3) A Protected Individual as defined by 8 USC 1324b(a)(3), or
 - (4) A foreign national for whom a current and directly relevant license or approval has been obtained from the U.S. Department of State.
- (l) Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are not citizens or nationals of the United States. They are not “lawful permanent residents” (also known as “green card holders”) under the Immigration and Nationality Act, and therefore do not meet the requirements of paragraph (h) above. These persons must be treated as Foreign Persons pursuant to paragraph (g) above. Further information is available at <http://www.uscis.gov>.
- (m) Seller shall indemnify, hold harmless and, at Buyer’s election, defend Buyer, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys’ fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this Section. Seller shall include the requirements of this Section in all agreements with lower tier subcontractors.
- (n) Buyer reserves the right to periodically audit Seller’s records for compliance with this Article.

FOREIGN CORRUPT PRACTICES PROHIBITION

- (a) By accepting this Order, Seller certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist Buyer or Seller in obtaining or retaining business.
- (b) Seller shall ensure that all lower tier subcontracts include this paragraph.

FURNISHED PROPERTY

- (a) Buyer may provide to Seller property owned by either Buyer or its Customer (Furnished Property). Unless previously authorized in writing by the Buyer's Procurement Representative, Furnished Property shall be used only for the performance of this Order.
- (b) Title to Furnished Property shall remain in Buyer or its Customer as applicable. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) The Furnished Property shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage to Furnished Property while in Seller's care, custody, or control. Without additional charge, Seller shall manage, maintain, preserve, and insure Furnished Property in accordance with good commercial practice.
- (d) At Buyer's request, and/or upon completion of this Order Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

INDEPENDENT CONTRACTOR

Seller's relationship to Buyer shall be that of an independent contractor and this Order does not create an agency, partnership, or joint venture relationship between Buyer and Seller or Buyer and Seller personnel. Seller personnel engaged in performing Work under this Order shall be deemed employees of Seller and shall not for any purposes be considered employees or agents of Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Order. Buyer assumes no liability for Seller personnel

INSPECTION AND TEST

Seller shall maintain a system of quality control including all inspections and tests necessary to insure conformance with the plans and specifications. At all times during Seller's performance, all material and workmanship shall be subject to inspection and test by Buyer or by its prime

contract customer; this right of inspection and test shall include rights of in-process inspection and test and of review of Seller's inspection and test documentation and records. All goods, Work, materials and services furnished hereunder shall be subject to final inspection after completion or delivery notwithstanding prior payment. Any inspection by Buyer or Buyer's customer, whether in-process or final, and any failure to inspect by Buyer or Buyer's customer shall not be deemed to constitute acceptance and shall not relieve Seller of its obligations hereunder, including, but not limited to those set forth at the clause "WORKMANSHIP AND MATERIALS", below. In addition to its obligations under the clause, "WARRANTY", below, Seller shall, prior to acceptance, promptly correct or replace any defective Work or materials to the satisfaction of Buyer and Buyer's prime contract customer. If Seller fails promptly to proceed with such correction or replacement, Buyer may, in addition to any other rights provided hereunder or by applicable law, by contract or otherwise, proceed with such correction or replacement and charge to Seller the cost thereof.

LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay Seller's performance of this Order, the Seller shall immediately give notice thereof to Buyer. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this paragraph in all subcontracts or purchase orders issued by Seller in connection with this Order.

LIABILITY, INSURANCE, INDEMNITY

- (a) Seller shall exercise due care to prevent accidents, injury, or damage to persons or property in or about the property of Buyer or Buyer's prime contract customer, and to any vessel or part thereof upon which Work is done or to which goods are furnished hereunder. If an Order requires the presence of any personnel of Seller or Seller's subcontractors or suppliers at Buyer's plant or on any property of Buyer's customer, including any ship on which Work is to be performed under Buyer's prime contract, Seller, Seller's employees, and much of Seller's subcontractors and suppliers as may be on such property shall strictly comply with all Buyer's regulations and procedures governing the conduct of Buyer's work, including, without limitation, Buyer's safety procedures. Without limitation of the foregoing, in connection with any Work performed on the property of Buyer or Buyer's customer, Seller shall comply with all requirements of any applicable federal, state, or local statutes and regulations, including, without limitation, the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651-678), and the Safety and Health Regulations for Ship Repairing (29 CFR 1915) promulgated under Public Law 85-742 amending §41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §941) and adopted by the Department of Labor under §6(a) of the Occupational Safety and Health Act of 1970 (See 29 CFR 1910.13).
- (b) Seller agrees to indemnify and obtain insurance coverage and provide Buyer with evidence thereof, all in accordance with that certain Indemnity Agreement executed by

Seller in connection with its acknowledgment of these Subcontract Terms and Conditions.

- (c) In addition to the insurance requirements set forth in said Indemnity Agreement, if Seller's Work will include providing professional services to Buyer, Seller shall maintain Professional Liability insurance in an amount not less than \$2,000,000 each occurrence; \$2,000,000 aggregate. This requirement may be increased by Buyer in the event Seller's Work includes the provision of engineering design services.
- (d) In the event that any form of dispute resolution is necessary to enforce this Article, the prevailing party shall be entitled to attorney's fees. This attorney's fees provision applies exclusively to this Article, and not generally with regard to any other terms, conditions, or provisions of any Order.

LICENSE AND PATENT RIGHTS

Where the Order calls for any research or development work, Buyer shall be granted a nonexclusive, royalty-free license to manufacture, use and sell any articles, compositions, devices, processes or the like in accordance with any patent application, invention, improvement or discovery (whether or not patentable), whenever such articles, compositions, devices, processes or the like were conceived or first reduced to practice, either in the performance of the Order or in the performance of any Work relating to the Order which was done upon the understanding that the Order would be awarded. Seller shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Buyer, its officers, agents, employees and indemnitees from and against any and all claims, losses, suits, damages, legal and otherwise, arising out of or in any way connected with any claim, action or proceeding for infringement of any United States or foreign patent, copyright, or trademark arising out of the Work under the Order, or out of use or disposal of said Work. If any claim or demand is made against Buyer for any matter enumerated herein, any payment due or thereafter to become due to Seller shall be held by Buyer to cover such losses and expenses, including attorney's fees.

LIENS

Without any additional action by Seller, Seller's acceptance of this Order includes a full waiver of and release of all liens, encumbrances and other rights in rem (perfected or unperfected) in respect of the goods and services covered by this Order. The waiver and release by Seller hereunder includes the following additional warranties by Seller:

- (a) that all Sellers' subcontractors, vendors, material-men, suppliers, journeymen, mechanics, laborers, and all other legal entities who have furnished labor, material, or services towards the performance of Seller's obligations under this purchase order have been paid and satisfied in full;
- (b) that there are no unsatisfied claims nor any other indebtednesses outstanding concerning the goods and Sellers's performance of this Order;
- (c) that Seller has made no hypothecation of sums owing to Seller which would require that another person or legal entity receive payment;

- (d) that Seller has not committed default of any bond or other third party guarantee or security device in respect of the goods and this Order;
- (e) that the goods furnished pursuant to the Order are not subject to fine, seizure, or forfeiture, in whole or in part; and
- (f) that no penalty of any nature whatsoever can be assessed against any of the goods nor any property to which the goods become a fixture, accession, or component part.

All of the foregoing warranties are continuing actions and undertakings of the Seller throughout the performance of this Order.

Seller warrants that all the foregoing are true and correct, and Seller undertakes that it shall save, hold, and keep harmless Buyer from all losses whatsoever, whether such losses are occasioned by debt, account, lien, encumbrance, forfeiture, fine, seizure, hypothecation, property damage, personal injury, statutory lien rights, or other operation of law.

In addition to the foregoing, Buyer, at its sole option, may request from Seller, and Seller will provide, a full and complete Waiver of Liens and Indemnification against Liens in a form satisfactory to Buyer from Seller and from all of Seller's factors, other financiers, material-men, subcontractors, and suppliers (herein "subordinates") having performed or supplied any portion of the goods or services, hereunder, at any time. Buyer, at its sole option, may also request from Seller, and Seller will provide Buyer with proof including affidavits and waiver of liens showing payments and release of all duties, taxes, liens, claims, charges and obligations arising by operation of law and otherwise out of Seller's and its subordinates' performance of the Work hereunder, and Buyer may withhold funds due to Seller hereunder to assure itself of the discharge of all such obligations, or to satisfy any requirements of law relating to such claims against Seller and its subordinates.

LIMITATION OF LIABILITY

In no event shall Buyer be liable for any claims of consequential, indirect, incidental or special damages of any nature whatsoever.

NEW MATERIALS

Unless authorized in writing by the Buyer's procurement or subcontract representative, all Work to be delivered hereunder shall consist of new materials, and shall not be used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

NOTICE

When Buyer's prime contract requires Buyer to give notice to the customer upon the occurrence of specified events, and the Seller knows or has reason to know a specified event has occurred, the Seller shall promptly give Buyer written notice of that event and, in any case, sufficient time to allow Buyer to timely give the customer any required notice. The Seller's notice shall contain all information it has or can reasonably obtain to enable buyer to comply fully with the informational requirements imposed by the customer. The Seller's failure to meet the

requirements of this clause shall bar any adjustment of time or amount to the Order to the extent Buyer's adjustment of time or amount to the prime contract is so barred.

NON-DISCLOSURE AND OWNERSHIP

Ownership of, and all rights with respect to any goods purchased under this Order, including all creative ideas incorporated therein, all preliminary materials, sketches, layouts, tooling, molds, dies, negatives, photographs, designs, blueprints or specifications relating thereto shall be vested exclusively in Buyer's company. Buyer may copy or reproduce any and all goods purchased hereunder for any and all purposes and may use the same in any and all media as often as it may so desire.

All plans, drawings, designs and specifications supplied by Buyer to Seller shall remain the property of Buyer, or Buyer's customer, and any information derived there from or otherwise communicated to the Seller, shall be regarded by Seller as strictly confidential and shall not, without the prior written consent of Buyer, be disclosed to any third party.

PACKING AND SHIPMENT

- (a) Unless otherwise specified in the prime contract, purchase order or other conditions of performance, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer's Contract or Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Order number.
- (c) Unless otherwise specified, delivery shall be FOB Destination

PAYMENT

- (a) Seller, upon submission of proper invoices, will be paid prices as stated in the Order for goods delivered and services completed and accepted, less deductions, if any, as herein provided. A calculation of payment due date and discount date, if applicable, is determined by date of final completion of Work or day of Buyer's receipt of proper invoice, whichever is later. Payments hereunder will be subject to set-off of any valid claim of Buyer (including its affiliated entities) against Seller arising from this or any other transaction.
- (b) Seller acknowledges that this order is in support of Buyer's prime contract and Seller agrees that it will submit its invoices within 30 days of the date on which the goods are delivered or the services are completed. Seller further agrees that its failure to submit a proper invoice within 30 days will render it subject to a 5% deduction of the amount of the invoice for each 30-day period for which the invoice is late and that

such deduction may be taken by Buyer pursuant to the payment set-off provision included in this clause.

- (c) In the event that this Order is in furtherance of a cost reimbursement contract, then Buyer reserves the right to invoke the following language by referencing this paragraph on the face of the specific Purchase Order:
- a. Seller is provided notice and acknowledges by accepting this Order that it is placed under a Cost Reimbursement Contract between Buyer and Buyer's customer and that Buyer will not have the cost of this Order reimbursed by its customer until it has paid Seller. If Seller fails to provide an invoice in a timely manner, Buyer's costs for goods or services incurred hereunder may be declared unallowable by Buyer's customer with subsequent refusal by Buyer's customer to reimburse Buyer for the goods or services supplied by Seller. Seller is required, as a specific deliverable under this Order to invoice for goods or services ordered herein within 30 days of the completion of its obligation hereunder.
 - b. The extent and amount of actual damages which would be suffered by Buyer as a result of Seller's failure to timely deliver its invoice, as stated above, are impractical or extremely difficult to determine or estimate. Therefore, the following liquidated damages represent the parties' best estimate of the sums which would be fair and average compensation for all losses that may be sustained. Seller shall pay Buyer an equal value of the subject Order as liquidated damages (and not as a penalty) for each occurrence of Seller's failure to timely deliver an invoice, with each failure occurrence being a separate default. Seller authorizes Buyer to deduct such damages from any money that may be due or may become due to Seller for stated materials or services.

PERFORMANCE AND DELIVERY

It is agreed that time is of the essence in performance of any Order incorporating these terms and conditions. Commencement and completion of Work or delivery of the goods ordered shall be strictly in accordance with the times set forth on the face of the Order, or, if no time is there set forth, in accordance with the requirements of Buyer's prime contract. If requested by Buyer, Seller shall submit to Buyer, in the form acceptable to Buyer, a detailed schedule for performance of the Order which schedule will comply with all schedule requirements of Buyer's prime contract. If the Order requires shipboard Work, Seller shall, at no additional cost to Buyer, coordinate its Work with that being performed by Buyer, other subcontractors of Buyer, and by Buyer's customer.

Seller shall furnish forces, supervision, equipment, and materials sufficient to complete the Order within the time required. If Seller falls behind schedule or if it otherwise appears that Seller will not complete Work or deliver goods within the time required, Buyer may, in accordance with the clause "TERMINATION FOR DEFAULT" hereof, terminate Seller's right to proceed with the Work or with such part thereof as is behind schedule. The Seller agrees, upon THREE CALENDAR DAYS written notice from Buyer, at Seller's expense, to provide the necessary

personnel and supply such equipment, materials, overtime workers and other devices and facilities as necessary so as to expedite the Order and meet or recover schedule. Such notice, once given, shall continue in effect until Work specified therein has been fully completed. The Seller shall work overtime at the direction of Buyer. If such overtime work is necessary to cure delinquency in maintaining the progress schedule, and such delinquency is directly or indirectly attributable to Seller, such effort shall be without additional cost to Buyer.

Should the Seller fail or neglect to complete all or any part of the Order, including any change order, within the time or times specified or otherwise delay Buyer by reason of Seller's failure or neglect to perform its obligations under the Order, including any change order, and if as a result Buyer shall incur damages or expenses, or become obligated to pay damages under the prime contract or shall otherwise incur additional expenses, including costs of acceleration or premium costs, the Seller agrees to pay Buyer as actual damages, and not as a penalty, all damages (including liquidated damages) or expenses (including attorney's fees) so incurred by Buyer.

PRECEDENCE

In the event of any inconsistency within the terms of an Order, including these terms and conditions, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Typed or handwritten special provisions appearing on the face of any Order, if any;
- (b) Special or additional terms and conditions referenced on the face of any Order, to include flowdown provisions from Buyer's prime contract, if any;
- (c) These Subcontract Terms and Conditions; and
- (d) Provisions, specifications, and drawings incorporated by reference.

PRICE WARRANTY

Seller warrants that the prices for goods covered by this Order shall not be greater than those quoted or last charged to Buyer unless so specified on the face of the Order.

Seller further warrants that the prices are the lowest prices charged by Seller to Buyers of a class similar to Buyer under conditions similar to those specified under this Order and do not exceed the prices allowed by law. Seller warrants that all discounts and allowances are as favorable as those then offered by Seller to Buyers of a class similar to Buyer. Seller further warrants that any price reduction made with respect to goods or services covered by this Order subsequent to the placement of this Order will be applicable to this Order.

PRIME CONTRACT

The prime contract together with all documents described therein and appurtenant thereto are incorporated by reference and made a part of the Order. Except as modified herein, the Seller

assumes the same obligations to Buyer under the Order that Buyer assumes to the customer under the prime contract, and the Seller shall comply with all conditions of the prime contract as they apply to the Work under the Order. By accepting the Order, the Seller acknowledges that it has had an opportunity to make a site visit to review conditions which may relate to its performance under the Order, and also acknowledges that it has reviewed the prime contract and all documents made a part thereof, including the drawings and specifications as they relate to its Work under the Order as well as other work which may interface with its Work.

PROGRESS PAYMENTS

If expressly so provided on the face of an Order, Seller shall receive progress payments in the same percentages and calculated in the same fashion as those provided in Buyer's prime contract. Determination of the percentage of completion of Seller's Work shall be made by Buyer and Buyer's prime contract customer; their decision shall be final and not subject to dispute by Seller. Seller shall submit invoices for such progress payments in a form acceptable to Buyer including such substantiation of costs incurred or progress made, or both, as Buyer may require. Such progress payments as are justified by suitable invoices and substantiation will be made within ten (10) days of Buyer's receipt of progress payments for the same period as the progress covered in Seller's invoices as are made under Buyer's prime contract. If Buyer's prime contract so provides, title to all Work in process, materials, equipment, or other property covered by progress payments shall vest in Buyer's prime contract customer, but this provision shall not be construed as effecting any acceptance or in any other way relieving Seller of its obligations of strict and timely performance, warranties, or any and all other obligations hereunder.

PROTECTION OF WORK

All loss of damage to the Work resulting from any cause whatsoever shall be borne and sustained by Seller and shall be solely at its risk until final acceptance by Buyer and Buyer's customer. Seller shall take necessary precautions to properly protect the Work and the work of others from damage caused by Seller's operations. Should Seller cause damage to the work or property of Buyer's customer or Buyer, or others, Seller shall promptly remedy such damage to the satisfaction of Buyer, or Buyer may so remedy and deduct the cost thereof from any amounts due or to become due Seller. Nothing herein shall limit any additional rights Buyer may have pursuant to this Order or law.

PUBLICITY, PROMOTION, ADVERTISEMENT

Seller shall not without the prior writing consent of Buyer, issue any news release, advertisement, publicity or promotional material regarding this Order or any other information regarding Buyer (including confirmation or denial thereof).

RECORDS AND AUDIT

To the extent that Seller is producing material or performing services specifically for Buyer, or if Seller is performing Work on Buyer's premises, or if Seller is performing Work on Buyer's or

Buyer's customer's equipment outside of Buyer's premises, Seller shall maintain records as follows:

- (a) Seller shall keep accurate daily records for all Work performed hereunder, and upon request it shall provide copies to the Buyer.
- (b) The records shall include the hours worked by each employee, the type of work performed, the wages paid, equipment and materials used and any other item of cost claimed by Seller or for which Buyer shall have reimbursed Seller.
- (c) Buyer shall have the right at all reasonable times during regular business hours, to inspect and audit such records.
- (d) Seller shall preserve such records for 36 months after completion or termination of this order

RIGHTS AND REMEDIES

The rights and remedies herein reserved to Buyer shall not be exclusive and shall be cumulative and additional to any other or further rights and remedies provided in law or in equity. If any provision of any Order is or becomes void and unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

The failure of Buyer to enforce at any time any of these terms and conditions or any other provisions of any Order, or to exercise any option provided therein, or to require at any time performance by Seller of any provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this agreement or any part thereof or the right of Buyer thereafter to enforce each and every such provision.

SAFETY

- (a) Seller shall be solely responsible for the safe conduct of its employees and subcontractors while performing the Work required under this Order. Seller shall comply with all applicable federal, state, and local health, safety and fire protection laws and regulations. Seller shall also comply with Buyer's safety policies and procedures. Seller shall inform Buyer in writing of all safety related problems or incidents immediately upon such occurrence.
- (b) Seller shall be solely responsible for the consequences of its failure to perform the foregoing safety obligations and shall defend and indemnify Buyer for all claims and liability, including penalties, resulting from Buyer's failure to so perform such safety obligations, negligent or otherwise. Seller shall also be responsible for all costs, including attorney's fees associated with any federal or state citation issued against Buyer resulting from the failure of Seller to comply with the safety obligations as stated in this Order
- (c) Seller may be terminated under the clause "TERMINATION FOR DEFAULT" below for significant or persistent safety or environmental issues.

SECOND TIER SUBCONTRACTING

No Work may be subcontracted by Seller without the express written consent of Buyer. If Seller intends to subcontract Work, Buyer must be furnished, in writing, a description of the specific Work to be subcontracted, the name of the company to be utilized, and a copy of the second tier subcontract or purchase order for approval. All of the applicable Order terms must be made part of the subcontract or purchase order to the second tier subcontractor.

SELLERS OF TEMPORARY LABOR

In addition to the terms herein, Seller warrants that temporary workers sent to Buyer are fit to perform the normal duties of a worker in the trade and at the skill level requested. Buyer reserves the right, at its sole, unfettered discretion, to order any worker supplied by Seller to cease work and exit the premises. Buyer shall not be responsible for paying Seller for the day on which any such worker is expelled. Buyer shall use its best efforts to promptly notify Seller of any such expulsion.

SEVERABILITY

In the event that any section, clause or provision of this Order conflicts with any applicable law, regulation, or ordinance, such conflict shall not affect other sections, clauses or provisions of this Order which can be given effect without the conflicting section, clause, or provision. To the end, the sections, clauses and provisions of this Order are declared to be severable.

STOP WORK ORDER

- (a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as Buyer and Seller may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, Buyer shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the clause "CHANGES" above shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

SUPERINTENDENCE BY SELLER

If any order requires Work to be performed at a site other than Seller's plant, Seller shall designate a project manager satisfactory to Buyer who shall be readily available at the site of such Work and authorized to act for Seller. A superintendent competent to supervise the Work shall be physically at the site of Work in charge of operations. Buyer may require Seller to remove from any such site any employees of Seller or of any subcontractor of Seller deemed by

Buyer or its prime contract customer to be incompetent or careless or for any other commercially reasonable reasons.

TERMINATION FOR CONVENIENCE

- (a) After receipt of a Notice of Termination and except as otherwise directed by Buyer, Seller shall:
- a. Stop Work as specified in the Notice;
 - b. Place no further subcontracts or orders for materials, except as necessary to complete the continued portion of the Order;
 - c. Terminate all subcontracts to the extent that they relate to the Work terminated;
 - d. Assign to the Buyer, as directed by Buyer, all right, title, and interest of Seller under terminated subcontracts of Seller;
 - e. Subject to Buyer's approval or ratification, settle all outstanding liabilities and subcontract termination claims;
 - f. As directed by Buyer in writing, transfer title and deliver to Buyer or Buyer's customer completed Work, fabricated, or unfabricated parts, Work in-process, supplies and other material produced or required for the terminated Work, including, but not limited to completed or partially completed plans, drawings, and other information that, if the Order had been completed, would be required to be furnished under the terms of the Order;
 - g. Complete performance of the Work not terminated;
 - h. Protect and preserve property relating to the Order that is in the possession of Seller in which Buyer or its prime contract customer has or may acquire an interest; as directed or authorized by Buyer, Seller shall use its best efforts to sell any property of the types referred to in subparagraph (6) above, provided, however, that Seller is not required to extend credit to any Buyer and may itself acquire any such property under conditions prescribed by and prices approved by Buyer. The proceeds of any such transfer or disposition shall be applied to reduce any payments to be made by Buyer under the terms of this clause or paid in such other manner as Buyer may direct.
- (b) Within thirty (30) days after receipt of a Notice of Termination, Seller shall submit to Buyer, in the form and with the certification prescribed by Buyer, Seller's termination claim.
- (c) Subject to the provisions of subparagraph (b), Seller and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Seller by reason of the total or

partial termination of Work pursuant to this clause. The amount so agreed may include a reasonable allowance for profit on Work done. However, the agreed amount, whether under this subparagraph (c), or subparagraph (d) below, exclusive of settlement costs, shall not exceed the total Order price as reduced by the amount of payment otherwise made and as further reduced by the order price of Work not terminated.

- (d) In the event of the failure of Seller and Buyer to agree as provided in subparagraph (c), Buyer shall pay to Seller the amounts determined as follows, but without duplication of any amounts agreed upon in accordance with subparagraph (c):
- a. The Order price for completed supplies or services accepted by Buyer and not previously paid for, appropriately adjusted for any saving of freight or other charges;
 - b. The total of:
 - i. The costs incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid for or to be paid for under subparagraph (1) above.
 - ii. A sum, as profit, on (i) above at a reasonable and customary rate therefor, provided, however, that if it appears that the Seller would have sustained a loss on the entire Order had it been completed, Seller shall be entitled to no profit under this subparagraph (ii) and an appropriate adjustment shall be made reducing the amount payable hereunder to reflect the indicated rate of loss.
 - c. The reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of a termination settlement claim and supporting data, and for the termination and settlement of subcontracts, and the reasonable cost of storage, transportation and other costs incurred for the preservation, protection, or disposition of termination inventory.
 - d. The total sum to be paid under (1) and (2) above shall not exceed the total Order price reduced by the amount of payments otherwise made and as further reduced by the price of Work not terminated.
- (e) The obligation of Buyer to make any payments under this clause shall be subject to deductions and offsets for all unliquidated progress or other payments on account made to Seller under the Order for any claim which Buyer may have against Seller, whether or not in connection with the terminated Order, and for the agreed price for or the proceeds of sale of any termination inventory retained by Seller or sold and not otherwise recovered by or credited to Buyer.

- (f) If the termination of an Order is partial, Seller may file a proposal with Buyer for equitable adjustment of the price or prices of the continued portion of the Order. Any claim for such an equitable adjustment must be asserted within thirty (30) days of Seller's receipt of Notice of Termination.

TERMINATION FOR DEFAULT

- (a) This Order may be terminated by Buyer, in whole or in part, whenever Seller defaults in its performance of this Order, and fails to remedy such default within FIVE CALENDAR DAYS after receipt by Seller of a notice specifying the default. Circumstances of default, include, but are not limited to the following:
- a. If Seller fails to make timely delivery of goods or to perform services within the time specified in an Order; or
 - b. If Seller fails to perform any of the other provisions of an Order, or so fails to make progress as to endanger performance of an Order in accordance with its terms; or
 - c. If Seller fails to comply with the "Safety" and/or "Environmental" clauses of this Order.
- (b) Except with respect to defaults of subcontractors of Seller, Seller shall not be liable for any excess costs if any failure to perform the Order arises from causes beyond the control and without the fault or negligence of the Seller, provided that Seller shall have provided to Buyer prompt notice of any such actual or potential cause or failure as soon as such cause shall have arisen. Such causes may include, but are not restricted to acts of God or the public enemy, acts of Buyer or Buyer's customers, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case, failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor of Seller and if such default arises out of causes beyond the control of both Seller and its subcontractor, and without the negligence of either of them, Seller shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by Seller's subcontractor were obtainable from other sources in sufficient time to permit Seller to perform within the time specified therein. As used in this clause, the word "subcontractor" means vendor or subcontractor at any tier.
- (c) In the event the Buyer terminates this Order in whole or in part as provided in this clause, Buyer may, upon such terms in such manner as it may deem appropriate, arrange for the completion of the Work so terminated. If the cost to Buyer of the Work procured or completed exceeds the price fixed for Work under the Order, Seller shall be liable for such excess.
- (d) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under, or applicable to, any

Order. In the event that the face of an Order contains a prime contract number, Seller is thereby placed on notice that Buyer's total damages by reason of Seller's default may include, but are not limited to damages and other costs imposed by the terms of Buyer's prime contract.

- (e) If Buyer effects a termination on the basis of a default by Seller, and it is thereafter determined, pursuant to this Order, that Seller was not in default, such termination shall then be deemed to have been effected for the convenience of Buyer or its customer.

TOOLING

If the order includes jigs, dies, fixtures, patterns, or special test equipment and manufacturing aids (hereinafter referred to as tooling) used in the manufacture of the articles, such tooling and drawings thereof become the property of Buyer or its customer immediately upon payment therefore. Tooling shall be used only for production for Buyer and shall be kept in good condition, including necessary replacement, without expense to Buyer, except that the cost of changes due to Buyer's change of design shall be paid for by Buyer.

Seller shall maintain property control records for such tooling and shall promptly furnish Buyer a list thereof upon request. Following completion or termination of this order, Seller shall hold all such tooling free of charge for six months following its furnishing of said inventory to Buyer, and any such tooling Buyer orders returned to it shall be delivered f.o.b. Seller's plant, properly crated for U.S. shipment. No crating charge is to be included in Seller's quotations unless expressly requested by Buyer.

TOOLS AND SUPPLIES

Seller shall furnish all required tools to complete the Work. Seller will not be permitted to use any Buyer tools unless specified in the Order. Seller shall indemnify and hold harmless Buyer, its officers, agents, and employees from and against any and all claims, notices, orders, losses, suits, damages (including consequential or punitive damages) legal and otherwise, and liabilities incurred by or asserted against Buyer which in any way arise out of or are related to the use of Buyer's tools or supplies by Seller. **Seller acknowledges that Buyer makes no warranty with regard to the merchantability or fitness for a particular purpose of the tools supplies, nor makes any other warranty, express or implied, with regard to said tools and acknowledges that the tools are being tendered to Seller "as is".**

WARRANTY

For all Work, Seller shall give the warranties called for in the prime contract for the time periods designated therein. In addition, Seller warrants that all Work and materials furnished hereunder will be free from defects in material and workmanship and will conform to applicable specifications, drawings, samples and descriptions, and if of Seller's design or selection, will be free from design defects and fit for intended use. Except as otherwise expressly provided, the foregoing warranties shall remain in effect for a period of ninety (90) days from the date of redelivery of the vessel under Buyer's prime contractor from the date of completion of any individual Work item incomplete at the time of redelivery of the vessel, whichever is later. The

foregoing warranties shall be in addition to any such standard warranty or guarantee of Seller and any warranties otherwise created by operation of law. All warranties and guarantees shall run to Buyer and Buyer's customers.

WORKMANSHIP AND MATERIALS

Work performed and goods supplied pursuant to any Order shall be in strict accordance with the specifications set forth or referenced in such Order, including all applicable plans and specifications of Buyer's prime contract. Unless otherwise specifically provided in any Order, or in Buyer's prime contract, all operational practices of Seller and all workmanship and materials shall be in accordance with the latest rules and requirements of the American Bureau of Shipping, United States Coast Guard and the American Institute of Electrical and Electronic Engineers, and with the best commercial marine practice; where Buyer's prime contract shall specify U.S. Navy specifications, Navy standards of material and workmanship shall be followed.

BAE SYSTEMS SOUTHEAST SHIPYARDS MAYPORT LLC
SUBCONTRACT TERMS AND CONDITIONS
(Form sk0811-MP, Rev. 1)

ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

These terms and conditions, the Buyer's prime contract, along with any special provisions or specifications appearing or referenced on the face of any Order constitute the entire agreement between Buyer and Seller, merge and supersede all communications, written or oral, prior to or contemporaneous with any Order, and shall not be subject to variation irrespective of any wording in Seller's acceptance and any additional or different terms appearing in Seller's acceptance are hereby rejected. An Order incorporating these terms and conditions becomes a binding contract when accepted by Seller, either by acknowledgment or commencement of performance.

Seller shall perform the services and provide the materials and supplies described in the Order and shall perform such other services and provide such other materials as may be added to the Order pursuant to the Changes and Notice provisions of these Subcontract Terms and Conditions (hereinafter collectively referred to as the "Work").

ACCESS TO SHIPYARD BY NON-U.S. CITIZENS.

Seller is hereby placed on notice that, at any given time, Buyer may have a United States Navy vessel in its shipyard and, in accordance with Buyer's prime contracts, only U.S. citizens are eligible for access to U.S. Navy vessels, work sites and adjacent areas, and shops where work in the naval vessel's equipment is being performed, unless prior approval is obtained for non-U.S. citizens. Seller warrants that, unless prior approval is obtained for non-U.S. citizens, only U.S. citizens shall have access to Buyer's shipyard.

Seller shall be responsible for ensuring that all personnel it assigns to this Order have all required work permits, appropriate licenses, and security clearances necessary to perform the Work. Seller shall produce such records at any reasonable time upon Buyer's request.

APPLICABLE LAWS

- (a) This Order and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State of Florida, excluding its choice of law rules.
- (b) (1) Seller shall comply with all applicable laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at Seller's expense.
- (2) Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes,

ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) If: (i) Buyer's contract price or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, Buyer may proceed as provided for in subparagraph 2(b)(4) below.

(4) Upon the occurrence of any of the circumstances identified in subparagraph 2(b)(3) above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Order or any other order with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded.

- (c) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

ASSIGNMENT

Seller may not assign this Order or any portion thereof without obtaining Buyer's written consent.

BUSINESS AND ETHICAL CONDUCT

- (a) It is the policy of Buyer that its acquisition and retention of business be conducted in accordance with the highest standards of honesty and integrity. Sales of its products and services must be free from even the perception that favorable treatment was sought or received, or that questionable activities were engaged in or condoned. Purchases of supplies, materials and services from Seller must be conducted with the same high standards. Severe criminal and civil penalties may be imposed on corporations and the individuals involved for violation of laws, federal and state, that affect the conduct of business under this Order.

- (b) The Government has amended the Federal Acquisition Regulations (FAR) to include Clause 52.203-13 Contractor Code of Business Ethics and Conduct. This clause requires: (i) a Code of Business Conduct and Ethics; and, (ii) compliance with mandatory disclosure reporting. Although the FAR flowdown of this clause to Sellers is subject to dollar and performance period thresholds, Buyer requires that all of its Sellers, as defined herein, comply with FAR 52.203-15 regardless of the purchase order value or length of the period of performance. Establishing a Seller Business Ethics and Conduct program is in the best interest of the Seller, Buyer and the Buyer's customer. Seller's Ethics Program can provide guidance for establishing an Ethics program upon request. Point of Contact is Seller's Ethics Officer at 888-306-7330.
- (c) Buyer maintains an ethics program that includes a written code of conduct, training and awareness for all employees, details of which can be found at www.baesystems.com/AboutUs/OurGlobalCodeofConduct/index.htm. Buyer requires all its suppliers to embrace ethical values of a comparable standard (including a method for reporting possible violations). Failure to comply with this requirement shall be a material breach of this agreement and subject to termination under the "Termination for Default" clause below.
- (d) The Seller is hereby on notice that it is Buyer's policy that Buyer's personnel owe complete loyalty to Buyer and are forbidden to accept money or things of value from any supplier of goods or service to Buyer, regardless whether such acceptance would constitute an act prohibited by any Anti-Kickback Covenant included in this Order. Seller for itself and its principal owners, stockholders, and officers warrants and covenants that no employee of Buyer has any financial interest in Seller (except such as has been disclosed in writing to Buyer's purchasing manager), and that Seller has not and will not directly or indirectly give anything to any employee of Buyer. Breach of the foregoing warranty and covenant shall entitle Buyer, in addition to any other rights and remedies, immediately to terminate for default any and all Orders to Seller outstanding at the time that Buyer learns of any such breach, regardless when such breach may have occurred.

CHANGES

Buyer or its prime contract customer may at any time, by written order, make changes within the general scope of any Order. Upon receipt of such a written change order, Seller shall proceed without delay with performance of the Order as changed. If any such change causes an increase or decrease in Seller's cost of, or in the time required for the performance of the Order, an equitable adjustment shall be made in the price or the time for completion, or both, and the Order shall be modified in writing accordingly; Seller's proposal for equitable adjustment shall be submitted to Buyer, in writing, within five (5) days of Seller's receipt of a written change order.

If any change shall have resulted or derived in any way from an act or omission or formal or constructive order by Buyer's prime contract customer, Seller's right to equitable adjustment

shall be contingent on, and the amount thereof shall be determined in accordance with the following:

- (a) Seller shall have provided to Buyer written notice of the facts giving rise to such change and shall have done so in time and in form sufficient to enable Buyer to provide to Buyer's customer notice sufficient to protect Buyer's right to equitable adjustment under Buyer's prime contract;
- (b) Buyer shall be liable to Seller only to the extent that Buyer's prime contract customer accepts liability or is determined to be liable therefore;
- (c) The amount of Seller's equitable adjustment, if any, shall not exceed that allowed or awarded to Buyer from its prime contract customer, less any profit or costs, or both, to which Buyer is entitled.

If the progress of the Work under this Order is delayed without fault or responsibility of Seller, then the time for performance of the Work shall be extended to the extent of the time extension obtained by Buyer under the prime contract for such specific delay, and the performance period and/or progress schedule shall be revised accordingly. Buyer shall not be liable to Seller for any damages or additional compensation as a consequence of delays or disruption, unless Buyer has first recovered the same on behalf of the Seller from the customer, it being understood and agreed by Seller that, apart from such recovery, Seller's sole and exclusive remedy for delay and disruption shall be an extension in time for performance of the Work.

CONFIDENTIALITY

Seller shall, in the course of Work hereunder, be exposed to and have access to information and data, which is considered the proprietary information of Buyer and/or Buyer's customer. Seller agrees that Seller, its agents and/or employees shall not, during the term of this Order or subsequent to the expiration thereof, disclose to any third party any information which Seller may acquire from or about Buyer or its customer or any information related to the business of Buyer or its customer; and Seller shall not use for his own benefit any such information or data. This restriction is not intended to extend to any information that is public knowledge or is made public by Buyer. In the event of a breach by Seller, Buyer shall have the right to bring an action for an immediate injunction (without posting bond) to enjoin the Seller from breaching this Order. Nothing in this clause shall waive any other rights or remedies that the non-breaching party may have against the breaching party.

CONTRACT DIRECTION

- (a) Only the Buyer's procurement or subcontract representatives have authority to make changes in, to amend, or to modify this Order. Such changes, amendments or modifications must be in writing.
- (b) Buyer's program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to

be a change under the "Changes" clause above, and shall not be the basis for equitable adjustment. If Seller believes the foregoing creates an actual or constructive change, Seller shall notify the Buyer Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph (a) above.

CUSTOMER COMMUNICATION

Buyer shall be solely responsible for all liaison and coordination with the Customer or any higher tier contractor(s) as it affects this Order or any Work thereunder or related thereto. Except as required by law, Seller shall not communicate with the Customer, and any higher tier contractor(s), with respect to this Order or any Work thereunder or related thereto, without prior approval of the Buyer's Procurement Representative. Seller shall promptly notify Buyer of any communications, initiated by the Customer or any higher tier contractor(s) that affects this Order or any Work thereunder or related thereto.

DISPUTES

If Buyer's prime contract contains a "Disputes" article or procedure, any claim, demand or request for adjustment of Seller originally derived or resulting in any way from an act or omission or formal or constructive order of Buyer's prime contract customer that is not disposed of by agreement, may, at Buyer's election, be submitted for resolution pursuant to such prime contract "Disputes" article. If Seller is the principal party-in-interest in connection with any such claim or demand, Buyer may authorize Seller to proceed under such Disputes provision in Buyer's name; if such authorization is provided, Seller shall have full responsibility for such proceedings and shall bear all expenses, including attorney's fees in connection therewith, provided however, that such authorization shall not constitute Seller the agent or attorney for Buyer.

Any and all other disputes arising from the making, performance, or termination of this Agreement shall be settled by binding Arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) are to govern this Arbitration. The Arbitration shall take place in the State of Florida. The dispute will be heard by a single Arbitrator. The Arbitrator shall be bound to follow the applicable subcontract provisions and the laws of the State of Florida in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The Arbitrator shall not have the authority to award punitive damages.

ENVIRONMENTAL

- (a) Hazardous Material Identification and Material Safety Data: Without regard to whether Buyer's prime contract is for the federal Government, Seller agrees to identify hazardous material as defined by FAR Clause 52.223-3 subparagraphs (a), (b), and (c), to submit a Material Safety Data Sheet as provided by subparagraph (d)

- of that clause, and otherwise agrees to comply with the provisions of that clause as though Seller were in the position of "offeror" and "contractor" and Buyer were in the position of "contracting officer" as those terms are used in that clause.
- (b) Seller shall comply with all federal, state and local laws and regulations regarding the use of any "hazardous substances" (both terms as defined by both federal and state law) generated in the performance of this Order. Seller shall inform Buyer in writing of all hazardous waste expected to be so generated. Seller shall be solely responsible for the consequences of its failure to perform the foregoing obligations and shall defend and indemnify Buyer for all claims and liability, including penalties, resulting from Buyer's failure to so perform, negligent or otherwise.
- (c) If Seller causes, to any extent, the actual or potential release, spill, discharge or other loss of control of a hazardous substance or hazardous waste (an "incident"), such that Buyer's On-Scene Emergency Coordinator is notified to respond through Buyer's existing Environmental Incident Communications Policy and Procedure, Buyer will incur response costs which are extremely difficult and impractical to ascertain. Buyer and Seller agree that the sums set forth herein represent the minimum amount of cost and expenses incurred by Buyer to respond to each Incident. Accordingly, Seller agrees to pay to Buyer for each incident caused by Seller, Buyer's actual response costs, which are agreed to be not less than the sum of one thousand dollars (\$1,000.00). Such payment shall not relieve Seller of the responsibility to pay Buyer the actual costs of Buyer's remediation of an incident caused by Seller, if any, resulting from the incident, and shall not impair or waive Buyer's indemnification rights as set forth herein.

EXPORT CONTROLS

- (a) Seller shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774. Seller shall obtain all required export licenses or agreements necessary to perform Seller's Work, as applicable.
- (b) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.**
- (c) Certification Regarding Registration with the U.S. Department of State, Directorate of Defense Trade Controls:** In compliance with ITAR, Contractor is registered with the United States Office of Defense Trade Controls.

- (d) If the technical data required to perform this Order is subject to the United States International Traffic in Arms Regulations (ITAR), Seller shall comply with the following:
- (1) The technical data shall be used only in performance of Work required by this Order; and
 - (2) The data shall not be disclosed to any other person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by Buyer and to any such data incorporated in documents generated by Seller; and
 - (3) Any rights in the data may not be acquired by Seller or any other Non-U.S. Person; and
 - (4) Seller shall return, or at Buyer's direction, destroy all of the technical data exported to Seller pursuant to this Order upon fulfillment of its terms;
 - (5) Unless otherwise expressly directed by Buyer, Seller shall deliver the Work only to Buyer or to an agency of the U.S. Government.
- (e) Where Seller is a signatory under Buyer's export license or export agreement (e.g. TAA, MLA), Seller shall provide prompt notification to the Buyer's Procurement Representative in the event of changed circumstances affecting said license or agreement.
- (f) Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, 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 a United States Government export license, export agreement, or applicable license exemption or exception.
- (g) Seller agrees to notify Buyer if any Articles or service to be delivered under this Purchase Order is restricted by export control laws or regulations.
- (h) Seller shall immediately notify Buyer's Purchasing Representative if Seller is listed in the Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (i) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act. **In compliance with 22 C.F.R. 130, Seller for itself, its principals, and its subcontractors warrants and covenants that neither Seller or its Subcontractor or any of their respective principals has paid, offered or agreed to pay, or will pay or offer to agree to pay, in respect to the Work which is to be provided to Buyer**

under any Order or Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.

- (j) For the purpose of this Article, “Foreign Persons” shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3) (i.e. persons granted asylum by the Government of the United States). It also means any Foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions). Further, United States Citizens, lawful permanent residents, or protected individuals who are employed by such foreign organizations shall be deemed “Foreign Persons” for the purpose of this Article.
- (k) All consultants, independent contractors and suppliers, who deliver material or provide services to the Buyer’s site will confirm in writing that they or their agents or employees meet one of the following criteria:
- (1) A citizen of the United States, or
 - (2) A lawful permanent residents as defined by U.S.C. 1101(b)(20), (i.e. Green Card Holders”), or
 - (3) A Protected Individual as defined by 8 USC 1324b(a)(3), or
 - (4) A foreign national for whom a current and directly relevant license or approval has been obtained from the U.S. Department of State.
- (l) Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are not citizens or nationals of the United States. They are not “lawful permanent residents” (also known as “green card holders”) under the Immigration and Nationality Act, and therefore do not meet the requirements of paragraph (h) above. These persons must be treated as Foreign Persons pursuant to paragraph (g) above. Further information is available at <http://www.uscis.gov>.
- (m) Seller shall indemnify, hold harmless and, at Buyer’s election, defend Buyer, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys’ fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this Section. Seller shall include the requirements of this Section in all agreements with lower tier subcontractors.
- (n) Buyer reserves the right to periodically audit Seller’s records for compliance with this Article.

FOREIGN CORRUPT PRACTICES PROHIBITION

- (a) By accepting this Order, Seller certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay

any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist Buyer or Seller in obtaining or retaining business.

(b) Seller shall ensure that all lower tier subcontracts include this paragraph.

FURNISHED PROPERTY

- (a) Buyer may provide to Seller property owned by either Buyer or its Customer (Furnished Property). Unless previously authorized in writing by the Buyer's Procurement Representative, Furnished Property shall be used only for the performance of this Order.
- (b) Title to Furnished Property shall remain in Buyer or its Customer as applicable. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) The Furnished Property shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage to Furnished Property while in Seller's care, custody, or control. Without additional charge, Seller shall manage, maintain, preserve, and insure Furnished Property in accordance with good commercial practice.
- (d) At Buyer's request, and/or upon completion of this Order Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

INDEPENDENT CONTRACTOR

Seller's relationship to Buyer shall be that of an independent contractor and this Order does not create an agency, partnership, or joint venture relationship between Buyer and Seller or Buyer and Seller personnel. Seller personnel engaged in performing Work under this Order shall be deemed employees of Seller and shall not for any purposes be considered employees or agents of Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Order. Buyer assumes no liability for Seller personnel

INSPECTION AND TEST

Seller shall maintain a system of quality control including all inspections and tests necessary to insure conformance with the plans and specifications. At all times during Seller's performance, all material and workmanship shall be subject to inspection and test by Buyer or by its prime contract customer; this right of inspection and test shall include rights of in-process inspection and test and of review of Seller's inspection and test documentation and records. All goods, Work, materials and services furnished hereunder shall be subject to final inspection after completion or delivery notwithstanding prior payment. Any inspection by Buyer or Buyer's

customer, whether in-process or final, and any failure to inspect by Buyer or Buyer's customer shall not be deemed to constitute acceptance and shall not relieve Seller of its obligations hereunder, including, but not limited to those set forth at the clause "WORKMANSHIP AND MATERIALS", below. In addition to its obligations under the clause, "WARRANTY", below, Seller shall, prior to acceptance, promptly correct or replace any defective Work or materials to the satisfaction of Buyer and Buyer's prime contract customer. If Seller fails promptly to proceed with such correction or replacement, Buyer may, in addition to any other rights provided hereunder or by applicable law, by contract or otherwise, proceed with such correction or replacement and charge to Seller the cost thereof.

LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay Seller's performance of this Order, the Seller shall immediately give notice thereof to Buyer. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this paragraph in all subcontracts or purchase orders issued by Seller in connection with this Order.

LIABILITY, INSURANCE, INDEMNITY

- (a) Seller shall exercise due care to prevent accidents, injury, or damage to persons or property in or about the property of Buyer or Buyer's prime contract customer, and to any vessel or part thereof upon which Work is done or to which goods are furnished hereunder. If an Order requires the presence of any personnel of Seller or Seller's subcontractors or suppliers at Buyer's plant or on any property of Buyer's customer, including any ship on which Work is to be performed under Buyer's prime contract, Seller, Seller's employees, and much of Seller's subcontractors and suppliers as may be on such property shall strictly comply with all Buyer's regulations and procedures governing the conduct of Buyer's work, including, without limitation, Buyer's safety procedures. Without limitation of the foregoing, in connection with any Work performed on the property of Buyer or Buyer's customer, Seller shall comply with all requirements of any applicable federal, state, or local statutes and regulations, including, without limitation, the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651-678), and the Safety and Health Regulations for Ship Repairing (29 CFR 1915) promulgated under Public Law 85-742 amending §41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §941) and adopted by the Department of Labor under §6(a) of the Occupational Safety and Health Act of 1970 (See 29 CFR 1910.13).
- (b) Seller agrees to indemnify and obtain insurance coverage and provide Buyer with evidence thereof, all in accordance with that certain Indemnity Agreement executed by Seller in connection with its acknowledgment of these Subcontract Terms and Conditions.

- (c) In addition to the insurance requirements set forth in said Indemnity Agreement, if Seller's Work will include providing professional services to Buyer, Seller shall maintain Professional Liability insurance in an amount not less than \$2,000,000 each occurrence; \$2,000,000 aggregate. This requirement may be increased by Buyer in the event Seller's Work includes the provision of engineering design services.
- (d) In the event that any form of dispute resolution is necessary to enforce this Article, the prevailing party shall be entitled to attorney's fees. This attorney's fees provision applies exclusively to this Article, and not generally with regard to any other terms, conditions, or provisions of any Order.

LICENSE AND PATENT RIGHTS

Where the Order calls for any research or development work, Buyer shall be granted a nonexclusive, royalty-free license to manufacture, use and sell any articles, compositions, devices, processes or the like in accordance with any patent application, invention, improvement or discovery (whether or not patentable), whenever such articles, compositions, devices, processes or the like were conceived or first reduced to practice, either in the performance of the Order or in the performance of any Work relating to the Order which was done upon the understanding that the Order would be awarded. Seller shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Buyer, its officers, agents, employees and indemnitees from and against any and all claims, losses, suits, damages, legal and otherwise, arising out of or in any way connected with any claim, action or proceeding for infringement of any United States or foreign patent, copyright, or trademark arising out of the Work under the Order, or out of use or disposal of said Work. If any claim or demand is made against Buyer for any matter enumerated herein, any payment due or thereafter to become due to Seller shall be held by Buyer to cover such losses and expenses, including attorney's fees.

LIENS

Without any additional action by Seller, Seller's acceptance of this Order includes a full waiver of and release of all liens, encumbrances and other rights in rem (perfected or unperfected) in respect of the goods and services covered by this Order. The waiver and release by Seller hereunder includes the following additional warranties by Seller:

- (a) that all Sellers' subcontractors, vendors, material-men, suppliers, journeymen, mechanics, laborers, and all other legal entities who have furnished labor, material, or services towards the performance of Seller's obligations under this purchase order have been paid and satisfied in full;
- (b) that there are no unsatisfied claims nor any other indebtednesses outstanding concerning the goods and Sellers's performance of this Order;
- (c) that Seller has made no hypothecation of sums owing to Seller which would require that another person or legal entity receive payment;
- (d) that Seller has not committed default of any bond or other third party guarantee or security device in respect of the goods and this Order;

- (e) that the goods furnished pursuant to the Order are not subject to fine, seizure, or forfeiture, in whole or in part; and
- (f) that no penalty of any nature whatsoever can be assessed against any of the goods nor any property to which the goods become a fixture, accession, or component part.

All of the foregoing warranties are continuing actions and undertakings of the Seller throughout the performance of this Order.

Seller warrants that all the foregoing are true and correct, and Seller undertakes that it shall save, hold, and keep harmless Buyer from all losses whatsoever, whether such losses are occasioned by debt, account, lien, encumbrance, forfeiture, fine, seizure, hypothecation, property damage, personal injury, statutory lien rights, or other operation of law.

In addition to the foregoing, Buyer, at its sole option, may request from Seller, and Seller will provide, a full and complete Waiver of Liens and Indemnification against Liens in a form satisfactory to Buyer from Seller and from all of Seller's factors, other financiers, material-men, subcontractors, and suppliers (herein "subordinates") having performed or supplied any portion of the goods or services, hereunder, at any time. Buyer, at its sole option, may also request from Seller, and Seller will provide Buyer with proof including affidavits and waiver of liens showing payments and release of all duties, taxes, liens, claims, charges and obligations arising by operation of law and otherwise out of Seller's and its subordinates' performance of the Work hereunder, and Buyer may withhold funds due to Seller hereunder to assure itself of the discharge of all such obligations, or to satisfy any requirements of law relating to such claims against Seller and its subordinates.

LIMITATION OF LIABILITY

In no event shall Buyer be liable for any claims of consequential, indirect, incidental or special damages of any nature whatsoever.

NEW MATERIALS

Unless authorized in writing by the Buyer's procurement or subcontract representative, all Work to be delivered hereunder shall consist of new materials, and shall not be used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

NOTICE

When Buyer's prime contract requires Buyer to give notice to the customer upon the occurrence of specified events, and the Seller knows or has reason to know a specified event has occurred, the Seller shall promptly give Buyer written notice of that event and, in any case, sufficient time to allow Buyer to timely give the customer any required notice. The Seller's notice shall contain all information it has or can reasonably obtain to enable buyer to comply fully with the informational requirements imposed by the customer. The Seller's failure to meet the requirements of this clause shall bar any adjustment of time or amount to the Order to the extent Buyer's adjustment of time or amount to the prime contract is so barred.

NON-DISCLOSURE AND OWNERSHIP

Ownership of, and all rights with respect to any goods purchased under this Order, including all creative ideas incorporated therein, all preliminary materials, sketches, layouts, tooling, molds, dies, negatives, photographs, designs, blueprints or specifications relating thereto shall be vested exclusively in Buyer's company. Buyer may copy or reproduce any and all goods purchased hereunder for any and all purposes and may use the same in any and all media as often as it may so desire.

All plans, drawings, designs and specifications supplied by Buyer to Seller shall remain the property of Buyer, or Buyer's customer, and any information derived there from or otherwise communicated to the Seller, shall be regarded by Seller as strictly confidential and shall not, without the prior written consent of Buyer, be disclosed to any third party.

PACKING AND SHIPMENT

- (a) Unless otherwise specified in the prime contract, purchase order or other conditions of performance, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer's Contract or Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Order number.
- (c) Unless otherwise specified, delivery shall be FOB Destination

PAYMENT

- (a) Seller, upon submission of proper invoices, will be paid prices as stated in the Order for goods delivered and services completed and accepted, less deductions, if any, as herein provided. A calculation of payment due date and discount date, if applicable, is determined by date of final completion of Work or day of Buyer's receipt of proper invoice, whichever is later. Payments hereunder will be subject to set-off of any valid claim of Buyer (including its affiliated entities) against Seller arising from this or any other transaction.
- (b) Seller acknowledges that this order is in support of Buyer's prime contract and Seller agrees that it will submit its invoices within 30 days of the date on which the goods are delivered or the services are completed. Seller further agrees that its failure to submit a proper invoice within 30 days will render it subject to a 5% deduction of the amount of the invoice for each 30-day period for which the invoice is late and that such deduction may be taken by Buyer pursuant to the payment set-off provision included in this clause.

- (c) In the event that this Order is in furtherance of a cost reimbursement contract, then Buyer reserves the right to invoke the following language by referencing this paragraph on the face of the specific Purchase Order:
- a. Seller is provided notice and acknowledges by accepting this Order that it is placed under a Cost Reimbursement Contract between Buyer and Buyer's customer and that Buyer will not have the cost of this Order reimbursed by its customer until it has paid Seller. If Seller fails to provide an invoice in a timely manner, Buyer's costs for goods or services incurred hereunder may be declared unallowable by Buyer's customer with subsequent refusal by Buyer's customer to reimburse Buyer for the goods or services supplied by Seller. Seller is required, as a specific deliverable under this Order to invoice for goods or services ordered herein within 30 days of the completion of its obligation hereunder.
 - b. The extent and amount of actual damages which would be suffered by Buyer as a result of Seller's failure to timely deliver its invoice, as stated above, are impractical or extremely difficult to determine or estimate. Therefore, the following liquidated damages represent the parties' best estimate of the sums which would be fair and average compensation for all losses that may be sustained. Seller shall pay Buyer an equal value of the subject Order as liquidated damages (and not as a penalty) for each occurrence of Seller's failure to timely deliver an invoice, with each failure occurrence being a separate default. Seller authorizes Buyer to deduct such damages from any money that may be due or may become due to Seller for stated materials or services.

PERFORMANCE AND DELIVERY

It is agreed that time is of the essence in performance of any Order incorporating these terms and conditions. Commencement and completion of Work or delivery of the goods ordered shall be strictly in accordance with the times set forth on the face of the Order, or, if no time is there set forth, in accordance with the requirements of Buyer's prime contract. If requested by Buyer, Seller shall submit to Buyer, in the form acceptable to Buyer, a detailed schedule for performance of the Order which schedule will comply with all schedule requirements of Buyer's prime contract. If the Order requires shipboard Work, Seller shall, at no additional cost to Buyer, coordinate its Work with that being performed by Buyer, other subcontractors of Buyer, and by Buyer's customer.

Seller shall furnish forces, supervision, equipment, and materials sufficient to complete the Order within the time required. If Seller falls behind schedule or if it otherwise appears that Seller will not complete Work or deliver goods within the time required, Buyer may, in accordance with the clause "TERMINATION FOR DEFAULT" hereof, terminate Seller's right to proceed with the Work or with such part thereof as is behind schedule. The Seller agrees, upon THREE CALENDAR DAYS written notice from Buyer, at Seller's expense, to provide the necessary personnel and supply such equipment, materials, overtime workers and other devices and facilities as necessary so as to expedite the Order and meet or recover schedule. Such notice, once given, shall continue in effect until Work specified therein has been fully completed. The

Seller shall work overtime at the direction of Buyer. If such overtime work is necessary to cure delinquency in maintaining the progress schedule, and such delinquency is directly or indirectly attributable to Seller, such effort shall be without additional cost to Buyer.

Should the Seller fail or neglect to complete all or any part of the Order, including any change order, within the time or times specified or otherwise delay Buyer by reason of Seller's failure or neglect to perform its obligations under the Order, including any change order, and if as a result Buyer shall incur damages or expenses, or become obligated to pay damages under the prime contract or shall otherwise incur additional expenses, including costs of acceleration or premium costs, the Seller agrees to pay Buyer as actual damages, and not as a penalty, all damages (including liquidated damages) or expenses (including attorney's fees) so incurred by Buyer.

PRECEDENCE

In the event of any inconsistency within the terms of an Order, including these terms and conditions, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Typed or handwritten special provisions appearing on the face of any Order, if any;
- (b) Special or additional terms and conditions referenced on the face of any Order, to include flowdown provisions from Buyer' prime contract, if any;
- (c) These Subcontract Terms and Conditions; and
- (d) Provisions, specifications, and drawings incorporated by reference.

PRICE WARRANTY

Seller warrants that the prices for goods covered by this Order shall not be greater than those quoted or last charged to Buyer unless so specified on the face of the Order.

Seller further warrants that the prices are the lowest prices charged by Seller to Buyers of a class similar to Buyer under conditions similar to those specified under this Order and do not exceed the prices allowed by law. Seller warrants that all discounts and allowances are as favorable as those then offered by Seller to Buyers of a class similar to Buyer. Seller further warrants that any price reduction made with respect to goods or services covered by this Order subsequent to the placement of this Order will be applicable to this Order.

PRIME CONTRACT

The prime contract together with all documents described therein and appurtenant thereto are incorporated by reference and made a part of the Order. Except as modified herein, the Seller assumes the same obligations to Buyer under the Order that Buyer assumes to the customer under the prime contract, and the Seller shall comply with all conditions of the prime contract as

they apply to the Work under the Order. By accepting the Order, the Seller acknowledges that it has had an opportunity to make a site visit to review conditions which may relate to its performance under the Order, and also acknowledges that it has reviewed the prime contract and all documents made a part thereof, including the drawings and specifications as they relate to its Work under the Order as well as other work which may interface with its Work.

PROGRESS PAYMENTS

If expressly so provided on the face of an Order, Seller shall receive progress payments in the same percentages and calculated in the same fashion as those provided in Buyer's prime contract. Determination of the percentage of completion of Seller's Work shall be made by Buyer and Buyer's prime contract customer; their decision shall be final and not subject to dispute by Seller. Seller shall submit invoices for such progress payments in a form acceptable to Buyer including such substantiation of costs incurred or progress made, or both, as Buyer may require. Such progress payments as are justified by suitable invoices and substantiation will be made within ten (10) days of Buyer's receipt of progress payments for the same period as the progress covered in Seller's invoices as are made under Buyer's prime contract. If Buyer's prime contract so provides, title to all Work in process, materials, equipment, or other property covered by progress payments shall vest in Buyer's prime contract customer, but this provision shall not be construed as effecting any acceptance or in any other way relieving Seller of its obligations of strict and timely performance, warranties, or any and all other obligations hereunder.

PROTECTION OF WORK

All loss of damage to the Work resulting from any cause whatsoever shall be borne and sustained by Seller and shall be solely at its risk until final acceptance by Buyer and Buyer's customer. Seller shall take necessary precautions to properly protect the Work and the work of others from damage caused by Seller's operations. Should Seller cause damage to the work or property of Buyer's customer or Buyer, or others, Seller shall promptly remedy such damage to the satisfaction of Buyer, or Buyer may so remedy and deduct the cost thereof from any amounts due or to become due Seller. Nothing herein shall limit any additional rights Buyer may have pursuant to this Order or law.

PUBLICITY, PROMOTION, ADVERTISEMENT

Seller shall not without the prior writing consent of Buyer, issue any news release, advertisement, publicity or promotional material regarding this Order or any other information regarding Buyer (including confirmation or denial thereof).

RECORDS AND AUDIT

To the extent that Seller is producing material or performing services specifically for Buyer, or if Seller is performing Work on Buyer's premises, or if Seller is performing Work on Buyer's or Buyer's customer's equipment outside of Buyer's premises, Seller shall maintain records as follows:

- (a) Seller shall keep accurate daily records for all Work performed hereunder, and upon request it shall provide copies to the Buyer.
- (b) The records shall include the hours worked by each employee, the type of work performed, the wages paid, equipment and materials used and any other item of cost claimed by Seller or for which Buyer shall have reimbursed Seller.
- (c) Buyer shall have the right at all reasonable times during regular business hours, to inspect and audit such records.
- (d) Seller shall preserve such records for 36 months after completion or termination of this order

RIGHTS AND REMEDIES

The rights and remedies herein reserved to Buyer shall not be exclusive and shall be cumulative and additional to any other or further rights and remedies provided in law or in equity. If any provision of any Order is or becomes void and unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

The failure of Buyer to enforce at any time any of these terms and conditions or any other provisions of any Order, or to exercise any option provided therein, or to require at any time performance by Seller of any provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this agreement or any part thereof or the right of Buyer thereafter to enforce each and every such provision.

SAFETY

- (a) Seller shall be solely responsible for the safe conduct of its employees and subcontractors while performing the Work required under this Order. Seller shall comply with all applicable federal, state, and local health, safety and fire protection laws and regulations. Seller shall also comply with Buyer's safety policies and procedures. Seller shall inform Buyer in writing of all safety related problems or incidents immediately upon such occurrence.
- (b) Seller shall be solely responsible for the consequences of its failure to perform the foregoing safety obligations and shall defend and indemnify Buyer for all claims and liability, including penalties, resulting from Buyer's failure to so perform such safety obligations, negligent or otherwise. Seller shall also be responsible for all costs, including attorney's fees associated with any federal or state citation issued against Buyer resulting from the failure of Seller to comply with the safety obligations as stated in this Order
- (c) Seller may be terminated under the clause "TERMINATION FOR DEFAULT" below for significant or persistent safety or environmental issues.

SECOND TIER SUBCONTRACTING

No Work may be subcontracted by Seller without the express written consent of Buyer. If Seller intends to subcontract Work, Buyer must be furnished, in writing, a description of the specific Work to be subcontracted, the name of the company to be utilized, and a copy of the second tier subcontract or purchase order for approval. All of the applicable Order terms must be made part of the subcontract or purchase order to the second tier subcontractor.

SELLERS OF TEMPORARY LABOR

In addition to the terms herein, Seller warrants that temporary workers sent to Buyer are fit to perform the normal duties of a worker in the trade and at the skill level requested. Buyer reserves the right, at its sole, unfettered discretion, to order any worker supplied by Seller to cease work and exit the premises. Buyer shall not be responsible for paying Seller for the day on which any such worker is expelled. Buyer shall use its best efforts to promptly notify Seller of any such expulsion.

SEVERABILITY

In the event that any section, clause or provision of this Order conflicts with any applicable law, regulation, or ordinance, such conflict shall not affect other sections, clauses or provisions of this Order which can be given effect without the conflicting section, clause, or provision. To the end, the sections, clauses and provisions of this Order are declared to be severable.

STOP WORK ORDER

- (a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as Buyer and Seller may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, Buyer shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the clause "CHANGES" above shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

SUPERINTENDENCE BY SELLER

If any order requires Work to be performed at a site other than Seller's plant, Seller shall designate a project manager satisfactory to Buyer who shall be readily available at the site of such Work and authorized to act for Seller. A superintendent competent to supervise the Work shall be physically at the site of Work in charge of operations. Buyer may require Seller to remove from any such site any employees of Seller or of any subcontractor of Seller deemed by Buyer or its prime contract customer to be incompetent or careless or for any other commercially reasonable reasons.

TERMINATION FOR CONVENIENCE

- (a) After receipt of a Notice of Termination and except as otherwise directed by Buyer, Seller shall:
- a. Stop Work as specified in the Notice;
 - b. Place no further subcontracts or orders for materials, except as necessary to complete the continued portion of the Order;
 - c. Terminate all subcontracts to the extent that they relate to the Work terminated;
 - d. Assign to the Buyer, as directed by Buyer, all right, title, and interest of Seller under terminated subcontracts of Seller;
 - e. Subject to Buyer's approval or ratification, settle all outstanding liabilities and subcontract termination claims;
 - f. As directed by Buyer in writing, transfer title and deliver to Buyer or Buyer's customer completed Work, fabricated, or unfabricated parts, Work in-process, supplies and other material produced or required for the terminated Work, including, but not limited to completed or partially completed plans, drawings, and other information that, if the Order had been completed, would be required to be furnished under the terms of the Order;
 - g. Complete performance of the Work not terminated;
 - h. Protect and preserve property relating to the Order that is in the possession of Seller in which Buyer or its prime contract customer has or may acquire an interest; as directed or authorized by Buyer, Seller shall use its best efforts to sell any property of the types referred to in subparagraph (6) above, provided, however, that Seller is not required to extend credit to any Buyer and may itself acquire any such property under conditions prescribed by and prices approved by Buyer. The proceeds of any such transfer or disposition shall be applied to reduce any payments to be made by Buyer under the terms of this clause or paid in such other manner as Buyer may direct.
- (b) Within thirty (30) days after receipt of a Notice of Termination, Seller shall submit to Buyer, in the form and with the certification prescribed by Buyer, Seller's termination claim.
- (c) Subject to the provisions of subparagraph (b), Seller and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Seller by reason of the total or partial termination of Work pursuant to this clause. The amount so agreed may include a reasonable allowance for profit on Work done. However, the agreed amount, whether under this subparagraph (c), or subparagraph (d) below, exclusive of settlement costs,

shall not exceed the total Order price as reduced by the amount of payment otherwise made and as further reduced by the order price of Work not terminated.

- (d) In the event of the failure of Seller and Buyer to agree as provided in subparagraph (c), Buyer shall pay to Seller the amounts determined as follows, but without duplication of any amounts agreed upon in accordance with subparagraph (c):
- a. The Order price for completed supplies or services accepted by Buyer and not previously paid for, appropriately adjusted for any saving of freight or other charges;
 - b. The total of:
 - i. The costs incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid for or to be paid for under subparagraph (1) above.
 - ii. A sum, as profit, on (i) above at a reasonable and customary rate therefor, provided, however, that if it appears that the Seller would have sustained a loss on the entire Order had it been completed, Seller shall be entitled to no profit under this subparagraph (ii) and an appropriate adjustment shall be made reducing the amount payable hereunder to reflect the indicated rate of loss.
 - c. The reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of a termination settlement claim and supporting data, and for the termination and settlement of subcontracts, and the reasonable cost of storage, transportation and other costs incurred for the preservation, protection, or disposition of termination inventory.
 - d. The total sum to be paid under (1) and (2) above shall not exceed the total Order price reduced by the amount of payments otherwise made and as further reduced by the price of Work not terminated.
- (e) The obligation of Buyer to make any payments under this clause shall be subject to deductions and offsets for all unliquidated progress or other payments on account made to Seller under the Order for any claim which Buyer may have against Seller, whether or not in connection with the terminated Order, and for the agreed price for or the proceeds of sale of any termination inventory retained by Seller or sold and not otherwise recovered by or credited to Buyer.
- (f) If the termination of an Order is partial, Seller may file a proposal with Buyer for equitable adjustment of the price or prices of the continued portion of the Order. Any claim for such an equitable adjustment must be asserted within thirty (30) days of Seller's receipt of Notice of Termination.

TERMINATION FOR DEFAULT

- (a) This Order may be terminated by Buyer, in whole or in part, whenever Seller defaults in its performance of this Order, and fails to remedy such default within FIVE CALENDAR DAYS after receipt by Seller of a notice specifying the default. Circumstances of default, include, but are not limited to the following:
- a. If Seller fails to make timely delivery of goods or to perform services within the time specified in an Order; or
 - b. If Seller fails to perform any of the other provisions of an Order, or so fails to make progress as to endanger performance of an Order in accordance with its terms; or
 - c. If Seller fails to comply with the “Safety” and/or “Environmental” clauses of this Order.
- (b) Except with respect to defaults of subcontractors of Seller, Seller shall not be liable for any excess costs if any failure to perform the Order arises from causes beyond the control and without the fault or negligence of the Seller, provided that Seller shall have provided to Buyer prompt notice of any such actual or potential cause or failure as soon as such cause shall have arisen. Such causes may include, but are not restricted to acts of God or the public enemy, acts of Buyer or Buyer's customers, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case, failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor of Seller and if such default arises out of causes beyond the control of both Seller and its subcontractor, and without the negligence of either of them, Seller shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by Seller's subcontractor were obtainable from other sources in sufficient time to permit Seller to perform within the time specified therein. As used in this clause, the word "subcontractor" means vendor or subcontractor at any tier.
- (c) In the event the Buyer terminates this Order in whole or in part as provided in this clause, Buyer may, upon such terms in such manner as it may deem appropriate, arrange for the completion of the Work so terminated. If the cost to Buyer of the Work procured or completed exceeds the price fixed for Work under the Order, Seller shall be liable for such excess.
- (d) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under, or applicable to, any Order. In the event that the face of an Order contains a prime contract number, Seller is thereby placed on notice that Buyer's total damages by reason of Seller's default may include, but are not limited to damages and other costs imposed by the terms of Buyer's prime contract.

- (e) If Buyer effects a termination on the basis of a default by Seller, and it is thereafter determined, pursuant to this Order, that Seller was not in default, such termination shall then be deemed to have been effected for the convenience of Buyer or its customer.

TOOLING

If the order includes jigs, dies, fixtures, patterns, or special test equipment and manufacturing aids (hereinafter referred to as tooling) used in the manufacture of the articles, such tooling and drawings thereof become the property of Buyer or its customer immediately upon payment therefore. Tooling shall be used only for production for Buyer and shall be kept in good condition, including necessary replacement, without expense to Buyer, except that the cost of changes due to Buyer's change of design shall be paid for by Buyer.

Seller shall maintain property control records for such tooling and shall promptly furnish Buyer a list thereof upon request. Following completion or termination of this order, Seller shall hold all such tooling free of charge for six months following its furnishing of said inventory to Buyer, and any such tooling Buyer orders returned to it shall be delivered f.o.b. Seller's plant, properly crated for U.S. shipment. No crating charge is to be included in Seller's quotations unless expressly requested by Buyer.

TOOLS AND SUPPLIES

Seller shall furnish all required tools to complete the Work. Seller will not be permitted to use any Buyer tools unless specified in the Order. Seller shall indemnify and hold harmless Buyer, its officers, agents, and employees from and against any and all claims, notices, orders, losses, suits, damages (including consequential or punitive damages) legal and otherwise, and liabilities incurred by or asserted against Buyer which in any way arise out of or are related to the use of Buyer's tools or supplies by Seller. **Seller acknowledges that Buyer makes no warranty with regard to the merchantability or fitness for a particular purpose of the tools supplies, nor makes any other warranty, express or implied, with regard to said tools and acknowledges that the tools are being tendered to Seller "as is".**

WARRANTY

For all Work, Seller shall give the warranties called for in the prime contract for the time periods designated therein. In addition, Seller warrants that all Work and materials furnished hereunder will be free from defects in material and workmanship and will conform to applicable specifications, drawings, samples and descriptions, and if of Seller's design or selection, will be free from design defects and fit for intended use. Except as otherwise expressly provided, the foregoing warranties shall remain in effect for a period of ninety (90) days from the date of redelivery of the vessel under Buyer's prime contractor from the date of completion of any individual Work item incomplete at the time of redelivery of the vessel, whichever is later. The foregoing warranties shall be in addition to any such standard warranty or guarantee of Seller and any warranties otherwise created by operation of law. All warranties and guarantees shall run to Buyer and Buyer's customers.

WORKMANSHIP AND MATERIALS

Work performed and goods supplied pursuant to any Order shall be in strict accordance with the specifications set forth or referenced in such Order, including all applicable plans and specifications of Buyer's prime contract. Unless otherwise specifically provided in any Order, or in Buyer's prime contract, all operational practices of Seller and all workmanship and materials shall be in accordance with the latest rules and requirements of the American Bureau of Shipping, United States Coast Guard and the American Institute of Electrical and Electronic Engineers, and with the best commercial marine practice; where Buyer's prime contract shall specify U.S. Navy specifications, Navy standards of material and workmanship shall be followed.

**BAE SYSTEMS SOUTHEAST SHIPYARDS ALABAMA LLC
SUBCONTRACT TERMS AND CONDITIONS
(Form sk0811-AL, Rev. 1)**

ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

These terms and conditions, the Buyer's prime contract, along with any special provisions or specifications appearing or referenced on the face of any Order constitute the entire agreement between Buyer and Seller, merge and supersede all communications, written or oral, prior to or contemporaneous with any Order, and shall not be subject to variation irrespective of any wording in Seller's acceptance and any additional or different terms appearing in Seller's acceptance are hereby rejected. An Order incorporating these terms and conditions becomes a binding contract when accepted by Seller, either by acknowledgment or commencement of performance.

Seller shall perform the services and provide the materials and supplies described in the Order and shall perform such other services and provide such other materials as may be added to the Order pursuant to the Changes and Notice provisions of these Subcontract Terms and Conditions (hereinafter collectively referred to as the "Work").

ACCESS TO SHIPYARD BY NON-U.S. CITIZENS.

Seller is hereby placed on notice that, at any given time, Buyer may have a United States Navy vessel in its shipyard and, in accordance with Buyer's prime contracts, only U.S. citizens are eligible for access to U.S. Navy vessels, work sites and adjacent areas, and shops where work in the naval vessel's equipment is being performed, unless prior approval is obtained for non-U.S. citizens. Seller warrants that, unless prior approval is obtained for non-U.S. citizens, only U.S. citizens shall have access to Buyer's shipyard.

Seller shall be responsible for ensuring that all personnel it assigns to this Order have all required work permits, appropriate licenses, and security clearances necessary to perform the Work. Seller shall produce such records at any reasonable time upon Buyer's request.

APPLICABLE LAWS

- (a) This Order and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State of Alabama, excluding its choice of law rules.
- (b) (1) Seller shall comply with all applicable laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at Seller's expense.
- (2) Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes,

ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) If: (i) Buyer's contract price or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, Buyer may proceed as provided for in subparagraph 2(b)(4) below.

(4) Upon the occurrence of any of the circumstances identified in subparagraph 2(b)(3) above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Order or any other order with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded.

- (c) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

ASSIGNMENT

Seller may not assign this Order or any portion thereof without obtaining Buyer's written consent.

BUSINESS AND ETHICAL CONDUCT

- (a) It is the policy of Buyer that its acquisition and retention of business be conducted in accordance with the highest standards of honesty and integrity. Sales of its products and services must be free from even the perception that favorable treatment was sought or received, or that questionable activities were engaged in or condoned. Purchases of supplies, materials and services from Seller must be conducted with the same high standards. Severe criminal and civil penalties may be imposed on corporations and the individuals involved for violation of laws, federal and state, that affect the conduct of business under this Order.

- (b) The Government has amended the Federal Acquisition Regulations (FAR) to include Clause 52.203-13 Contractor Code of Business Ethics and Conduct. This clause requires: (i) a Code of Business Conduct and Ethics; and, (ii) compliance with mandatory disclosure reporting. Although the FAR flowdown of this clause to Sellers is subject to dollar and performance period thresholds, Buyer requires that all of its Sellers, as defined herein, comply with FAR 52.203-15 regardless of the purchase order value or length of the period of performance. Establishing a Seller Business Ethics and Conduct program is in the best interest of the Seller, Buyer and the Buyer's customer. Seller's Ethics Program can provide guidance for establishing an Ethics program upon request. Point of Contact is Seller's Ethics Officer at 888-306-7330.
- (c) Buyer maintains an ethics program that includes a written code of conduct, training and awareness for all employees, details of which can be found at www.baesystems.com/AboutUs/OurGlobalCodeofConduct/index.htm. Buyer requires all its suppliers to embrace ethical values of a comparable standard (including a method for reporting possible violations). Failure to comply with this requirement shall be a material breach of this agreement and subject to termination under the "Termination for Default" clause below.
- (d) The Seller is hereby on notice that it is Buyer's policy that Buyer's personnel owe complete loyalty to Buyer and are forbidden to accept money or things of value from any supplier of goods or service to Buyer, regardless whether such acceptance would constitute an act prohibited by any Anti-Kickback Covenant included in this Order. Seller for itself and its principal owners, stockholders, and officers warrants and covenants that no employee of Buyer has any financial interest in Seller (except such as has been disclosed in writing to Buyer's purchasing manager), and that Seller has not and will not directly or indirectly give anything to any employee of Buyer. Breach of the foregoing warranty and covenant shall entitle Buyer, in addition to any other rights and remedies, immediately to terminate for default any and all Orders to Seller outstanding at the time that Buyer learns of any such breach, regardless when such breach may have occurred.

CHANGES

Buyer or its prime contract customer may at any time, by written order, make changes within the general scope of any Order. Upon receipt of such a written change order, Seller shall proceed without delay with performance of the Order as changed. If any such change causes an increase or decrease in Seller's cost of, or in the time required for the performance of the Order, an equitable adjustment shall be made in the price or the time for completion, or both, and the Order shall be modified in writing accordingly; Seller's proposal for equitable adjustment shall be submitted to Buyer, in writing, within five (5) days of Seller's receipt of a written change order.

If any change shall have resulted or derived in any way from an act or omission or formal or constructive order by Buyer's prime contract customer, Seller's right to equitable adjustment

shall be contingent on, and the amount thereof shall be determined in accordance with the following:

- (a) Seller shall have provided to Buyer written notice of the facts giving rise to such change and shall have done so in time and in form sufficient to enable Buyer to provide to Buyer's customer notice sufficient to protect Buyer's right to equitable adjustment under Buyer's prime contract;
- (b) Buyer shall be liable to Seller only to the extent that Buyer's prime contract customer accepts liability or is determined to be liable therefore;
- (c) The amount of Seller's equitable adjustment, if any, shall not exceed that allowed or awarded to Buyer from its prime contract customer, less any profit or costs, or both, to which Buyer is entitled.

If the progress of the Work under this Order is delayed without fault or responsibility of Seller, then the time for performance of the Work shall be extended to the extent of the time extension obtained by Buyer under the prime contract for such specific delay, and the performance period and/or progress schedule shall be revised accordingly. Buyer shall not be liable to Seller for any damages or additional compensation as a consequence of delays or disruption, unless Buyer has first recovered the same on behalf of the Seller from the customer, it being understood and agreed by Seller that, apart from such recovery, Seller's sole and exclusive remedy for delay and disruption shall be an extension in time for performance of the Work.

CONFIDENTIALITY

Seller shall, in the course of Work hereunder, be exposed to and have access to information and data, which is considered the proprietary information of Buyer and/or Buyer's customer. Seller agrees that Seller, its agents and/or employees shall not, during the term of this Order or subsequent to the expiration thereof, disclose to any third party any information which Seller may acquire from or about Buyer or its customer or any information related to the business of Buyer or its customer; and Seller shall not use for his own benefit any such information or data. This restriction is not intended to extend to any information that is public knowledge or is made public by Buyer. In the event of a breach by Seller, Buyer shall have the right to bring an action for an immediate injunction (without posting bond) to enjoin the Seller from breaching this Order. Nothing in this clause shall waive any other rights or remedies that the non-breaching party may have against the breaching party.

CONTRACT DIRECTION

- (a) Only the Buyer's procurement or subcontract representatives have authority to make changes in, to amend, or to modify this Order. Such changes, amendments or modifications must be in writing.
- (b) Buyer's program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to

be a change under the "Changes" clause above, and shall not be the basis for equitable adjustment. If Seller believes the foregoing creates an actual or constructive change, Seller shall notify the Buyer Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph (a) above.

CUSTOMER COMMUNICATION

Buyer shall be solely responsible for all liaison and coordination with the Customer or any higher tier contractor(s) as it affects this Order or any Work thereunder or related thereto. Except as required by law, Seller shall not communicate with the Customer, and any higher tier contractor(s), with respect to this Order or any Work thereunder or related thereto, without prior approval of the Buyer's Procurement Representative. Seller shall promptly notify Buyer of any communications, initiated by the Customer or any higher tier contractor(s) that affects this Order or any Work thereunder or related thereto.

DISPUTES

If Buyer's prime contract contains a "Disputes" article or procedure, any claim, demand or request for adjustment of Seller originally derived or resulting in any way from an act or omission or formal or constructive order of Buyer's prime contract customer that is not disposed of by agreement, may, at Buyer's election, be submitted for resolution pursuant to such prime contract "Disputes" article. If Seller is the principal party-in-interest in connection with any such claim or demand, Buyer may authorize Seller to proceed under such Disputes provision in Buyer's name; if such authorization is provided, Seller shall have full responsibility for such proceedings and shall bear all expenses, including attorney's fees in connection therewith, provided however, that such authorization shall not constitute Seller the agent or attorney for Buyer.

Any and all other disputes arising from the making, performance, or termination of this Agreement shall be settled by binding Arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) are to govern this Arbitration. The Arbitration shall take place in the State of Alabama. The dispute will be heard by a single Arbitrator. The Arbitrator shall be bound to follow the applicable subcontract provisions and the laws of the State of Alabama in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The Arbitrator shall not have the authority to award punitive damages.

ENVIRONMENTAL

- (a) Hazardous Material Identification and Material Safety Data: Without regard to whether Buyer's prime contract is for the federal Government, Seller agrees to identify hazardous material as defined by FAR Clause 52.223-3 subparagraphs (a), (b), and (c), to submit a Material Safety Data Sheet as provided by subparagraph (d)

- of that clause, and otherwise agrees to comply with the provisions of that clause as though Seller were in the position of "offeror" and "contractor" and Buyer were in the position of "contracting officer" as those terms are used in that clause.
- (b) Seller shall comply with all federal, state and local laws and regulations regarding the use of any "hazardous substances" (both terms as defined by both federal and state law) generated in the performance of this Order. Seller shall inform Buyer in writing of all hazardous waste expected to be so generated. Seller shall be solely responsible for the consequences of its failure to perform the foregoing obligations and shall defend and indemnify Buyer for all claims and liability, including penalties, resulting from Buyer's failure to so perform, negligent or otherwise.
 - (c) If Seller causes, to any extent, the actual or potential release, spill, discharge or other loss of control of a hazardous substance or hazardous waste (an "incident"), such that Buyer's On-Scene Emergency Coordinator is notified to respond through Buyer's existing Environmental Incident Communications Policy and Procedure, Buyer will incur response costs which are extremely difficult and impractical to ascertain. Buyer and Seller agree that the sums set forth herein represent the minimum amount of cost and expenses incurred by Buyer to respond to each Incident. Accordingly, Seller agrees to pay to Buyer for each incident caused by Seller, Buyer's actual response costs, which are agreed to be not less than the sum of one thousand dollars (\$1,000.00). Such payment shall not relieve Seller of the responsibility to pay Buyer the actual costs of Buyer's remediation of an incident caused by Seller, if any, resulting from the incident, and shall not impair or waive Buyer's indemnification rights as set forth herein.

EXPORT CONTROLS

- (a) Seller shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774. Seller shall obtain all required export licenses or agreements necessary to perform Seller's Work, as applicable.
- (b) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- (c) **Certification Regarding Registration with the U.S. Department of State, Directorate of Defense Trade Controls:** In compliance with ITAR, Contractor is registered with the United States Office of Defense Trade Controls.

- (d) If the technical data required to perform this Order is subject to the United States International Traffic in Arms Regulations (ITAR), Seller shall comply with the following:
- (1) The technical data shall be used only in performance of Work required by this Order; and
 - (2) The data shall not be disclosed to any other person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by Buyer and to any such data incorporated in documents generated by Seller; and
 - (3) Any rights in the data may not be acquired by Seller or any other Non-U.S. Person; and
 - (4) Seller shall return, or at Buyer's direction, destroy all of the technical data exported to Seller pursuant to this Order upon fulfillment of its terms;
 - (5) Unless otherwise expressly directed by Buyer, Seller shall deliver the Work only to Buyer or to an agency of the U.S. Government.
- (e) Where Seller is a signatory under Buyer's export license or export agreement (e.g. TAA, MLA), Seller shall provide prompt notification to the Buyer's Procurement Representative in the event of changed circumstances affecting said license or agreement.
- (f) Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, 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 a United States Government export license, export agreement, or applicable license exemption or exception.
- (g) Seller agrees to notify Buyer if any Articles or service to be delivered under this Purchase Order is restricted by export control laws or regulations.
- (h) Seller shall immediately notify Buyer's Purchasing Representative if Seller is listed in the Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (i) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act. **In compliance with 22 C.F.R. 130, Seller for itself, its principals, and its subcontractors warrants and covenants that neither Seller or its Subcontractor or any of their respective principals has paid, offered or agreed to pay, or will pay or offer to agree to pay, in respect to the Work which is to be provided to Buyer**

under any Order or Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.

- (j) For the purpose of this Article, “Foreign Persons” shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3) (i.e. persons granted asylum by the Government of the United States). It also means any Foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions). Further, United States Citizens, lawful permanent residents, or protected individuals who are employed by such foreign organizations shall be deemed “Foreign Persons” for the purpose of this Article.
- (k) All consultants, independent contractors and suppliers, who deliver material or provide services to the Buyer’s site will confirm in writing that they or their agents or employees meet one of the following criteria:
- (1) A citizen of the United States, or
 - (2) A lawful permanent residents as defined by U.S.C. 1101(b)(20), (i.e. Green Card Holders”), or
 - (3) A Protected Individual as defined by 8 USC 1324b(a)(3), or
 - (4) A foreign national for whom a current and directly relevant license or approval has been obtained from the U.S. Department of State.
- (l) Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are not citizens or nationals of the United States. They are not “lawful permanent residents” (also known as “green card holders”) under the Immigration and Nationality Act, and therefore do not meet the requirements of paragraph (h) above. These persons must be treated as Foreign Persons pursuant to paragraph (g) above. Further information is available at <http://www.uscis.gov>.
- (m) Seller shall indemnify, hold harmless and, at Buyer’s election, defend Buyer, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys’ fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of Seller, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this Section. Seller shall include the requirements of this Section in all agreements with lower tier subcontractors.
- (n) Buyer reserves the right to periodically audit Seller’s records for compliance with this Article.

FOREIGN CORRUPT PRACTICES PROHIBITION

- (a) By accepting this Order, Seller certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay

any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist Buyer or Seller in obtaining or retaining business.

(b) Seller shall ensure that all lower tier subcontracts include this paragraph.

FURNISHED PROPERTY

- (a) Buyer may provide to Seller property owned by either Buyer or its Customer (Furnished Property). Unless previously authorized in writing by the Buyer's Procurement Representative, Furnished Property shall be used only for the performance of this Order.
- (b) Title to Furnished Property shall remain in Buyer or its Customer as applicable. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) The Furnished Property shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage to Furnished Property while in Seller's care, custody, or control. Without additional charge, Seller shall manage, maintain, preserve, and insure Furnished Property in accordance with good commercial practice.
- (d) At Buyer's request, and/or upon completion of this Order Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

INDEPENDENT CONTRACTOR

Seller's relationship to Buyer shall be that of an independent contractor and this Order does not create an agency, partnership, or joint venture relationship between Buyer and Seller or Buyer and Seller personnel. Seller personnel engaged in performing Work under this Order shall be deemed employees of Seller and shall not for any purposes be considered employees or agents of Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Order. Buyer assumes no liability for Seller personnel

INSPECTION AND TEST

Seller shall maintain a system of quality control including all inspections and tests necessary to insure conformance with the plans and specifications. At all times during Seller's performance, all material and workmanship shall be subject to inspection and test by Buyer or by its prime contract customer; this right of inspection and test shall include rights of in-process inspection and test and of review of Seller's inspection and test documentation and records. All goods, Work, materials and services furnished hereunder shall be subject to final inspection after completion or delivery notwithstanding prior payment. Any inspection by Buyer or Buyer's

customer, whether in-process or final, and any failure to inspect by Buyer or Buyer's customer shall not be deemed to constitute acceptance and shall not relieve Seller of its obligations hereunder, including, but not limited to those set forth at the clause "WORKMANSHIP AND MATERIALS", below. In addition to its obligations under the clause, "WARRANTY", below, Seller shall, prior to acceptance, promptly correct or replace any defective Work or materials to the satisfaction of Buyer and Buyer's prime contract customer. If Seller fails promptly to proceed with such correction or replacement, Buyer may, in addition to any other rights provided hereunder or by applicable law, by contract or otherwise, proceed with such correction or replacement and charge to Seller the cost thereof.

LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay Seller's performance of this Order, the Seller shall immediately give notice thereof to Buyer. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this paragraph in all subcontracts or purchase orders issued by Seller in connection with this Order.

LIABILITY, INSURANCE, INDEMNITY

- (a) Seller shall exercise due care to prevent accidents, injury, or damage to persons or property in or about the property of Buyer or Buyer's prime contract customer, and to any vessel or part thereof upon which Work is done or to which goods are furnished hereunder. If an Order requires the presence of any personnel of Seller or Seller's subcontractors or suppliers at Buyer's plant or on any property of Buyer's customer, including any ship on which Work is to be performed under Buyer's prime contract, Seller, Seller's employees, and much of Seller's subcontractors and suppliers as may be on such property shall strictly comply with all Buyer's regulations and procedures governing the conduct of Buyer's work, including, without limitation, Buyer's safety procedures. Without limitation of the foregoing, in connection with any Work performed on the property of Buyer or Buyer's customer, Seller shall comply with all requirements of any applicable federal, state, or local statutes and regulations, including, without limitation, the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651-678), and the Safety and Health Regulations for Ship Repairing (29 CFR 1915) promulgated under Public Law 85-742 amending §41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §941) and adopted by the Department of Labor under §6(a) of the Occupational Safety and Health Act of 1970 (See 29 CFR 1910.13).
- (b) Seller agrees to indemnify and obtain insurance coverage and provide Buyer with evidence thereof, all in accordance with that certain Indemnity Agreement executed by Seller in connection with its acknowledgment of these Subcontract Terms and Conditions.
- (c) In addition to the insurance requirements set forth in said Indemnity Agreement, if Seller's Work will include providing professional services to Buyer, Seller shall maintain

Professional Liability insurance in an amount not less than \$2,000,000 each occurrence; \$2,000,000 aggregate. This requirement may be increased by Buyer in the event Seller's Work includes the provision of engineering design services.

- (d) In the event that any form of dispute resolution is necessary to enforce this Article, the prevailing party shall be entitled to attorney's fees. This attorney's fees provision applies exclusively to this Article, and not generally with regard to any other terms, conditions, or provisions of any Order.

LICENSE AND PATENT RIGHTS

Where the Order calls for any research or development work, Buyer shall be granted a nonexclusive, royalty-free license to manufacture, use and sell any articles, compositions, devices, processes or the like in accordance with any patent application, invention, improvement or discovery (whether or not patentable), whenever such articles, compositions, devices, processes or the like were conceived or first reduced to practice, either in the performance of the Order or in the performance of any Work relating to the Order which was done upon the understanding that the Order would be awarded. Seller shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Buyer, its officers, agents, employees and indemnitees from and against any and all claims, losses, suits, damages, legal and otherwise, arising out of or in any way connected with any claim, action or proceeding for infringement of any United States or foreign patent, copyright, or trademark arising out of the Work under the Order, or out of use or disposal of said Work. If any claim or demand is made against Buyer for any matter enumerated herein, any payment due or thereafter to become due to Seller shall be held by Buyer to cover such losses and expenses, including attorney's fees.

LIENS

Without any additional action by Seller, Seller's acceptance of this Order includes a full waiver of and release of all liens, encumbrances and other rights in rem (perfected or unperfected) in respect of the goods and services covered by this Order. The waiver and release by Seller hereunder includes the following additional warranties by Seller:

- (a) that all Sellers' subcontractors, vendors, material-men, suppliers, journeymen, mechanics, laborers, and all other legal entities who have furnished labor, material, or services towards the performance of Seller's obligations under this purchase order have been paid and satisfied in full;
- (b) that there are no unsatisfied claims nor any other indebtednesses outstanding concerning the goods and Sellers's performance of this Order;
- (c) that Seller has made no hypothecation of sums owing to Seller which would require that another person or legal entity receive payment;
- (d) that Seller has not committed default of any bond or other third party guarantee or security device in respect of the goods and this Order;
- (e) that the goods furnished pursuant to the Order are not subject to fine, seizure, or forfeiture, in whole or in part; and

- (f) that no penalty of any nature whatsoever can be assessed against any of the goods nor any property to which the goods become a fixture, accession, or component part.

All of the foregoing warranties are continuing actions and undertakings of the Seller throughout the performance of this Order.

Seller warrants that all the foregoing are true and correct, and Seller undertakes that it shall save, hold, and keep harmless Buyer from all losses whatsoever, whether such losses are occasioned by debt, account, lien, encumbrance, forfeiture, fine, seizure, hypothecation, property damage, personal injury, statutory lien rights, or other operation of law.

In addition to the foregoing, Buyer, at its sole option, may request from Seller, and Seller will provide, a full and complete Waiver of Liens and Indemnification against Liens in a form satisfactory to Buyer from Seller and from all of Seller's factors, other financiers, material-men, subcontractors, and suppliers (herein "subordinates") having performed or supplied any portion of the goods or services, hereunder, at any time. Buyer, at its sole option, may also request from Seller, and Seller will provide Buyer with proof including affidavits and waiver of liens showing payments and release of all duties, taxes, liens, claims, charges and obligations arising by operation of law and otherwise out of Seller's and its subordinates' performance of the Work hereunder, and Buyer may withhold funds due to Seller hereunder to assure itself of the discharge of all such obligations, or to satisfy any requirements of law relating to such claims against Seller and its subordinates.

LIMITATION OF LIABILITY

In no event shall Buyer be liable for any claims of consequential, indirect, incidental or special damages of any nature whatsoever.

NEW MATERIALS

Unless authorized in writing by the Buyer's procurement or subcontract representative, all Work to be delivered hereunder shall consist of new materials, and shall not be used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

NOTICE

When Buyer's prime contract requires Buyer to give notice to the customer upon the occurrence of specified events, and the Seller knows or has reason to know a specified event has occurred, the Seller shall promptly give Buyer written notice of that event and, in any case, sufficient time to allow Buyer to timely give the customer any required notice. The Seller's notice shall contain all information it has or can reasonably obtain to enable buyer to comply fully with the informational requirements imposed by the customer. The Seller's failure to meet the requirements of this clause shall bar any adjustment of time or amount to the Order to the extent Buyer's adjustment of time or amount to the prime contract is so barred.

NON-DISCLOSURE AND OWNERSHIP

Ownership of, and all rights with respect to any goods purchased under this Order, including all creative ideas incorporated therein, all preliminary materials, sketches, layouts, tooling, molds, dies, negatives, photographs, designs, blueprints or specifications relating thereto shall be vested exclusively in Buyer's company. Buyer may copy or reproduce any and all goods purchased hereunder for any and all purposes and may use the same in any and all media as often as it may so desire.

All plans, drawings, designs and specifications supplied by Buyer to Seller shall remain the property of Buyer, or Buyer's customer, and any information derived there from or otherwise communicated to the Seller, shall be regarded by Seller as strictly confidential and shall not, without the prior written consent of Buyer, be disclosed to any third party.

PACKING AND SHIPMENT

- (a) Unless otherwise specified in the prime contract, purchase order or other conditions of performance, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer's Contract or Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Order number.
- (c) Unless otherwise specified, delivery shall be FOB Destination

PAYMENT

- (a) Seller, upon submission of proper invoices, will be paid prices as stated in the Order for goods delivered and services completed and accepted, less deductions, if any, as herein provided. A calculation of payment due date and discount date, if applicable, is determined by date of final completion of Work or day of Buyer's receipt of proper invoice, whichever is later. Payments hereunder will be subject to set-off of any valid claim of Buyer (including its affiliated entities) against Seller arising from this or any other transaction.
- (b) Seller acknowledges that this order is in support of Buyer's prime contract and Seller agrees that it will submit its invoices within 30 days of the date on which the goods are delivered or the services are completed. Seller further agrees that its failure to submit a proper invoice within 30 days will render it subject to a 5% deduction of the amount of the invoice for each 30-day period for which the invoice is late and that such deduction may be taken by Buyer pursuant to the payment set-off provision included in this clause.

- (c) In the event that this Order is in furtherance of a cost reimbursement contract, then Buyer reserves the right to invoke the following language by referencing this paragraph on the face of the specific Purchase Order:
- a. Seller is provided notice and acknowledges by accepting this Order that it is placed under a Cost Reimbursement Contract between Buyer and Buyer's customer and that Buyer will not have the cost of this Order reimbursed by its customer until it has paid Seller. If Seller fails to provide an invoice in a timely manner, Buyer's costs for goods or services incurred hereunder may be declared unallowable by Buyer's customer with subsequent refusal by Buyer's customer to reimburse Buyer for the goods or services supplied by Seller. Seller is required, as a specific deliverable under this Order to invoice for goods or services ordered herein within 30 days of the completion of its obligation hereunder.
 - b. The extent and amount of actual damages which would be suffered by Buyer as a result of Seller's failure to timely deliver its invoice, as stated above, are impractical or extremely difficult to determine or estimate. Therefore, the following liquidated damages represent the parties' best estimate of the sums which would be fair and average compensation for all losses that may be sustained. Seller shall pay Buyer an equal value of the subject Order as liquidated damages (and not as a penalty) for each occurrence of Seller's failure to timely deliver an invoice, with each failure occurrence being a separate default. Seller authorizes Buyer to deduct such damages from any money that may be due or may become due to Seller for stated materials or services.

PERFORMANCE AND DELIVERY

It is agreed that time is of the essence in performance of any Order incorporating these terms and conditions. Commencement and completion of Work or delivery of the goods ordered shall be strictly in accordance with the times set forth on the face of the Order, or, if no time is there set forth, in accordance with the requirements of Buyer's prime contract. If requested by Buyer, Seller shall submit to Buyer, in the form acceptable to Buyer, a detailed schedule for performance of the Order which schedule will comply with all schedule requirements of Buyer's prime contract. If the Order requires shipboard Work, Seller shall, at no additional cost to Buyer, coordinate its Work with that being performed by Buyer, other subcontractors of Buyer, and by Buyer's customer.

Seller shall furnish forces, supervision, equipment, and materials sufficient to complete the Order within the time required. If Seller falls behind schedule or if it otherwise appears that Seller will not complete Work or deliver goods within the time required, Buyer may, in accordance with the clause "TERMINATION FOR DEFAULT" hereof, terminate Seller's right to proceed with the Work or with such part thereof as is behind schedule. The Seller agrees, upon THREE CALENDAR DAYS written notice from Buyer, at Seller's expense, to provide the necessary personnel and supply such equipment, materials, overtime workers and other devices and facilities as necessary so as to expedite the Order and meet or recover schedule. Such notice, once given, shall continue in effect until Work specified therein has been fully completed. The

Seller shall work overtime at the direction of Buyer. If such overtime work is necessary to cure delinquency in maintaining the progress schedule, and such delinquency is directly or indirectly attributable to Seller, such effort shall be without additional cost to Buyer.

Should the Seller fail or neglect to complete all or any part of the Order, including any change order, within the time or times specified or otherwise delay Buyer by reason of Seller's failure or neglect to perform its obligations under the Order, including any change order, and if as a result Buyer shall incur damages or expenses, or become obligated to pay damages under the prime contract or shall otherwise incur additional expenses, including costs of acceleration or premium costs, the Seller agrees to pay Buyer as actual damages, and not as a penalty, all damages (including liquidated damages) or expenses (including attorney's fees) so incurred by Buyer.

PRECEDENCE

In the event of any inconsistency within the terms of an Order, including these terms and conditions, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Typed or handwritten special provisions appearing on the face of any Order, if any;
- (b) Special or additional terms and conditions referenced on the face of any Order, to include flowdown provisions from Buyer' prime contract, if any;
- (c) These Subcontract Terms and Conditions; and
- (d) Provisions, specifications, and drawings incorporated by reference.

PRICE WARRANTY

Seller warrants that the prices for goods covered by this Order shall not be greater than those quoted or last charged to Buyer unless so specified on the face of the Order.

Seller further warrants that the prices are the lowest prices charged by Seller to Buyers of a class similar to Buyer under conditions similar to those specified under this Order and do not exceed the prices allowed by law. Seller warrants that all discounts and allowances are as favorable as those then offered by Seller to Buyers of a class similar to Buyer. Seller further warrants that any price reduction made with respect to goods or services covered by this Order subsequent to the placement of this Order will be applicable to this Order.

PRIME CONTRACT

The prime contract together with all documents described therein and appurtenant thereto are incorporated by reference and made a part of the Order. Except as modified herein, the Seller assumes the same obligations to Buyer under the Order that Buyer assumes to the customer under the prime contract, and the Seller shall comply with all conditions of the prime contract as

they apply to the Work under the Order. By accepting the Order, the Seller acknowledges that it has had an opportunity to make a site visit to review conditions which may relate to its performance under the Order, and also acknowledges that it has reviewed the prime contract and all documents made a part thereof, including the drawings and specifications as they relate to its Work under the Order as well as other work which may interface with its Work.

PROGRESS PAYMENTS

If expressly so provided on the face of an Order, Seller shall receive progress payments in the same percentages and calculated in the same fashion as those provided in Buyer's prime contract. Determination of the percentage of completion of Seller's Work shall be made by Buyer and Buyer's prime contract customer; their decision shall be final and not subject to dispute by Seller. Seller shall submit invoices for such progress payments in a form acceptable to Buyer including such substantiation of costs incurred or progress made, or both, as Buyer may require. Such progress payments as are justified by suitable invoices and substantiation will be made within ten (10) days of Buyer's receipt of progress payments for the same period as the progress covered in Seller's invoices as are made under Buyer's prime contract. If Buyer's prime contract so provides, title to all Work in process, materials, equipment, or other property covered by progress payments shall vest in Buyer's prime contract customer, but this provision shall not be construed as effecting any acceptance or in any other way relieving Seller of its obligations of strict and timely performance, warranties, or any and all other obligations hereunder.

PROTECTION OF WORK

All loss of damage to the Work resulting from any cause whatsoever shall be borne and sustained by Seller and shall be solely at its risk until final acceptance by Buyer and Buyer's customer. Seller shall take necessary precautions to properly protect the Work and the work of others from damage caused by Seller's operations. Should Seller cause damage to the work or property of Buyer's customer or Buyer, or others, Seller shall promptly remedy such damage to the satisfaction of Buyer, or Buyer may so remedy and deduct the cost thereof from any amounts due or to become due Seller. Nothing herein shall limit any additional rights Buyer may have pursuant to this Order or law.

PUBLICITY, PROMOTION, ADVERTISEMENT

Seller shall not without the prior writing consent of Buyer, issue any news release, advertisement, publicity or promotional material regarding this Order or any other information regarding Buyer (including confirmation or denial thereof).

RECORDS AND AUDIT

To the extent that Seller is producing material or performing services specifically for Buyer, or if Seller is performing Work on Buyer's premises, or if Seller is performing Work on Buyer's or Buyer's customer's equipment outside of Buyer's premises, Seller shall maintain records as follows:

- (a) Seller shall keep accurate daily records for all Work performed hereunder, and upon request it shall provide copies to the Buyer.
- (b) The records shall include the hours worked by each employee, the type of work performed, the wages paid, equipment and materials used and any other item of cost claimed by Seller or for which Buyer shall have reimbursed Seller.
- (c) Buyer shall have the right at all reasonable times during regular business hours, to inspect and audit such records.
- (d) Seller shall preserve such records for 36 months after completion or termination of this order

RIGHTS AND REMEDIES

The rights and remedies herein reserved to Buyer shall not be exclusive and shall be cumulative and additional to any other or further rights and remedies provided in law or in equity. If any provision of any Order is or becomes void and unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

The failure of Buyer to enforce at any time any of these terms and conditions or any other provisions of any Order, or to exercise any option provided therein, or to require at any time performance by Seller of any provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this agreement or any part thereof or the right of Buyer thereafter to enforce each and every such provision.

SAFETY

- (a) Seller shall be solely responsible for the safe conduct of its employees and subcontractors while performing the Work required under this Order. Seller shall comply with all applicable federal, state, and local health, safety and fire protection laws and regulations. Seller shall also comply with Buyer's safety policies and procedures. Seller shall inform Buyer in writing of all safety related problems or incidents immediately upon such occurrence.
- (b) Seller shall be solely responsible for the consequences of its failure to perform the foregoing safety obligations and shall defend and indemnify Buyer for all claims and liability, including penalties, resulting from Buyer's failure to so perform such safety obligations, negligent or otherwise. Seller shall also be responsible for all costs, including attorney's fees associated with any federal or state citation issued against Buyer resulting from the failure of Seller to comply with the safety obligations as stated in this Order
- (c) Seller may be terminated under the clause "TERMINATION FOR DEFAULT" below for significant or persistent safety or environmental issues.

SECOND TIER SUBCONTRACTING

No Work may be subcontracted by Seller without the express written consent of Buyer. If Seller intends to subcontract Work, Buyer must be furnished, in writing, a description of the specific Work to be subcontracted, the name of the company to be utilized, and a copy of the second tier subcontract or purchase order for approval. All of the applicable Order terms must be made part of the subcontract or purchase order to the second tier subcontractor.

SELLERS OF TEMPORARY LABOR

In addition to the terms herein, Seller warrants that temporary workers sent to Buyer are fit to perform the normal duties of a worker in the trade and at the skill level requested. Buyer reserves the right, at its sole, unfettered discretion, to order any worker supplied by Seller to cease work and exit the premises. Buyer shall not be responsible for paying Seller for the day on which any such worker is expelled. Buyer shall use its best efforts to promptly notify Seller of any such expulsion.

SEVERABILITY

In the event that any section, clause or provision of this Order conflicts with any applicable law, regulation, or ordinance, such conflict shall not affect other sections, clauses or provisions of this Order which can be given effect without the conflicting section, clause, or provision. To the end, the sections, clauses and provisions of this Order are declared to be severable.

STOP WORK ORDER

- (a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as Buyer and Seller may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, Buyer shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the clause "CHANGES" above shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

SUPERINTENDENCE BY SELLER

If any order requires Work to be performed at a site other than Seller's plant, Seller shall designate a project manager satisfactory to Buyer who shall be readily available at the site of such Work and authorized to act for Seller. A superintendent competent to supervise the Work shall be physically at the site of Work in charge of operations. Buyer may require Seller to remove from any such site any employees of Seller or of any subcontractor of Seller deemed by Buyer or its prime contract customer to be incompetent or careless or for any other commercially reasonable reasons.

TERMINATION FOR CONVENIENCE

- (a) After receipt of a Notice of Termination and except as otherwise directed by Buyer, Seller shall:
- a. Stop Work as specified in the Notice;
 - b. Place no further subcontracts or orders for materials, except as necessary to complete the continued portion of the Order;
 - c. Terminate all subcontracts to the extent that they relate to the Work terminated;
 - d. Assign to the Buyer, as directed by Buyer, all right, title, and interest of Seller under terminated subcontracts of Seller;
 - e. Subject to Buyer's approval or ratification, settle all outstanding liabilities and subcontract termination claims;
 - f. As directed by Buyer in writing, transfer title and deliver to Buyer or Buyer's customer completed Work, fabricated, or unfabricated parts, Work in-process, supplies and other material produced or required for the terminated Work, including, but not limited to completed or partially completed plans, drawings, and other information that, if the Order had been completed, would be required to be furnished under the terms of the Order;
 - g. Complete performance of the Work not terminated;
 - h. Protect and preserve property relating to the Order that is in the possession of Seller in which Buyer or its prime contract customer has or may acquire an interest; as directed or authorized by Buyer, Seller shall use its best efforts to sell any property of the types referred to in subparagraph (6) above, provided, however, that Seller is not required to extend credit to any Buyer and may itself acquire any such property under conditions prescribed by and prices approved by Buyer. The proceeds of any such transfer or disposition shall be applied to reduce any payments to be made by Buyer under the terms of this clause or paid in such other manner as Buyer may direct.
- (b) Within thirty (30) days after receipt of a Notice of Termination, Seller shall submit to Buyer, in the form and with the certification prescribed by Buyer, Seller's termination claim.
- (c) Subject to the provisions of subparagraph (b), Seller and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Seller by reason of the total or partial termination of Work pursuant to this clause. The amount so agreed may include a reasonable allowance for profit on Work done. However, the agreed amount, whether

under this subparagraph (c), or subparagraph (d) below, exclusive of settlement costs, shall not exceed the total Order price as reduced by the amount of payment otherwise made and as further reduced by the order price of Work not terminated.

- (d) In the event of the failure of Seller and Buyer to agree as provided in subparagraph (c), Buyer shall pay to Seller the amounts determined as follows, but without duplication of any amounts agreed upon in accordance with subparagraph (c):
- a. The Order price for completed supplies or services accepted by Buyer and not previously paid for, appropriately adjusted for any saving of freight or other charges;
 - b. The total of:
 - i. The costs incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid for or to be paid for under subparagraph (1) above.
 - ii. A sum, as profit, on (i) above at a reasonable and customary rate therefor, provided, however, that if it appears that the Seller would have sustained a loss on the entire Order had it been completed, Seller shall be entitled to no profit under this subparagraph (ii) and an appropriate adjustment shall be made reducing the amount payable hereunder to reflect the indicated rate of loss.
 - c. The reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of a termination settlement claim and supporting data, and for the termination and settlement of subcontracts, and the reasonable cost of storage, transportation and other costs incurred for the preservation, protection, or disposition of termination inventory.
 - d. The total sum to be paid under (1) and (2) above shall not exceed the total Order price reduced by the amount of payments otherwise made and as further reduced by the price of Work not terminated.
- (e) The obligation of Buyer to make any payments under this clause shall be subject to deductions and offsets for all unliquidated progress or other payments on account made to Seller under the Order for any claim which Buyer may have against Seller, whether or not in connection with the terminated Order, and for the agreed price for or the proceeds of sale of any termination inventory retained by Seller or sold and not otherwise recovered by or credited to Buyer.
- (f) If the termination of an Order is partial, Seller may file a proposal with Buyer for equitable adjustment of the price or prices of the continued portion of the Order. Any

claim for such an equitable adjustment must be asserted within thirty (30) days of Seller's receipt of Notice of Termination.

TERMINATION FOR DEFAULT

- (a) This Order may be terminated by Buyer, in whole or in part, whenever Seller defaults in its performance of this Order, and fails to remedy such default within FIVE CALENDAR DAYS after receipt by Seller of a notice specifying the default. Circumstances of default, include, but are not limited to the following:
- a. If Seller fails to make timely delivery of goods or to perform services within the time specified in an Order; or
 - b. If Seller fails to perform any of the other provisions of an Order, or so fails to make progress as to endanger performance of an Order in accordance with its terms; or
 - c. If Seller fails to comply with the "Safety" and/or "Environmental" clauses of this Order.
- (b) Except with respect to defaults of subcontractors of Seller, Seller shall not be liable for any excess costs if any failure to perform the Order arises from causes beyond the control and without the fault or negligence of the Seller, provided that Seller shall have provided to Buyer prompt notice of any such actual or potential cause or failure as soon as such cause shall have arisen. Such causes may include, but are not restricted to acts of God or the public enemy, acts of Buyer or Buyer's customers, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case, failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor of Seller and if such default arises out of causes beyond the control of both Seller and its subcontractor, and without the negligence of either of them, Seller shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by Seller's subcontractor were obtainable from other sources in sufficient time to permit Seller to perform within the time specified therein. As used in this clause, the word "subcontractor" means vendor or subcontractor at any tier.
- (c) In the event the Buyer terminates this Order in whole or in part as provided in this clause, Buyer may, upon such terms in such manner as it may deem appropriate, arrange for the completion of the Work so terminated. If the cost to Buyer of the Work procured or completed exceeds the price fixed for Work under the Order, Seller shall be liable for such excess.
- (d) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under, or applicable to, any Order. In the event that the face of an Order contains a prime contract number, Seller is thereby placed on notice that Buyer's total damages by reason of Seller's default may

include, but are not limited to damages and other costs imposed by the terms of Buyer's prime contract.

- (e) If Buyer effects a termination on the basis of a default by Seller, and it is thereafter determined, pursuant to this Order, that Seller was not in default, such termination shall then be deemed to have been effected for the convenience of Buyer or its customer.

TOOLING

If the order includes jigs, dies, fixtures, patterns, or special test equipment and manufacturing aids (hereinafter referred to as tooling) used in the manufacture of the articles, such tooling and drawings thereof become the property of Buyer or its customer immediately upon payment therefore. Tooling shall be used only for production for Buyer and shall be kept in good condition, including necessary replacement, without expense to Buyer, except that the cost of changes due to Buyer's change of design shall be paid for by Buyer.

Seller shall maintain property control records for such tooling and shall promptly furnish Buyer a list thereof upon request. Following completion or termination of this order, Seller shall hold all such tooling free of charge for six months following its furnishing of said inventory to Buyer, and any such tooling Buyer orders returned to it shall be delivered f.o.b. Seller's plant, properly crated for U.S. shipment. No crating charge is to be included in Seller's quotations unless expressly requested by Buyer.

TOOLS AND SUPPLIES

Seller shall furnish all required tools to complete the Work. Seller will not be permitted to use any Buyer tools unless specified in the Order. Seller shall indemnify and hold harmless Buyer, its officers, agents, and employees from and against any and all claims, notices, orders, losses, suits, damages (including consequential or punitive damages) legal and otherwise, and liabilities incurred by or asserted against Buyer which in any way arise out of or are related to the use of Buyer's tools or supplies by Seller. **Seller acknowledges that Buyer makes no warranty with regard to the merchantability or fitness for a particular purpose of the tools supplies, nor makes any other warranty, express or implied, with regard to said tools and acknowledges that the tools are being tendered to Seller "as is".**

WARRANTY

For all Work, Seller shall give the warranties called for in the prime contract for the time periods designated therein. In addition, Seller warrants that all Work and materials furnished hereunder will be free from defects in material and workmanship and will conform to applicable specifications, drawings, samples and descriptions, and if of Seller's design or selection, will be free from design defects and fit for intended use. Except as otherwise expressly provided, the foregoing warranties shall remain in effect for a period of ninety (90) days from the date of redelivery of the vessel under Buyer's prime contractor from the date of completion of any individual Work item incomplete at the time of redelivery of the vessel, whichever is later. The foregoing warranties shall be in addition to any such standard warranty or guarantee of Seller

and any warranties otherwise created by operation of law. All warranties and guarantees shall run to Buyer and Buyer's customers.

WORKMANSHIP AND MATERIALS

Work performed and goods supplied pursuant to any Order shall be in strict accordance with the specifications set forth or referenced in such Order, including all applicable plans and specifications of Buyer's prime contract. Unless otherwise specifically provided in any Order, or in Buyer's prime contract, all operational practices of Seller and all workmanship and materials shall be in accordance with the latest rules and requirements of the American Bureau of Shipping, United States Coast Guard and the American Institute of Electrical and Electronic Engineers, and with the best commercial marine practice; where Buyer's prime contract shall specify U.S. Navy specifications, Navy standards of material and workmanship shall be followed.

FEDERAL GOVERNMENT CONTRACT PROVISIONS (9/23/2011)

If the face of any Order includes identification of a prime contract with the United States including, but not limited to, a number of a Job Order issued under any of Buyer's Master Agreements for Repair and Alteration of Vessels (DFARS Subpart 217.71), the following provisions of the FAR and DFARS as in effect on the effective date of Buyer's prime contract, are incorporated by reference; except as specifically indicated to the contrary below, as used in the following provisions, for the purposes of this Order, the term "contract" means an Order, the term "contractor" means Seller, and the terms "Government" and "Contracting Officer" mean Buyer.

The full text of the clauses set forth below is available at the following Internet web sites:

- <http://farsite.hill.af.mil/>
- <http://www.arnet.gov/far/>
- <http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

Clauses By Reference		
52.202-1	Definitions	Jul-04
52.203-3	Gratuities	Apr-84
52.203-5	Covenant Against Contingent Fees	Apr-84
52.203-6	Restrictions On Subcontractor Sales To The Government	Sep-06
52.203-7	Anti-Kickback Procedures	Oct-10
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	Jan-97
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	Jan-97
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions [applicable if this Order exceeds \$100,000; for purposes of this clause, the term "Offeror" means Seller and the term "offer" means Seller's bid, proposal, quote, or acceptance of this Order]	Sep-07
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	Oct-10
52.203-13	Contractor Code of Business Ethics and Conduct	Apr-10
52.203-14	Display of Hotline posters	Dec-07
52.204-2	Security Requirements	Aug-96
52.204-9	Personal Identity Verification of Contractor Personnel	Jan-11
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (Applicable to awards \$25k or greater)	Oct-10
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	Dec-10
52.211-5	Material Requirements	Aug-00
52.211-15	Defense Priority And Allocation Requirements	Apr-08
52.214-26	Audit-Sealed Bidding (Applicable to Fixed Price Orders Exceeding \$100,000).	Oct-10
52.214-27	Price Reduction for Defective Cost Or Pricing Data -- Modifications--Sealed Bidding (Applicable if Fixed Price Order, subject to the requirements of clause 31.)	Oct-10
52.214-28	Subcontractor Cost and Pricing Data- Modifications-Sealed Bidding (Applicable if FIXED PRICE order).	Oct-10
52.215-2	Audit and Records--Negotiation	Oct-10
52.215-8	Order of Precedence--Uniform Contract Format	Oct-97
52.215-10	Price Reduction for Defective Cost or Pricing Data	Oct-10

52.215-11	Price Reduction for Defective Cost or Pricing Data -- Modifications [Subject to the requirement of clause 31.]	Oct-10
52.215-12	Subcontractor Cost or Pricing Data	Oct-10
52.215-13	Subcontractor Cost and Pricing Data - Modifications (OCT 1997) [applicable if Order issued under a negotiated prime contract, subject to the requirements of clause 31.]	Oct-10
52.215-14	Integrity of Unit Prices [applicable if Order issued under a negotiated prime contract]	Oct-10
52.215-15	Pension Adjustments and Asset Reversions	Oct-10
52.215-16	Facilities Capital Cost Of Money [applicable if Order issued under a negotiated prime contract.]	Jun-03
52.215-17	Waiver of Facilities Capital Cost of Money [Applicable in accordance with 52.215-16 when FCCOM not proposed by subcontractor.]	Oct-97
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	Jul-05
52.215-19	Notification Of Ownership Changes [Applicable the order is subject to requirements of FAR 15.408 (k)]	Oct-97
52-215-20	Requirement for Cost and Pricing Data or Information Other than Cost and Pricing Data [applicable during negotiation of proposals or modifications with the Government]	Oct-10
52.215-21	Requirement for Cost and Pricing Data or Information Other than Cost and Pricing Data--Modifications [applicable if Order issued under a negotiated prime contract]	Oct-10
52.215-22	Limitations on Pass-Through Charges – Identification of Subcontract Effort	Oct-09
52.215-23	Limitations on Pass-Through Charges	Oct-09
52.216-7	Allowable Cost And Payment	Dec-02
52.219-8	Utilization of Small Business Concerns	Jan-11
52.219-9 Alt II	Small Business Subcontracting Plan (Apr 2008) Alternate II	Jan-11
52.219-16	Liquidated Damages-Subcontracting Plan	Jan-99
52.222-1	Notice to the Government of Labor Disputes	Feb-97
52.222-3	Convict Labor	Jun-03
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	Jul-05
52.222-19	Child Labor -- Cooperation with Authorities and Remedies	Jul-10
52.222-20	Walsh-Healey Public Contracts Act	Oct-10
52.222-21	Prohibition Of Segregated Facilities	Feb-99
52.222-26	Equal Opportunity	Mar-07
52.222-35	Equal Opportunity For Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	Sep-10
52.222-36	Affirmative Action For Workers With Disabilities	Oct-10
52.222-37	Employment Reports On Special Disabled Veterans, Veterans Of The Vietnam Era, and Other Eligible Veterans	Sep-10
52.222-38	Compliance with Veterans' Employment Reporting Requirements	Sep-10
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (>= \$150k)	Dec-10
52.222.50	Combating Trafficking in Persons	Feb-09
52.222-54	Employment Eligibility Verification	Jan-09
52.223-3	Hazardous Material Identification And Material Safety Data	Jan-97
52.223-5	Pollution Prevention and Right-to-Know Information	Aug-03
52.223-6	Drug-Free Workplace	May-01
52.223-7	Notice Of Radioactive Materials [Applicable in any order concerning radioactive materials as set forth in Paragraph (a) of the clause]	Jan-97

52.223-11	Ozone-Depleting Substances	May-01
52.223-12	Refrigeration Equipment and Air Conditioners	May-95
52.223-13	Certification of Toxic Chemical Release Reporting (OCT 2000) [applicable if this Order exceeds \$100,000]	Aug-03
52.223-14	Toxic Chemical Release Reporting	Aug-03
52.223-18	Contractor Policy to Ban Text Messaging While Driving	Sep-10
52.225-8	Duty-Free Entry [IAW paragraph (j)]	Oct-10
52.225-13	Restrictions on Certain Foreign Purchases	Jun-08
52.227-1	Authorization and Consent	Dec-07
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	Dec-07
52.227-10	Filing Of Patent Applications--Classified Subject Matter	Dec-07
52.227-11	Patent Rights--Ownership By The Contractor	Dec-07
52.227-13	Patent Rights--Ownership By The Government	Dec-07
52.228-5	Insurance – Work On A Government Installation	Jan-97
52.229-3	Federal State and Local Taxes	Mar-03
52.229-4	Federal, State, And Local Taxes (State and Local Adjustments) (APRIL 2003)	Apr-03
52.230-2	Cost Accounting Standards	Oct-10
52.230-3	Disclosure And Consistency Of Cost Accounting Practices	Oct-08
52.230-6	Administration of Cost Accounting Standards	Mar-08
52.232-17	Interest	Oct-10
52.232-20	Limitation Of Cost	Apr-84
52.232-22	Limitation Of Funds	Apr-84
52.234-1	Industrial Resources Developed Under Defense Production Act Title III	Dec-94
52.237-2	Protection Of Government Buildings, Equipment, And Vegetation	Apr-84
52.242-1	Notice of Intent to Disallow Costs	Apr-84
52.242-3	Penalties for Unallowable Costs	May-01
52.242-4	Certification of Final Indirect Costs	Jan-97
52.243-6	Change Order Accounting	Apr-84
52.244-2	Subcontracts	Jun-07
52.244-5	Competition In Subcontracting	Dec-96
52.244-6	Subcontracts For Commercial Items And Commercial Components	Dec-10
52.245-1	Government Property	Aug-10
52.245-2	Government Property Installation Operation Services	Aug-10
52.245-9	Use and Charges	Aug-10
52.247-1	Commercial Bill of Lading Notations	Feb-06
52.247-63	Preference for U.S. Flag Air Carriers	Jun-03
52.247-67	Submission Of Commercial Transportation Bills To The General Services Administration For Audit [When Seller is directed to comply by Buyer in separate writing]	Feb-06
52.248-1	Value Engineering	Oct-10
52.253-1	Computer Generated Forms	Jan-91
252.201-7000	Contracting Officer's Representative	Dec-91
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	Dec-08
252.204-7000	Disclosure Of Information	Dec-91
252.204-7005	Oral Attestation of Security Responsibilities	Nov-01
252.205-7000	Provision of Information to Cooperative Agreement Holders	Dec-91
252.208-7000	Intent To Furnish Precious Metals As Government-Furnished Material	Dec-91
252.209-7001	Disclosure Of Ownership Or Control By The Government Of A Terrorist Country	Jan-09

252.209-7002	Disclosure Of Ownership Or Control By A Foreign Government	Jun-10
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country	Dec-06
252.211-7000	Acquisition Streamlining [Applies to Orders over \$1,000,000]	Oct-10
252.211-7003	Item Identification and Valuation	Aug-08
252.211-7007	Reporting of Government Furnished Equipment in the DOD Item Unique Identification (IUID) Registry	Nov-08
252.215-7000	Pricing Adjustments	Dec-91
252.215-7002	Cost Estimating System Requirements	May-11
252.219-7003	Small Business Subcontracting Plan (DOD Contracts)	Oct-10
252.222-7006	Restrictions on Use of Mandatory Arbitration Agreements (Applies to Orders > \$1M)	Dec-10
252.223-7001	Hazard Warning Labels	Dec-91
252.223-7004	Drug Free Work Force	Sep-88
252.223-7006	Prohibition On Storage And Disposal Of Toxic And Hazardous Materials	Apr-93
252.225-7001	Buy American Act And Balance Of Payments Program	Dec-09
252.225-7002	Qualifying Country Sources As Subcontractors	Apr-03
252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies	Sep-06
252.225-7008	Restriction on Acquisition of Specialty Metals	Jul-09
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	Jan-11
252.225-7012	Preference For Certain Domestic Commodities	Jun-10
252.225-7013	Duty-Free Entry [IAW paragraph (j)]	Dec-09
252.225-7014	Preference for Domestic Specialty Metals (APR 2003); and, Alternate 1	Jun-05
252.225-7015	Restriction on Acquisition of Hand Or Measuring Tools	Jun-05
252.225-7016	Restriction On Acquisition Of Ball and Roller Bearings	Dec-10
252.225-7019	Restriction on Acquisition of Foreign Anchor and Mooring Chain	Dec-09
252.225-7025	Restriction on Acquisition of Forgings	Dec-09
252.225-7030	Restriction On Acquisition Of Carbon, Alloy, And Armor Steel Plate	Dec-06
252.225-7031	Secondary Arab Boycott Of Israel	Jun-05
252.225-7036	Buy American- North American Free Trade Agreement Implementation Act – Balance of Payments Program	Dec-10
252.225-7037	Evaluation of Offers for Air Circuit Breakers	Jun-05
252.227-7013	Rights in Technical Data--Noncommercial Items	Mar-11
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	Mar-11
252.227-7016	Rights in Bid or Proposal Information	Jan-11
252.227-7019	Validation of Asserted Restrictions--Computer Software	Jun-95
252.227-7027	Deferred Ordering Of Technical Data Or Computer Software	Apr-88
252.227-7030	Technical Data--Withholding Of Payment	Mar-00
252.227-7037	Validation of Restrictive Markings on Technical Data	Sep-99
252.231-7000	Supplemental Cost Principles	Dec-91
252.243-7001	Pricing of Contract Modifications	Dec-91
252.243-7002	Requests for Equitable Adjustment	Mar-98
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	Nov-10
252.246-7000	Material Inspection And Receiving Report	Mar-08
252.246-7001	Warranty Of Data	Dec-91
252.247-7023	Transportation of Supplies by Sea	May-02

252.247-7024	Notification Of Transportation Of Supplies By Sea	Mar-00
252.249-7002	Notification of Anticipated Program Termination or Reduction	Dec-10
252.251-7000	Ordering From Government Supply Sources [Must be approved by Buyer]	Nov-04
Pending	Executive Order 13496 - Obligation of Federal Contractors to Notify Employees of their Rights Under Federal Labor Laws	

CERTIFICATIONS AND REPRESENTATIONS

- (1) This Subsection contains certifications and representations that are material representations of fact upon which Buyer will rely in making awards to Seller. This Subsection applies in addition to any other representations and certifications submitted by Seller. By submitting its written offer, or providing oral offers/quotations at the request of Buyer, or accepting any Order, Seller certifies to the representations and certifications as set forth below in this Subsection. These certifications and representations shall apply whenever these terms and conditions are incorporated by reference in any Order, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by Buyer. Seller shall immediately notify Buyer of any change of status with regard to these certifications and representations.
- (2) To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 C.F.R. Part 60-1.4(a) (women and minorities), 41 C.F.R. Part 60-250.5(a) and Part 60-300.5(a) (covered veterans), and 41 C.F.R. Part 60-741.5(a) (individuals with disabilities) and the employee notice requirements set forth in 29 C.F.R. Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.
- (3) **The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to this Contract. In each clause incorporated below, substitute "Buyer" for "Government" and "Contracting Agency," and "Buyer Procurement Representative" for "Contracting Officer" throughout.**
- (a) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$100,000)
- (i) **Definitions. As used in this provision—**
"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).
The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).
- (ii) **Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.**
- (iii) **Certification. Seller hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.**
- (iv) **Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, Contractor shall complete and submit, with its offer, to Buyer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.**
- (v) **Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.**
- (b) **FAR 52.209-5 -- Certification Regarding Responsibility Matters (Apr 2010) (Applies to Contracts that exceed \$100,000)**
- (1) The Seller certifies, to the best of its knowledge and belief, that --
- (i) The Seller and/or any of its Principals --
- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have not within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(I) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) The Seller has not within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Seller shall provide immediate written notice to the Buyer Procurement Representative if, at any time prior to contract award, the Seller learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Seller's responsibility. Failure of the Seller to furnish a certification or provide such additional information as requested by the Buyer Procurement Representative may render the Seller non-responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a Seller is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Seller knowingly rendered an erroneous certification, in addition to other remedies available to the Buyer, Buyer may terminate the contract resulting from this solicitation for default.

(c) FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Dec 2010)

(1) Contractor certifies that, to the best of its knowledge and belief, that Contractor and/or any of its Principals, (as defined in FAR 52.209-6) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(2) Contractor shall provide immediate written notice to BUYER if, any time prior to award of any Contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(d) FAR 52.222-22 Previous Contracts and Compliance Reports.

Seller represents that if Seller has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) (i) Seller has filed all required compliance reports and: (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(e) FAR 52.222-25 Affirmative Action Compliance.

Seller represents (1) that Seller has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Seller will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.

- (f) FAR 52.223-13 Certification Of Toxic Chemical Release Reporting (Applicable to competitive solicitations/contracts which exceed \$100,000.)
- (1) Executive Order 13148, of April 21, 2000. Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.
- (2) Seller certifies that—
- (a) As the owner or operator of facilities that will be used in the performance of this Contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of this Contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or
- (b) None of its owned or operated facilities to be used in the performance of this Contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:
- (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under 40 CFR 372.65;
- (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);
- (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 C.F.R. 372.27, provided an appropriate certification form has been filed with EPA);
- (iv) The facility does not fall within Standard Industrial Classification Code (SIC) codes or their corresponding North American Industry Classification Systems sectors:
- (A) Major group code 10 (except 1011, 1081, and 1094.)
- (B) Major group code 12 (except 1241).
- (C) Major group codes 20 through 39.
- (D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
- (E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.) < 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery on a contract or fee basis): or
- (v) The facility is not located in the United States or its outlying areas.
- (g) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act. In compliance with 22 C.F.R. 130, neither Seller nor its subcontractors at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which is to be provided to BAE SYSTEMS under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.
- (h) **Anti-Kickback Covenant.** This Order is subject to the terms of the Anti-Kickback Act of 1986 (41 U.S.C. §51-58) and implementing regulations and prime contract clauses. By accepting this Contract, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply. Seller agrees that Seller shall be strictly prohibited from providing or attempting to provide or offering to provide any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind directly or indirectly to Buyer, to any Buyer employee, or to any other subcontractor of Buyer or any employee of any such subcontractor for the purpose of improperly obtaining this or any other contract or Order from Buyer or for rewarding favorable treatment in connection with this or any other contract or Order between Buyer and Seller. Seller also agrees that it shall promptly report to Buyer's General Counsel any solicitation or request for a kickback as defined in the previous sentence. Seller's breach of the foregoing prohibition or of the foregoing obligation to report shall be considered a material breach of this contract and of any and all contracts between Buyer and Seller.
- (i) **Procurement Integrity Covenant.** This Order is subject to the terms of the Office of Federal Procurement Policy Act (41 U.S.C. §423) and implementing regulations. Seller agrees that Seller shall, during the conduct of any federal agency procurement, be strictly prohibited from engaging in any of the following activities: (i) making, directly or indirectly, any offer or promise of future employment or business opportunity to, or engaging, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency; (ii) offering, giving, or promising to offer or give, directly or indirectly,

any money, gratuity, or other thing of value to any procurement official of such agency; (iii) soliciting or obtaining, directly or indirectly, from any officer or employee of such agency, any proprietary or source-selection information regarding such procurement; (iv) knowingly disclosing any proprietary or source-selection information regarding such procurement, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information; or (v) permitting any individual who was formerly a Government procurement official with respect to the Government contract appearing on the face of this Order to knowingly participate in any manner in any negotiations leading to the award, modification, or extension of a contract for such procurement, or to knowingly participate personally and substantially on behalf of the Seller in the performance of such contract [this last restriction, number (v), only applies if this Order qualifies under 41 U.S.C. §423(d)]. Seller also agrees that it shall promptly report to Buyer's General Counsel any violations or possible violations of the above provisions.

Seller's violation of any of the prohibitions set forth in 41 U.S.C. §423 or failure to comply with the reporting requirements shall be considered a material breach of this contract and of any and all contracts between Buyer and Seller. Seller agrees to indemnify and save harmless Buyer and its successors, assigns, or customers from any expense, loss, damage, or liability on account of any violations of the foregoing prohibitions. Seller agrees at its own expense to defend any actions, suits, or claims in which such violations are alleged, provided that Seller is notified as to such actions, suits, or claims.

- (j) **Certification Regarding Registration with the U.S. Department of State, Directorate of Defense Trade Controls:** In compliance with ITAR, Seller is registered with the United States Office of Defense Trade Controls.
- (k) **Certification Regarding Additional Seller Requirements and Responsibilities Restricting the Use of Mandatory Agreements. (Applicable to solicitations/contracts which exceed \$1,000,000.)** Seller certifies it agrees not to enter into, and not take any action to enforce any provision of any agreement with respect to any employee of independent Seller performing work related to such subcontract in accordance with Office of the Under Secretary of Defense Class Deviation No. 2010-O0004 (FEB 2010) to Implement Additional Seller Requirements and Responsibilities Restricting the Use of Mandatory Agreements. Seller additionally certifies that it shall flow down the requirements of this clause on all its applicable subcontracts.