



**optimanufacturing**  
**GENERAL TERMS AND CONDITIONS**

THESE GENERAL TERMS AND CONDITIONS ARE HEREBY INCORPORATED IN THIS ORDER AND MADE AN INTEGRAL PART HERE OF

1. **ACCEPTANCE.** The Purchase Order incorporating these terms and conditions becomes a binding contract on the terms set forth herein, when it is accepted by acknowledgment or commencement of performance. Acceptance of this order is limited to the terms and conditions stated herein. Whether the Purchase Order is accepted by acknowledgment or commencement of performance, any additions, deletions or differences in the terms proposed by Seller or contained in Seller's acknowledgment or acceptance or invoice are objected to and hereby rejected unless Buyer specifically agrees otherwise in writing. Any references to substitution of Seller's terms and conditions on the acknowledgment copy of the order or the over stamping of same on the Acknowledgments copy or on invoices are specifically rejected. These terms and conditions shall constitute the complete and exclusive statement of the contract between the parties.

2. **DEFINITIONS.** Except as otherwise specified in this Purchase Order, the following terms shall have the meaning set forth below:

- a. The term "Government" means the Government of the United States of America.
- b. The term "Buyer" unless otherwise defined shall mean OPTI Manufacturing Corp.
- c. The term "prime contract" means Buyer's contract with its customer(s) to which the work hereunder relates.
- d. The terms "Agreement", "Order" and "Purchase Order" mean this contractual instrument, including changes, supplements, amendments and modifications hereto.
- e. The terms "Seller" and "Supplier" mean the person, firm or corporation executing this contract with Buyer and who will furnish the work or Services provided for herein.
- f. The term "Buyer's Customer" means the person or entity with whom Buyer has a contract under which this Order is issued
- g. Except as otherwise provided in this contract, the term "subcontract" includes purchase orders placed by the Seller under this contract.
- h. The term "supplies" shall include "Services", if this contract wholly or in part provides for the furnishing of Services.
- i. The term "Services" means any effort incidental to the sale of goods by Seller under this order including, without limitation, installation, repair and maintenance services. It shall also include, without limitation, any effort specifically required by this order, including all associated efforts such as design, engineering, repair, maintenance, technical, construction, consulting, professional or other services.

3. **ADMINISTRATIVE MATTERS.**

(i) All matters pertaining to the administration of this Purchase Order shall be referred to the attention of the authorized representative of the Buyer's Procurement Department identified on the face page of the order at the Buyer's address as shown thereon.

(ii) The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of this purchase order and its provisions.

4. **SPECIFICATIONS.** Seller shall comply with all specifications stated in this order and (unless the goods called for by this order are standard commercial products not intended as component parts or as equipment or as accessories for Buyer's products) with all applicable U.S. Government specifications.

5. **PACKAGING AND SHIPPING**

a. Unless otherwise stated in this Purchase Order, all supplies shall be delivered without charge for containers, crating, boxing, bundling, dunnage, draying or storage. Seller shall mark, pack, and ship all items in conformity with good commercial practice, or and if Government specifications are applicable, in accordance with such specifications, and in compliance with requirements of common carriers. Any highly polished, highly finished or precision parts are to be properly preserved and packed in containers which will afford protection against atmospheric deterioration.

b. All parts and materials intended for Buyer shall be protected against the potential damage from shipping, ESD (Electrostatic Discharge), FOD (Foreign Object Debris or Damage), corrosion, moisture, contamination, deterioration or damage by processing, handling, storage at the Seller, or in transit to Buyer or any sub-tier supplier.

1. **Packaging** All packaging must be designed with considerations given to ergonomics and ease of part removal. Appropriate consideration must be given to carton height, width weight, and disassembly which may affect ergonomics and worker safety. Staples and paperclips are not allowed for any item packaging. The only exception is industrialized staples used to hold cardboard to wood. The large staples are in the same class as nails and screws that hold the crate together and do not pose a FOD danger to the area.

2. **Recycle packaging** Suppliers are encouraged to determine where and how much recycling materials can be incorporated into packaging design while also providing adequate performance. Consideration should be given to eliminating all unnecessary packaging materials wherever possible. A priority should be placed on reducing material by weight and volume.

3. **FOD Control** When bags are used they should be sufficient size to be sealed with the item inside. Bags shall be heat sealed, or zip locked. Staples, tape or paperclips shall not be used. Trays holding parts shall not be paperboard (egg crates). Part trays should be plastic or non debris producing material. Trays should have covers to prevent parts from falling out or FOD getting in. Items requiring bubble wrap should use an antistatic or conductive material

4. **ESD Control** Static sensitive parts shall be delivered to Buyer in ESD protective packaging, and identified on the external packaging as Static Sensitive. In case of conflict between this procedure and Buyer drawing or PO the drawing or PO shall take precedence.

c. Buyer's Purchase Order number and line item number shall be plainly marked on all packages, individual items, bills of lading, packing sheets, shipping orders, and invoices. Shipping orders or packing sheets shall accompany delivery of all items. Each container of a multiple container shipment shall be identified (i) to show the number of the container and the total number of containers in the shipment and (ii) the number of the container in which the packing sheet has been enclosed. Material for different purchase orders shall be listed on separate packing sheets. Items shall be routed in accordance with instructions provided on the face page of the Purchase Order at the lowest transportation costs or as may be directed by Buyer. Buyer's count and weight shall be conclusive if shipment is not accompanied by shipping order or packing sheet. Originals of all Government bills of lading, commercial bills of lading, air bills, and rail and air express receipts shall be mailed to the traffic department of Buyer.

d. Insurance for loss or damage in transit shall not be purchased unless specifically directed. Excess costs resulting from Seller's failure to comply herewith will be debited to seller.

e. Unless otherwise specified in this Order, shipments will be made via United Parcel Service uninsured collect on Buyer's account. If shipment is prepaid and transportation charges are to be billed to Buyer, a copy of the prepaid transportation bill shall accompany Seller's invoice. Shipments consigned to Buyer and made the same day via the same carrier shall be consolidated on a single bill of lading. Seller's failure to comply herewith will result in Seller being debited for excess cost incurred.

f. Seller shall notify Buyer of all shipments.

## 6. DELIVERY

a. Time is expressly made of the essence herein. Buyer's production schedules and warranties to its customers are dependent on Seller making delivery of items as ordered and in accordance with the delivery or performance schedule as shown on the face of this order. Seller shall immediately notify Buyer if, at any time, it appears Seller may not meet the agreed schedule. Such notification shall include the cause for delay, actual or proposed steps taken to remedy the delay, and the revised schedule Seller believes it will be able to meet. Buyer's receipt of such notification shall not constitute approval of the delay or of any proposed schedule or be deemed to be a waiver to the delivery schedule. Any assistance provided by Buyer to Seller to overcome delays shall not be deemed to be waiver of any of the Buyer's rights hereunder including termination for default.

b. If Seller's delivery fails to meet the schedule set forth herein such that Buyer calls upon Seller for expedited shipment, Seller, unless excused under the provisions of "Excusable Delays" of this order, shall pay the difference between the method of shipment specified in the order and the expedited method directed by the Buyer.

c. If Seller makes delivery of any item in excess of the quantity specified herein (after considering any authorized variation in quantity), the excess quantities shall be treated as being delivered for the convenience of the Seller. Buyer shall not accept over-shipments except those resulting in good faith from conditions of loading, shipping, packing or allowances in manufacturing processes and in no case exceeding 5% of the quantity called for or a total value of \$250.00, whichever is the lesser. Seller shall not ship ahead of schedule unless authorized in writing in advance by Buyer. Seller may return unauthorized advance shipments at Seller's expense.

## 7. INSPECTION AND ACCEPTANCE

a. The Seller shall, at no additional cost to Buyer, provide and maintain a quality and inspection system which complies with all specifications and acceptable to Buyer and the Government covering the supplies hereunder. Records of all inspection work by the Seller shall be kept complete and available to Buyer and Buyer's Customer during the performance of this Purchase Order, including any period for final resolution of any dispute involving or related to the goods delivered under this order and for such longer period as may be specified elsewhere in this Purchase Order. Seller shall tender to Buyer only goods that have been inspected in accordance with the inspection system and shall have been found by Seller to be in conformity with all requirements of this order.

b. All supplies (which term throughout this article includes without limitation raw material, components, intermediate assemblies, end products and quality related records) may be subject to inspection and test by Buyer and Buyer's Customer, or either of them, to the extent practicable at all reasonable times and places, including the facilities of Seller's subcontractors and, in any event, prior to final acceptance.

c. If any inspection or test is made by Buyer or Buyer's Customer on the premises of the Seller, or a subcontractor, the Seller without additional charge shall provide all reasonable facilities and assistance, including any requested copies of this order or any drawings, specifications and technical or other data applicable to the ordered items, for the safety and convenience of inspectors in the performance of their duties. If the Buyer's or Buyer's Customer's inspection or test is made at a point other than the premises of the Seller, or a subcontractor, it shall be at the expense of Buyer except as otherwise provided in this Purchase Order, provided that, in case of rejection, neither Buyer or Buyer's Customer shall be liable for any reduction in value of samples used in such inspection or test. Buyer reserves the right to charge to the Seller any additional cost of inspection or test when supplies are not ready at the time such inspection or test is requested by the Seller or when re-inspection or re-test is necessitated by a prior rejection. Final acceptance or rejection of the supplies shall be made at destination except as otherwise provided in this Purchase Order, but failure to inspect and accept or reject supplies shall neither relieve the Seller from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability to Buyer or Buyer's Customer for the supplies.

d. In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Buyer shall have the right either to reject them (with or without instructions as to their deposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by Buyer, corrected in place by and at the expense of the Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed. If the Seller fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, Buyer (i) may, by contract or otherwise, replace or correct such supplies and charge to the Seller the cost occasioned to Buyer or the Government thereby, or (ii) may terminate this Purchase Order for default as provided in the article of this Purchase Order entitled "Termination." Unless the Seller corrects or replaces such supplies within the delivery schedule, Buyer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances.

e. The inspection and test by Buyer or Buyer's Customer of any supplies or lots thereof does not relieve the Seller from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Unless otherwise provided in this Purchase Order, acceptance shall not be conclusive with respect to latent defects or the Seller's warranty obligations.

f. Seller hereby certifies that all supplies will conform to all requirements, specifications, drawings, and related documents referenced by and/or in this Purchase Order. Seller shall maintain on file all test and/or inspection reports relating to the supplies or from compliance with this Purchase Order and be made available for review by Buyer or Buyer's Customer, if applicable, at any reasonable time.

g. Buyer, Buyer's Customer, Government representatives, and/or representatives from regulatory agencies shall have the right of entry to any place necessary to determine and verify the quality of contracted work, records, and material.

## 8. RESPONSIBILITY FOR SUPPLIES

a. Unless this Purchase Order specifically provides for earlier passage of title, title to supplies covered by this Purchase Order shall pass to Buyer upon formal acceptance by Buyer or Buyer's Customer, whichever is later, regardless of when Buyer or Buyer's Customer, takes physical possession.

b. Except as otherwise provided in this Purchase Order, (i) all risk of loss of or damage to the supplies covered by this Purchase Order shall remain with the Seller until they are delivered to the designated delivery point regardless of any points of inspection; (ii) after delivery to the designated delivery point and prior to acceptance or rejection and the giving of notice thereof by Buyer, Buyer shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction or damage results from the negligence of officers, agents or employees of Buyer acting within the scope of their employment; and (iii) the Seller shall bear all risks as to rejected supplies after notice of rejection, except that Buyer shall be responsible for the loss or damage to the supplies only if such loss or damage results from the gross negligence of officers, agents, or employees of Buyer acting within the scope of their employment.

9. **PAYMENTS AND DISCOUNTS.** Payments shall be made upon the submission by Seller of proper invoices to Buyer's Accounts Payable Department, at the address shown on the face page of this order, for all items delivered and accepted. With respect to any deferred prompt payment discount, time shall be computed from the date of delivery, date of acceptance, or from the date a proper invoice is received by Buyer, whichever is later. Payment is deemed to be made for the purpose of earning a discount; on the date Buyer's check is mailed. The date for calculation of any cash discount offered by the Seller and provided for on the face of this purchase order is (i) the date the material is received, (ii) the date material is scheduled to be received under the purchase order, or (iii) the date an acceptable invoice is received, whichever is later.

10. **PRICE WARRANTY.** Seller warrants that prices of the items set forth herein charged to the Buyer do not differ from the prices charged to any other purchasers of items of like grade and quality in similar or lesser quantities, and under similar conditions of purchase. Seller further warrants that during the performance of this order, should it elect to reduce the prices charged to any other purchases of items of like grade and quality, it will reduce the prices charged to Buyer accordingly.

11. **WARRANTY.** All warranties of Seller, whether created by law or otherwise, are incorporated herein by reference and shall include the following express warranties:

a. Seller warrants the goods delivered hereunder to be in compliance with all drawings, specifications incorporated or referenced herein and with any samples or other description furnished by the Seller.

b. Seller warrants that the goods delivered hereunder shall be merchantable, new, of good material and workmanship and free from defects in workmanship, material and manufacture, suitable for their intended purpose and, where the goods were designed by Seller, free from defects in design.

c. Seller warrants that all Services and technical data have been performed or prepared in a professional and workmanlike manner. All warranties survive acceptance and shall run to Buyer, its successors and assigns, Buyer's Customer and to the users of its products. Delivery, inspection, test, acceptance or use of or payment for the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use.

## 12. MATERIAL FURNISHED.

a. If Buyer furnishes any material or fabrication hereunder, Seller, (i) agrees not to substitute any other material in such fabrication without Buyer's written consent, (ii) agrees that title to such material shall not be affected by incorporation in or attachment to any other property and (iii) agrees to state and warrant on its shipper and invoice for final parts: "All material furnished by Buyer on this Purchase Order (except that which becomes normal industrial waste) has been returned in the form of parts and unused material". Proceeds of scrap salvage shall accrue to Seller and are reflected in the prices stated herein.

b. Seller agrees that it will use any designs, tools, patterns, drawings, information and equipment, title to which is with Buyer only in the performance of this Purchase Order and not otherwise unless Buyer's prior written consent has been obtained. The foregoing shall not be construed as limiting the right of the Seller to use designs, tools, patterns, drawings, information and equipment in the manufacture of

items for direct sale to the United States Government to the extent that the Government has the right under its prime contract with Buyer or otherwise to authorize such use by Seller, and further, to the extent that such use will not interfere with Seller's performance of this or other orders from Buyer relating to Government contracts in effect at the time Seller enters into direct sale to the Government; provided further, that Seller furnishes prior written notice to Buyer of such intended use and to the extent practicable Seller prominently identifies each such item as being manufactured by the Seller for direct sale to the United States Government. Seller agrees that no inaccuracy in tools or fixtures which Buyer furnishes, shall excuse performance not in strict accordance with specifications. Upon completion or termination of this Purchase Order, Seller shall obtain from Buyer shipping instructions or other authorized disposal instructions prior to the return of any items furnished by Buyer under this Purchase Order. Unless otherwise specified in this Purchase Order, the price includes the cost of gauges, jigs, fixtures, dies, molds, tools, patterns, and similar property that may be obtained or required by Seller for use in the manufacture, fabrication, or assembly of the articles called for herein, and unless otherwise specified, title to such property will remain with Buyer.

c. In the event (i) there are any new features of design conceived in the performance of the work hereunder or incorporated in any material, article or machine made under this Purchase Order, (ii) a substantial portion of the development cost thereof is being charged by Seller directly or indirectly to Buyer and (iii) the material, article, or machine with respect to which Seller already possesses patent or proprietary rights, then Seller grants to Buyer the right of reproduction of such material, article, or machine together with a royalty-free, non-exclusive, irrevocable license under any U.S. patent covering such new features of design. Seller agrees to disclose, and on request assign to Buyer and at no expense thereto, any invention or discovery conceived or first reduced to practice arising from designs, sketches, specifications, drawings, computer programs and software, or from tools and test equipment, or any other item of equipment, data or information furnished by Buyer or from items specially developed for Buyer under this order.

**13. CHANGES.** Buyer may at any time, in the manner described hereinafter, and without notice to sureties, make changes within the general scope of this Purchase Order in any one or more of the following (i) drawings, designs, statements of work or specifications of supplies being specifically manufactured to Buyer, (ii) method of shipment or packaging, (iii) the method or manner of performance of the work, (iv) place of delivery, (v) Buyer or Government furnished property, facilities, equipment, materials or Services, (vi) Seller's obligation to comply with any provision of the Federal Acquisition Regulation or any supplement thereto, whether or not incorporated into this order, and (vii) delivery schedules. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule or both, and the Purchase Order shall be modified in writing accordingly. Buyer shall promptly comply with such changes. Buyer employees have no authority (a) to direct any change affecting (i) above which increases the Purchase Order price, except by a change order issued by a duly authorized purchasing representative, or (b) to direct any other change affecting (i) through (iv) above except by a change advice or other writing issued or signed by Buyer. Any claim by Seller for adjustment under this clause, and any claim by Seller for adjustment predicated upon the contention that Buyer has directed a change by means other than those stated above, must be asserted in writing to Buyer's Purchasing Department not later than fifteen (15) days after the date of receipt by Seller of the change advice or other writing referred to above or allegedly equivalent direction or within such extension of that fifteen (15) day period as Buyer, in its sole discretion, may grant at Seller's request prior to the expiration of said period or any extension thereof. Nothing in this clause shall excuse Seller from proceeding with the Purchase Order as changed.

**14. EXCUSABLE DELAYS.** Time is of the essence in the performance under this Purchase Order. A delay in delivery or performance of this Purchase Order shall be excused when such delay is due to causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not limited to, Acts of God or of the Public Enemy, Acts of the Federal, State or Local Government in a sovereign or contractual capacity, fire, floods, epidemics, quarantine restrictions, unusually severe weather, strikes or freight embargoes. In every case, such failure to perform must be beyond the control and without the fault or negligence of Seller. No cause shall constitute a basis for an excusable delay unless Seller notifies Buyer in writing within ten (10) days from the beginning of such delay.

#### **15. TERMINATION.**

a. Termination for Convenience. The Buyer, at any time and without limitation, may terminate this order, in whole or in part, pursuant to the provisions of the contract clause entitled "Termination for Convenience of the Government (fixed price)" as set forth at sub-section 52.249-2 of the Federal Acquisition Regulation in effect of the date of this order, which said clause is incorporated herein by this reference in its entirety except paragraph (i) of said clause. For purposes of implementing the said clause, words and terms as used in the clause shall be altered as follows:

- i. "Contracting Officer" shall mean "Buyer's Purchasing Representative."
- ii. "Government" shall mean "Buyer."
- iii. "Contractor" shall mean "Seller."
- iv. The period of "1 year" in paragraph (d) is changed to "6 months."
- v. The period of "45 days" in paragraph (e) is changed to "90 days."
- vi. The period of "90 days" in paragraph (k) is changed to "45 days."
- vii. "This contract" and "The contract" shall mean "this Order."

This paragraph shall apply whether or not this Order is authorized pursuant to a Government contract or subcontract. In the event Buyer elects to terminate pursuant to the above and audit by Government of the Seller's books and records is not authorized by provisions of this Order then such an audit shall be conducted by an independent certified public accounting firm selected by the Buyer.

b. Termination for default. In addition to the rights conferred in (a) above and under applicable law, Buyer reserves the right to terminate without charge all or any part of the undelivered portion of this order if Seller does not make deliveries or otherwise perform as specified, or so fails to make progress as to endanger performance of this order as specified. In the event of such termination, in whole or in part, Buyer may procure the supplies or Services elsewhere and on such terms as Buyer deems appropriate and Seller shall be liable for Buyer's re-procurement costs. Seller shall continue performance of this Purchase Order to the extent not terminated.

1) Except with respect to defaults of vendors or subcontractors, Seller shall not be liable for any excess costs if the failure to perform this order arises out of causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not restricted to an excusable delay as defined in Section 14; and in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If failure to perform is caused by the default of a vendor or subcontractor to Seller, and if such default arises out of causes beyond the control of both the Seller and the vendor or subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods to be furnished by the vendor or subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. No cause shall constitute a basis for excusable delay unless Seller has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.

2) If this order is terminated under this clause, Buyer, in addition to any other rights provided in this section, may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (i) any completed goods, and (ii) any partially completed goods and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "contract materials") as the Seller has specifically produced or specifically acquired for the performance of such part of this order as has been terminated; and the Seller shall upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered or rendered to and accepted by Buyer shall be at the order price. Payment for contract materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed goods or contract materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

3) If, after notice of termination of this contract under this provision it is determined for any reason that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 16 entitled "Termination for Convenience".

c. Buyer also reserves the right to terminate all or any part of this Purchase Order without charge in the event of the insolvency of Seller, filing of a voluntary or involuntary petition of bankruptcy by the Seller, appointment of a receiver or trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors.

The provisions of (a), (b) and (c) shall not limit the rights or remedies of Buyer in event of breach by Seller in other provisions of this order or as provided by law.

**16. WAIVER.** The failure of Buyer to enforce at any time any of the provisions of this Purchase Order, or to exercise any option herein provided, or to require at any time performance by Seller of any of the provisions hereof, shall in no way be construed as a waiver of such provisions, nor in any way to affect the validity of this agreement or any part thereof, or the right of the Buyer thereafter to enforce each and every such provision.

**17. PROPERTY LIABILITY.** Seller shall (i) immediately notify Buyer of and (ii) be liable for the loss of or damage to Buyer or Buyer's Customer property while such property is in Seller's possession. Seller shall maintain in serviceable condition, preserve and account for all property furnished hereunder, and shall not use or dispose of same except in acceptance with Buyer's written instructions. Seller shall also be liable for all losses to Buyer occasioned by Seller's failure to furnish timely written notice to Buyer of loss or damage to Buyer and/or Government furnished property suffered in transit or prior to receipt by Seller. Seller agrees that Buyer and/or Government representative shall, at all reasonable times, have access to any premises upon which Buyer and/or Government property is located for the purpose of inspecting such property.

**18. ASSIGNMENT.** Neither this Purchase Order nor any interest herein may be assigned or otherwise transferred by Seller in any manner, except that claims for monies due or to become due Seller under this Purchase Order may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this Purchase Order not already paid, shall not be made to more than one (1) party, and shall be subject to the right hereby reserved and exercisable by and granted to Buyer to make at any time deductions from assigned claims by way of setoff or recoupment in the same manner that such deductions could be made if such assignment did not exist. This right of setoff or recoupment shall exist whether the subject of the setoff or recoupment arose before or after the assignment, before or after any notice with respect thereto that Seller or its assignee may give to Buyer or for debts arising under this or any other agreement. It is also a condition of this limited consent that, in spite of the prohibitions herein contained, multiple assignees are involved; Buyer shall be entitled to apportion recoupment of setoff amongst such assignees in any manner it may elect.

**19. LABOR DISPUTES.** Wherever Seller has knowledge that any present or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice thereof, including all information relevant thereto, to Buyer Purchasing Department. Seller agrees to insert the substance of this Article 19, including this sentence, in any subcontract hereunder where a labor dispute might delay timely performance of this purchase order, except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by any actual or potential labor dispute, the subcontractor shall immediately give Seller notice thereof, including all information relevant thereto.

**20. TAXES.** Except as otherwise provided in this Purchase Order or as prohibited by law, the Seller represents that the prices stated shall include any and all applicable federal, state and local taxes which cannot be excluded by action of the Seller or operation of law. Seller shall pay all federal state and local sales, use, excise or other taxes that may be levied or assessed for any reason or purpose as a result of this Purchase Order. The Seller represents that the prices stated exclude all such taxes which can be excluded by action of the Seller or by action of law. Any tax not so excluded shall be entered on invoices as a separate line item. If any tax or portion thereof which is included or added to the price paid to Seller hereunder is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund, including any interest to the extent it was earned after payment by Buyer.

**21. RELEASE OF NEWS INFORMATION.** If this Purchase Order is issued under a Government prime contract or subcontract hereunder, no news release, public announcement, denial or confirmation of same or any part of the subject matter of this Purchase Order or any phase of any program hereunder shall be made without written approval of Buyer.

**22. CONFIDENTIAL INFORMATION.** All information, including but not limited to writings, drawings, tools, models, and oral disclosures, not in the public domain, received by Seller from Buyer or learned of, or produced by Seller in connection with the performance of work under this order is the

sole property of Buyer and will be held by Seller in confidence at all times hereafter, and will not be used by Seller or disclosed by Seller to any person, firm, or corporation without prior written consent of Buyer. The foregoing shall not be construed as limiting the right of the Seller to use such writings, drawings, tools, models, and disclosures in the manufacture of end items for direct sale to the United States Government to the extent that the Government has the right under its prime contract with Buyer, or otherwise, to authorize such use by Seller, and further, to the extent that such use will not interfere with Seller's performance of this or others from Buyer relating to Government contracts in effect at the time Seller enters into direct sale to the Government, provided further, that Seller furnishes prior written notice to Buyer of such intended use and to the extent practicable Seller prominently identifies each such end item as being manufactured by the Seller for direct sale to the Government. If this Purchase Order is issued under a Government prime contract or subcontract, this Article 22 shall be deemed deleted to the extent inconsistent with the clauses incorporated by reference under Article 45, below.

**23. COPYRIGHTS.** Seller agrees that, for any works of authorship created by Seller or any of its employees or subcontractors of Seller in the course of this order, those works that come under one of the categories of "Works Made For Hire" in 17 U.S.C. § 101 shall be considered Works Made For Hire. For any works of authorship that do not come under such categories, Seller, warranting that it has the right to do so, hereby assigns and agrees to assign to Buyer all right, title and interest it has to any copyright in such works and will execute or cause to be executed any documents required to establish Buyer's ownership of such copyright.

**24. COST OR PRICING DATA.**

- a. Seller shall submit cost or pricing data prior to the execution of this Purchase Order and the pricing of any Purchase Order change or other modification which involves aggregate increases or decreases, or both, in costs plus applicable profits expected to exceed the threshold for submission of cost or pricing data, except where the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- b. Seller shall certify, in the same form as that used in the certificate by Buyer to the Government, that, to the best of its knowledge and belief, the cost or pricing data submitted under (a) above is accurate, complete and current as of the date prescribed by the Truth in Negotiations Act, 10 U.S.C. 2306a ("TINA" and FAR Subpart 15.4).
- c. Seller agrees to indemnify and hold harmless Buyer for damages, as defined herein, resulting from any failure or alleged failure of Seller, or Seller's lower tier subcontractors, to supply current, accurate and complete cost or pricing data to Buyer as prescribed by the Truth in Negotiations Act, 10 U.S.C. Section 2306a ("TINA"), and FAR Subpart 15.4. As used herein, "damages" shall mean the dollar amount by which the total price of the prime contract is reduced, or the amount of Buyer's cost that is disallowed, plus interest and penalties prescribed in TINA, and incidental costs and expenses, including attorney's fees and costs.
- d. The price of this Purchase Order shall be equitably reduced by the amount of damages as defined herein, at such time as the Contracting Officer of the prime contract reduces the price of the prime contract disallows Buyer's costs, or demands payment from Buyer's Customer for damages in a final decision, whichever occurs first, based on findings that Seller or any lower tier subcontractor failed to supply current, accurate and complete cost or pricing data. In the event Seller has been paid the entire Purchase Order price, then, upon written notice by Buyer, Seller immediately shall remit to Buyer the amount of damages.
- e. The Seller shall require subcontractors hereunder to submit and certify cost or pricing data in accordance with and under the circumstances described in the clauses entitled "Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data" or "Requirements for Cost or Pricing Data or Other Information Other Than Cost or Pricing Data -Modifications" which is presently set forth in FAR clauses 52.215-20 or 52.215-21" and paragraph (a) above, as applicable.
- f. Seller acknowledges that Buyer is relying on Seller's compliance with its obligations to submit current, complete and accurate cost or pricing data and to update its cost or pricing data as required in applicable regulations and agrees that, notwithstanding the other provisions of this purchase order, it will certify its cost or pricing data as of the date Buyer enters into the contract with its customer.

**25. INDEMNIFICATION OF BUYER.**

- a. Seller shall indemnify and hold harmless Buyer against and from any liability, claims, obligations, losses, cost and expenses, including attorney's fees (hereafter collectively referred to in this provision as "damages") resulting from any failure or alleged failure of Seller, or Seller's lower tier subcontractors to comply with any federal or state law, statute, regulation, ruling, order or directive, including, but not limited to: the Cost Accounting Standards, 48 CFR Chapter 99, Public Law 100-679 (41 U.S.C. § 422) and FAR Part 30; the Procurement Integrity Act (41 U.S.C. §423 as amended and FAR 3.104; FAR 52.203-10; FAR 22.302; and DFARS 223.70), the Anti-Kickback Act (41 USC §§ 51-58) and the False Claims Act (41 U.S.C. 3729 et seq.)
- b. Seller shall take all precautions it deems necessary, and such additional precautions as Buyer or Buyer's Customer may prescribe, to prevent injury or death to persons, including customer, or loss of or damage to property. Seller shall indemnify, hold harmless and defend, Buyer and Buyer's Customer against any and all claims, liabilities, losses and expenses, including attorney's fees, which may result in any manner from an act or omission on the part of Seller, its employees, agents, suppliers or subcontractors, except to the extent that such loss or damage is due solely and directly to negligence on the part of Buyer or Buyer's Customer. Seller shall procure and maintain appropriate insurance to indemnify and protect Buyer and Buyer's customer from such actual or claimed loss, damage or injury resulting from acts by the Seller, its employees, agents, suppliers or subcontractors, or from the use of Seller's supplies.
- c. Seller shall hold harmless and indemnify Buyer from and against all claims and liabilities (including attorney's fees), however arising and whether based on contract, tort, strict liability, negligence, statute, or any other theory, arising from, based upon, or connected with the performance of this order by Seller's agents and subcontractors. Seller's covenant of indemnity herein shall continue in full force and effect notwithstanding the termination of this order.

**26. ORDER OF PRECEDENCE.** The rights and obligations of the parties to this contract shall be subject to and governed by the Statement of Work, if any, these General Terms and Conditions, Additional Terms and Conditions, if any, and any proposals, specifications or other documents or provisions which are made a part of this contract by reference or otherwise. To the extent of any inconsistency between (i) the Statement of Work and the General and Additional Terms and Conditions and (ii) proposals, specifications or other documents or provisions which are made a part of this contract by reference or otherwise, the Statement of Work and the General and Additional Terms and Conditions shall control. To the extent of any inconsistency between (i) the Statement of Work and (ii) the General and Additional Terms and

Conditions, the General and Additional Terms and Conditions shall control. To the extent of any inconsistency between (i) the General Terms and Conditions and (ii) the Additional Terms and Conditions, the Additional Terms and Conditions shall control.

**27. NOTICES.** All notices required or permitted to be sent by either party hereto shall be deemed sufficiently given if sent by prepaid mail or overnight delivery to the address shown on the first page of this Purchase Order for each party and to the attention of the individual who executes this contract on behalf of the party to whom the notice is sent. All notices shall be deemed given when they are sent by mail or overnight delivery and deposited in the mail addressed in the aforesaid manner or deposited with the overnight delivery service. Either party may designate, in writing, a different manner of address for notices under this Purchase Order.

**28. DISPUTES.**

a. Except as otherwise specifically provided in this Purchase Order, all disputes concerning questions of fact under this contract which are not promptly disposed of by mutual agreement may be decided by recourse to any available legal or equitable remedy. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this order in the appropriate state or federal court in the state in which the Buyer's facility which issued this Order is located, and Seller hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the Secretary of State as agent for receiving service of process. Any action or claim by Seller with respect hereto shall also be brought in such appropriate state or federal court in the state in which the Buyer's facility which issued this Order is located, if Buyer so elects. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of the state in which the Buyer's facility which issued this Order is located if Buyer, within thirty (30) days from receipt thereof, makes its election.

b. The applicable law is the law of the state of Buyer's facility which issued this Order, without recourse to its choice of law rules.

c. Pending decision of any disputes hereunder, the Seller shall diligently proceed with performance of this Purchase Order as directed by Buyer. Seller further agrees that injunctive relief for specific performance is appropriate in event Seller fails to perform as ordered during the pending dispute and Seller performing in accordance with written instructions shall provide such relief by Buyer.

**29. SUBCONTRACTING.** Seller agrees to obtain the prior written consent of Buyer before subcontracting this order or any substantial portion thereof, provided, however, that this provision shall not apply to Seller's purchase of commercial supplies or materials or Services required by Seller in performance hereof. Seller further agrees to select subcontractors and suppliers on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the order.

**30. INFRINGEMENT INDEMNITY.** Seller, at its own expense, shall hold harmless and defend Buyer and Buyer's customers against any claim or legal proceeding brought against Buyer or its customers which is based upon a claim, whether rightful or otherwise, that any item, or part thereof, delivered to Buyer under this order, for Buyer's use or resale thereof, constitutes an infringement of any patent, trade secret, copyright, semiconductor chip mask, work right or other proprietary right. Seller shall reimburse Buyer and Buyer's Customers for all damages and costs awarded against Buyer and Buyer's Customers and all reasonable expenses Buyer and Buyer's Customers may have incurred in connection with such a claim or proceeding. In the event Buyer's and Buyer's Customers use of such item or part thereof is held to constitute an infringement and Buyer or Buyer's Customer's use thereof, is enjoined, Seller, at its own expense and option, shall either purchase for the Buyer all necessary rights to continued use of the enjoined supplies, Services or part thereof; or in a manner acceptable to Buyer and acceptable to Buyer make replacement or modification to the suppliers or Services as may be needed to avoid infringement.

**31. PERFORMANCE SURVEILLANCE.** Seller agrees that Buyer's and Buyer's Customer's authorized representatives have the right to observe all aspects of Seller's performance of work under this order. Buyer agrees such authorized representatives will comply with Seller's reasonable precautions and procedures relating to observance of health and safety regulations, safeguarding of proprietary information and avoidance of interference with orderly process or normal business operations.

**32. GRATUITIES.** This order may be terminated at no cost to Buyer for Seller's breach if Seller, or any of its officers, employees or agents either offered or gave a gratuity to any officer, employee or agent of Buyer and intended, by that gratuity, to obtain any order for supplies or Services or to obtain favorable treatment from Buyer or its officers, employees or agents. For purposes of this provision, the term "gratuity" means any benefit extended to, or on behalf of the recipient for which fair market value is not paid by the recipient.

**33. RELIANCE.** Seller, by its acceptance of this order, acknowledges that Seller is an expert fully competent in all phases of the work involved in developing, producing and supporting the supplies and Services delivered and performed hereunder. Seller agrees that Buyer and Buyer's Customer are entitled to, and have relied upon Seller as an expert and Seller shall not in any manner or by any act deny responsibility or obligation hereunder to Buyer or Buyer's Customers on the basis that Seller relied on recommendations or assistance or approval provided by Buyer or Buyer's Customer in any phase of the work involved in developing, producing and supporting the supplies and Services delivered or performed.

**34. COMPLIANCE WITH LAWS.** Seller warrants that all suppliers or Services delivered or performed hereunder are in compliance with all federal, state and local statutes, laws, orders, ordinances, and regulations applicable to the developing, producing, testing and delivery of such supplies or performance of such Services. Seller further agrees that in the event that such supplies delivered or Services performed do not conform to any aforesaid legal requirement and Buyer is penalized for such non-conformance, Seller shall indemnify Buyer for all penalties, costs and expenses, including interest and attorney's fees, levied against or incurred by Buyer.

**35. OZONE DEPLETING SUBSTANCE.** Seller agrees that the goods delivered hereunder shall be accurately labeled in accordance with the requirements of Section 611 of the 1990 Clean Air Act Amendments and the regulations promulgated hereunder, including but not limited to requirements contained in 40 C.F.R. Part 82.114 and 82.116. At Buyer's request, Seller shall certify in a form satisfactory to Buyer whether the goods were manufactured with a controlled substance, as defined in 40 C.F.R. Part 82.104.

**36. TOXIC, HAZARDOUS OR CARCINOGENIC SUBSTANCES.** Seller warrants that each chemical substance delivered under this order is on the Inventory List (see 40 C.F.R. §710) published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. § 2601 et seq) at the time of such delivery. If Seller provides a product under this order which contains a toxic or hazardous substance as identified under Occupational Safety and Health Standards, 29 C.F.R. §1910.20 or 29 C.F.R. §1910.1000 et seq. (subpart Z), or a carcinogenic substance, or requires a Material Safety Data Sheet, then Seller shall provide Buyer with a Material Safety Data Sheet (meeting the requirements of 29 C.F.R. §1910.1200(g) and the latest revision of Federal Standard No. 313), and any other information required by applicable law with the initial shipment of

the product and when a change in formulation occurs. Seller shall label each container of such products in a clearly legible and conspicuous form, stating that a toxic or hazardous substance is contained therein, and providing Buyer with a copy of any restrictions on handling or use.

37. **NOTIFICATION OF CHANGE:** Seller agrees to notify Buyer in the event that one of the following situations may occur during the performance of the contract:

a. Seller shall notify the Buyer of any proposed changes to Buyer approved designs, parts, materials, fabrication methods and or processes, by contract and shall obtain Buyers approval prior to change incorporation.

b. Seller shall notify Buyer of changes to the designs, parts, materials or fabrication methods or processes for functionally disclosed items.

c. Seller shall immediately notify the Buyer of a change to facilities location and or name of organization, in which Seller is operating under.

38. **APPLICABLE DOCUMENTS:** Military specifications, standards and documents referenced shall be to the latest revision level in effect on the date of this contract being awarded, unless specified otherwise.

39. **INTERPRETATION.** It shall be the obligation of Seller to exercise due diligence to discover and to bring to the attention of Buyer at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts herein or in or between any specifications, drawings, or other documents attached hereto or incorporated by reference herein. Ambiguities, inconsistencies, or conflicts in this order will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

40. **PARTIAL INVALIDITY.** If in any instance any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.

41. **WAIVER.** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any such terms, conditions, or privileges or any other terms, conditions, or privileges, whether of the same or similar type.

42. **ATTORNEY'S FEES.** In the event Buyer should bring an action for enforcement of the terms and conditions of this order, Seller agrees that Buyer shall be entitled to award of its reasonable attorney's fees and court costs associated with such enforcement proceedings.

43. **CAPTIONS.** Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions may refer.

44. **CUMULATIVE REMEDIES.** The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

45. **PROVISIONS APPLICABLE UNDER GOVERNMENT CONTRACTS:** If a Government contract is shown on the face page of this order, this order shall be deemed to be a subcontract under such Government contract and subject to the provisions of the Federal Acquisition Regulation ("FAR") and the DoD FAR Supplement ("DFARS") or the NASA FAR Supplement ("NFARS") or the Department of Energy Acquisition Regulation ("DEAR"), whichever is applicable, and the contract clauses thereof as listed below. If the prime contract is issued by an agency subject to the DFARS, the DFARS clauses and not the NFARS or the DEAR shall apply to this order. If the prime contract is issued by the National Aeronautics and Space Administration, the NFARS and not the DFARS or DEAR clauses listed below shall apply. If the prime contract is issued by the Department of Energy, the DEAR clauses and not the NFARS or DFARS clauses listed below shall apply. The parties understand and agree with respect to such clauses, except as noted below, the terms "contract", "subcontract" and "purchase order" shall mean this order, the terms "Contractor" and "Offeror" shall mean the Seller, and the terms "Government", "Contracting Officer" and equivalent phrases shall mean the Buyer, unless the contract in which such terms are used clearly requires otherwise. It is further understood and agreed that any listed clause shown by explanatory note to be inapplicable to the work called for under this order shall be deemed to be self-deleting. Therefore the express deletion of any such inapplicable clause shall not be required.

#### FAR Clauses

- 52.203-6 Restrictions on Subcontractor Sales to the Government. (Applicable if this order exceeds \$100,000.)
- 52.203-7 Anti-Kickback Procedures. This clause applies if this order exceeds \$100,000. Paragraph (c) (4) is revised by deleting "The Contracting Officer may" and inserting "To the extent the Contracting Officer has effected an offset at the prime contract level or has directed Buyer to withhold any sum from the Seller, Buyer may"
- 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. (Applicable if this contract exceeds \$100,000.) ("Offer or" shall mean Seller.)
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions. (Applicable if this contract exceeds \$100,000.) ("Offer or" shall mean Seller.)
- 52.204-2 Security Requirements. (Applicable if the contract requires access to classified information.)
- 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment ("Government" shall mean US Government and not Buyer.)
- 52.211-5 Material Requirements.
- 52.211-15 Defense Priority and Allocation Requirements. (Applicable if the purchase order states that the order is a rated order.)
- 52.214-26 Audit and Records — Sealed Bidding. (Applicable if the prime contract was awarded by sealed bidding and this order is expected to exceed \$650,000.) In paragraph (b) of the clause, the term "Contracting Officer" shall mean the US Government's Contracting Officer and not Buyer.)
- 52.215-2 Audit and Records - Negotiation. (Applicable if this order exceeds \$100,000 and thus order is cost reimbursement, time and materials, labor hour or price re-determinable or submission of cost or pricing data is required or cost, funding or performance reports are required.) ("Authorized representative of the Contracting Officer shall mean the Defense Contracting Audit Agency or an independent certified public accounting firm selected by Buyer.)
- 52.215-12 Subcontractor Cost or Pricing Data. (Applicable if this order is expected to exceed the threshold for submission of cost or pricing data.)



- 52.215-13 Subcontractor Cost or Pricing Data—Modifications. (Applicable if this order is expected to exceed the threshold for submission of cost or pricing data.)
- 52.215-14 Integrity of Unit Prices. (Except paragraph (b).) (Applicable if this order exceeds \$100,000 and is not for construction or architect engineer Services, utility Services, Services where no supplies are required, commercial items and petroleum products.)
- 52.215-15 Pension Adjustments and Asset Reversions. ("Contracting Officer" shall mean Buyer) (Applicable if certified cost and pricing data was submitted and for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2.)
- 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions ("Contracting Officer" shall mean Buyer.) (Applicable if certified cost or pricing data was submitted or for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2.)
- 52.215-19 Notification of Ownership Changes (Applicable if certified cost or pricing data was submitted or for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2.)
- 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.
- 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications.
- 52.215-43 Audit-Commercial Items (Insert "and Buyer" after "Contracting Officer".) (Applicable if submission of certified cost or pricing data is required for this order.)
- 52.216-7 Allowable Cost and Payment (Applicable to cost reimbursement orders only)
- 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (Applicable if this subcontract is for more than \$100,000)
- 52.219-9 Small, Small Disadvantaged and Women-Owned Small Subcontracting Plan (Applicable if this Subcontract exceeds \$550,000 and Seller is other than a small business concern.) (In Paragraph (c) "Contracting Officer" shall mean Buyer.)
- 52.222-1 Notice to the Government of Labor Disputes ("Contracting Officer" shall mean Buyer.)
- 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation. (Applicable if this contract is for \$100,000 or more) (Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.)
- 52.222-20 Walsh-Healey Public Contracts Act. (Applicable if this contract exceeds \$10,000 and is for materials, supplies, articles or equipment.)
- 52.222-21 Prohibition of Segregated Facilities. (Applicable if this order contains the Equal Opportunity clause.)
- 52.222-22 Previous Contracts and Compliance Reports
- 52.222-25 Affirmative Action Compliance
- 52.222-26 Equal Opportunity. (Only subparagraphs (b) (1) through (b) (11) of FAR 52.222-26 shall be applicable. "Contracting officer" as used in this clause shall mean the US Government Contracting Officer and not Buyer.)
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans. (Applicable if this contract is for \$25,000 or more and not exempted by rules, regulations or orders of the Secretary of Labor.) ("Government" shall mean US government and not Buyer)
- 52.222-36 Affirmative Action for Workers With Disabilities. (Applicable if this contract exceeds \$10,000 unless exempted by rules, regulations or orders of the Secretary of Labor.)
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans. (Applicable if this contract is for \$25,000 or more unless exempted by rules, regulations or orders of the Secretary of Labor.)
- 52.223-3 Hazardous Material Identification and Material Safety Data and Alternate I if the prime contract is awarded by an agency other than the DoD. ("Government" shall mean Government or Buyer, except in paragraph (h)) (Applicable if this contract indicates that items will be shipped directly to the Government)
- 52.223-11 Ozone Depleting Substances.
- 52.223-14 Toxic Chemical Release Reporting.
- 52.225-1 Buy American Act - Supplies.
- 52.225-3 Buy American Act -- North American Free Trade Agreement --Israeli Trade Act (This clause applies only if the Seller is supplying an item which is an end product under the Buyer's prime contract.)
- 52.225-8 Duty-Free Entry ("Contracting Officer" shall mean Buyer, except the first time it appears in paragraph (c) (2) and (c) (3) and paragraph (e). Change "20 days" to "30 days" in paragraph (b) (1). Change "10 days" to "20 days" in paragraph (c) (2). The terms "the Schedule" and "the contract Schedule" in paragraphs (b), (c) and (h) mean "this contract.")
- 52.225-13 Restrictions on Certain Foreign Purchases ("Contracting Officer" shall mean Buyer.)
- 52.225-15 Sanctioned European Union Country End Products (This clause applies only if the Seller is supplying an item which is an end product under the Buyer's prime contract.)
- 52.227-1 Authorization and Consent (Applicable if this contract exceeds \$100,000 except when complete performance and delivery are outside the United States of America, its possessions and Puerto Rico.)
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Applicable if this contract exceeds \$100,000.) ("Contracting Officer" shall mean Buyer and "Government" shall mean Government or Buyer.)
- 52.227-3 Patent Indemnity
- 52.227-9 Refund of Royalties ("Contracting Officer" shall mean Buyer in paragraphs (a) and (c) and the third time it appears in paragraph (d), and shall mean Contracting Officer and Buyer in paragraph (e). In paragraph (e) "this contract" shall mean the prime contract.)
- 52.227-10 Filing of Patent Applications - Classified Subject Matter
- 52.227-11 Patent Rights - Retention by the Contractor (Short Form) (Applicable to Small Businesses)
- 52.227-14 Rights in Data – General (Unless the prime contract is subject to the DFARS) (May be modified by NFARS)
- 52.227-16 Additional Data Requirements
- 52.227-19 Commercial Computer Software-Restricted Rights
- 52.228-5 Insurance-Work on a Government Installation (Applicable if this order requires work on a US Government installation)
- 52.230-2 Cost Accounting Standards (Except paragraph (b)) (Applicable if this order exceeds the threshold for submission of cost or pricing data unless exempted from CAS requirements)
- 52.230-3 Disclosure and Consistency of Cost Accounting Practices (Applicable if this order exceeds the threshold for submission of cost or pricing data unless exempted from CAS requirements)
- 52.232-16 Progress Payments (Alternate I applies to Small Businesses; Alternate II applies to Letter Contracts) (Applicable only if this contract meets the threshold contained in FAR 32.5 and inclusion of progress payments is approved in writing by Buyer. If approved, the applicable rate shall be as provided in the clause unless otherwise specified in this contract; "Contracting Officer" and "Administrative Contracting Officer" or "Procuring Contracting Officer" shall mean Buyer; "Government" shall mean Buyer;

- in paragraph (d)(l) "Government" shall mean Government and Buyer; in paragraph (d)(2)(iv) "Government" shall mean Government or Buyer.)
- 52.232-17 Interest ("Government" shall mean Buyer.) (The parenthetical phrase "(net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)" is deleted from the first sentence) (Paragraph (c) is deleted.)
- 52.233-3 Protest After Award Alternate 1 (The first sentence is revised to read "In the event Buyer's Customer has directed Buyer to stop performance of the work, pursuant to FAR Subpart 33.1, under the prime contract or higher-tier subcontract under which this contract is issued, Buyer may by written order to Seller direct Seller to stop performance of the work hereunder." Additionally, in paragraph (b) (2), "30 days" shall mean 20 days; in paragraphs (b), (c) and (e), "Government" shall mean Buyer; "Contracting Officer" shall mean Buyer.)
- 52.236-13 Accident Prevention ("Government" shall mean Government and Buyer.)
- 52.242-13 Bankruptcy ("Contracting Officer" shall mean Buyer.)
- 52.242-15 Stop Work Order ("Contracting Officer" shall mean Buyer.)
- 52.242-17 Government Delay of Work ("Contracting Officer" shall mean Buyer.)
- 52.243-7 Notification of Changes ("Contracting Officer" and "Administrative Contracting Officer" shall mean Buyer, and "Government" shall mean Buyer. Insert "10 calendar days" in the spaces provided in paragraphs (b) and (d).)
- 52.244-6 Subcontracts for Commercial Items and Commercial Components
- 52.245-1 Government Property
- 52.246-23 Limitation of Liability ("Acceptance of supplies delivered under this contract" shall mean acceptance by the US Government and not Buyer under the prime contract of the supplies delivered hereunder or as incorporated in supplies delivered to the US Government by buyer.)
- 52.247-63 Preference for U.S. Flag Air Carriers (Applicable if this contract may involve international air transportation.)
- 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (Applicable only to contracts receiving progress payments.) (In paragraph (c) (2) "20" and "30" are changed to "10" and "20" respectively.)
- 52.248-1 Value Engineering ("Contracting Officer" shall mean Buyer; in paragraph (g) (4) "Government" shall mean Buyer.) (Applicable if this contract equals or exceeds \$100,000.)

## DFARS Clauses

- 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Applicable to first-tier contracts over \$100,000.) (In paragraph (e), "Government" shall mean Government and Buyer.)
- 252.204-7000 Disclosure of Information ("Contracting Officer" shall mean Buyer.) (In paragraph (b), change "45" days to "60.")
- 252.208-7000 Intent to Furnish Precious Metals as Government Furnished Material (In paragraph (a) "Government intends" is changed to "Government or Buyer intend.") (In paragraph (c) "Government" shall mean "Government or Buyer.")
- 252.209-7000 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Applicable if this contract is over \$25,000.)
- 252.211-7000 Acquisition Streamlining (Applicable if this subcontract is valued at more than \$1,000,000.)
- 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontractors Plan (DOD Contracts)
- 252.223-7001 Hazard Warning Labels
- 252.223-7002 Safety Precautions for Ammunition and Explosives ("Contracting Officer" shall mean Government or Buyer in paragraphs (b), (c), (e), (f) and (g), except in the first and third sentences of (g) (ii).) (Applicable if the subcontract involves ammunition or explosives.) (Seller understands and agrees to the Government's and Buyer's right of access to the Seller's facilities, personnel, and safety program documentation to review and evaluate safety programs, implementation, and facilities, including Seller's compliance with applicable law under this clause. Seller shall accept direction to cease performance of this contract if a serious, uncorrected or recurring safety deficiency potentially causes an imminent hazard to Government or Buyer personnel, property or contract performance.)
- (a) *Definition.* "Ammunition and explosives," as used in this clause—(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:(i) Bulk, (ii) Ammunition; (iii) Rockets; (iv) Missiles; (v) Warheads; (vi) Devices; and (vii) Components of (i) through (vi), except for wholly inert items.
- (2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system— (i) Inert components containing no explosives, propellants, or pyrotechnics;(ii) Flammable liquids; (iii) Acids; (iv) Oxidizers; (v) Powdered metals; or (vi) Other materials having fire or explosive characteristics.
- (b) *Safety requirements.*
- (1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26-M, hereafter referred to as "the manual," in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.
- (2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.
- (c) *Noncompliance with the manual.*
- (1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct the noncompliance unless such reimbursement is specified elsewhere in the contract.
- (2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of the noncompliance.
- (3) If the Contractor refuses or fails to correct the noncompliance within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

- (4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.
- (5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Contractor shall—

(1) Notify the Contracting Officer immediately; (2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and (3) Submit a written report to the Contracting Officer.

(e) *Contractor responsibility for safety.*

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—(i) The Contractor's personnel and property; (ii) The Government's personnel and property; or (iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) *Contractor responsibility for contract performance.*

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieves the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) *Subcontractors.*

(1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) **NOTE:** The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to "the Government". The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled "Change in Place of Performance--Ammunition and Explosives".

252.223-7003	Change in Place of Performance--Ammunition and Explosives.
252.223-7004	Drug-Free Work Force
252.223-7006	Prohibition on Storage And Disposal Of Toxic And Hazardous Materials (Applicable if the subcontract requires, may require or permits Seller to treat or dispose of non-DoD-owned toxic or hazardous materials.)
252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Applicable if the order is for the development, production, manufacture or purchase of arms, ammunition or explosives or if arms, ammunition or explosives will be provided as US Government or Buyer furnished property.)
252.225-7001	Buy American Act And Balance Of Payments Program
252.225-7002	Qualifying Country Sources as Subcontractors
252.225-7012	Preference for Certain Domestic Commodities
252.225-7013	Duty-free entry
252.225-7014	Preference for Domestic Specialty Metals (Applicable if items contain specialty metals.)
252.225-7016	Restriction on the Acquisition of Ball or Roller Bearings (Applicable to all subcontracts except for commercial items other than ball or roller bearings or items that do not contain ball or roller bearings.)
252.225-7025	Restriction on the Acquisition of Forgings (Applicable to subcontracts for forging items or for other items containing forging items.)
252.225-7033	Waiver of United Kingdom Levies (Applicable if over \$1 million and Seller is a United Kingdom firm.)
252.227-7013	Rights in Technical Data- Noncommercial Items
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
252.227-7015	Technical Data - Commercial Items (Applicable if a commercial item)
252.227-7018	Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR) Program
252.227-7019	Validation of Asserted Restrictions - Computer S/W
252.227-7025	Limitations on the Use or Disclosure of Government Furnished Information Marked With Restrictive Legends
252.227-7026	Deferred Delivery of Technical Data or Computer Software ("Government" shall mean Buyer.)

252.227-7027	Deferred Ordering of Technical Data or Computer Software ("Government" shall mean Buyer, except in the last sentence.)
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government ("Government" shall mean Buyer.)
252.227-7030	Technical Data-Withholding of Payment ("Contracting Officer" and "Government" shall mean Buyer.)
252.227-7037	Validation of Restrictive Markings on Technical Data (In paragraph (c) "Contracting Officer" shall mean Contracting Officer or Buyer. In paragraph (i) insert "Seller or any" before "subcontractor.")
252.227-7039	Patents-Reporting of Subject Inventions
252.228-7005	Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles
252.231-7000	Supplemental Cost Principles
252.243-7000	Engineering Change Proposals
252.243-7001	Pricing of Contract Modifications
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DOD Contracts)
252.245-7001	Reports of Government Property (Reports required under this clause shall be submitted no later than September 30) In paragraph (a) (3) "Government" shall mean Buyer.)
252.246-7001	Warranty of Data - Alternate I
252.247-7023	Transportation of Supplies by Sea (Applicable if this contract is for \$100,000 or more) (All requests to the Contracting Officer shall be submitted through Buyer.)
252.247-7024	Notification of Transportation of Supplies by Sea ("Contracting Officer" shall mean Buyer.)
<b>NASA FARS Clause</b>	
1852.219-74	Use of Rural Area Small Businesses. (Applicable if this purchase order offers subcontracting possibilities.)
1852.219-75	Small Business and Small Disadvantaged Business Subcontract Reporting. (Applicable if FAR 52.219-9 is incorporated in this purchase order.)
1852.223-70	Safety and Health. (Applicable where work will be conducted completely or partly on premises owned or controlled by the Government, the work includes construction, alteration or repair of facilities in excess of \$100,000, the work involves hazards that could endanger the public, astronauts and pilots the NASA workforce or high value equipment or property and the hazards are not adequately addresses by OSHA or DOT regulations.)
1852.223-72	Potentially Hazardous Items. (Applicable to subcontracts which exceed \$10,000.)
1852.223-74	Drug- and Alcohol-Free Workforce.
1852.227-11	Patent Rights--Retention by the Contractor (Short Form) (Applicable if subcontract includes experimental, developmental, research, design or engineering work and Seller is other than a small business firm or non profit organization.)
1852.227-14	Rights In Data—General
1852.227-19	Commercial Computer Software--Restricted Rights.
1852.227-70	New Technology. (Applicable if this purchase order is for the performance of experimental, developmental or research work and Seller is not a small business firm or nonprofit organization. If this purchase order is for the performance of experimental, developmental or research work and Seller is a small business firm or nonprofit organization. FAR 5.227-11 is incorporated instead.)
1852.227-71	Requests for Waiver of Rights to Inventions.
1852.227-72	Designation of New Technology Representative and Patent Representative. (Applicable only if 1852.227-70 or FAR 52.227-11 is incorporated in this purchase order.)
1852.227-85	Invention Reporting and Rights - Foreign. (Applicable if this purchase order includes the performance of research, experimental design, engineering, or developmental work.)
1852.228-72	Cross-Waiver of Liability for Space Shuttle Services.
1852.228-76	Cross-Waiver of Liability for Space Station Activities.
1852.228-78	Cross-Waiver of Liability for NASA Expendable Launch Vehicle Launches.
1852.231.71	Determination of Compensation Reasonableness. (Applicable if this purchase order is a service contract (1) with proposed cost-reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of \$500,000 and (2) the cumulative value of all service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.)
1852.237-71	Pension Portability. (Applicable if this purchase order is a continuing Services contract and (1) the prime contract requires pension portability, (2) the purchase order labor dollars (excluding any burdens or profit/fee) exceed \$2,500,00 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee), and (3) the conditions at 18-371.170 are satisfied.)
1852.242-73	NASA Contractor Financial Management Reporting. (Applicable if this purchase order is a first-tier contract under the prime contract that meets the criteria of 18-42.7201 (b) (1).)
1852.244-70	Geographic Participation in the Aerospace Program. (Applicable if this purchase order exceeds \$100,000.)
1852.245-73	Financial Reporting of Government Owned/Contractor-Held Property.
1852.246-73	Human Space Flight Item.

**DEAR Clauses**

952.202-1	Definitions
952.203-70	Whistleblower Protection for Contractor Employees (Applicable to work performed on behalf of DOE directly related to activities at DOE-owned or leased sites)
952.204-2	Security Requirements (Applicable if access authorizations required for Seller personnel) (Information to be submitted directly to US Government Contracting Officer.)
952.204-70	Classification/Declassification (Applicable if classified information involved.)
952.204-71	Sensitive foreign nations controls
952.204-73	Facility Clearance (Applicable to subcontracts subject to DOE FARS 904.70) (Information to be submitted to US Government Contracting Officer.)
952.209-72	Organizational conflicts of interest (Applicable if 952.209-72 Clause, Alternate I is included in Buyer's contract with Buyer's Customer.)

- 952.211-70 Priorities and Allocations for energy programs (Applicable to subcontracts in support of DOE atomic energy programs.)
- 952.211-70 Priorities and Allocations (Atomic Energy) (Applicable to subcontracts in support of DOE atomic energy pursuant to Atomic Energy Act of 1954.)
- 952.223-71 Integration of environment, safety, and health into work planning and execution (Applicable to work performed on government-owned or leased facility where DOE has asserted authority to establish and enforce occupational safety and health standards.)
- 952.223-72 Radiation protection and nuclear criticality (Applicable where enforcement of radiological safety and health standards is by contract.)
- 952.223-75 Preservation of individual occupational radiation exposure records (Applicable if 952.223-71 or 952.223-72 apply to this order.)
- 952.226-74 Displaced Employee Hiring Preference (Applicable to subcontracts expected to exceed \$500,000.)
- 952.227-7 Refund of Royalties (Applicable if royalties reported during negotiations exceed \$250.)
- 952.227-11 Patent rights-retention by the contractor (Applicable for experimental, developmental or research work by small business.) (Seller shall retain rights of Contractor and Buyer shall not acquire rights in Seller's inventions)
- 952.227-13 Patent rights-Acquisition by the Government (Applicable for experimental, developmental, demonstration, or research work.)
- 952.245-2 Government Property (fixed price contracts) (Applicable if FAR 52.245-2 applies to this order)