

## GENERAL ATOMICS

### ADDITIONAL TERMS AND CONDITIONS FOR COMMERCIAL CONSTRUCTION ORDERS

If this Order is for commercial construction work the following clauses of GA Form 1603 (Rev. 1/99), "Terms and Conditions for Commercial Orders," shall apply except:

Clause numbers 3, 11, 12, 22, 24, 25, 38, 39, 40 & 41.

In addition to the above, the following additional clauses shall apply to this construction order:

#### 1. Differing Site Condition

a) Seller shall promptly, and before such conditions are disturbed, notify Buyer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Order, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Order. Buyer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in Seller's cost of, or the time required for, performance of any part of the work under this Order whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Order modified in writing accordingly.

b) No claim of the Seller under this clause shall be allowed unless Seller has given the notice required in (a) above: provided, however, that the time prescribed therefor may be extended by Buyer.

c) No claim by the Seller for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Order.

#### 2. Specifications and Drawings

Seller shall keep, on the site, a copy of the drawings and specifications and shall at all times give Buyer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings or in the specifications, the matter shall be promptly submitted to the Buyer, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at his own risk and expense. Buyer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

#### 3. Shop Drawings

a) The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and

similar materials furnished by Seller to explain in detail specific portions of the work required by the Order.

b) If this Order requires shop drawings. Seller shall coordinate all such drawings and review them for accuracy, completeness, and compliance with Order requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to Buyer without evidence of Seller's approval may be returned for resubmission. Buyer will indicate his approval or disapproval of the shop drawings and if he does not approve them as submitted he shall indicate his reasons therefor. Any work done prior to such approval shall be at Seller's risk. Approval by Buyer shall not relieve Seller from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Order, except with respect to variations described and approved in accordance with (c) below.

c) If shop drawings show variations from the Order requirements, Seller shall describe such variations in writing, separate from the drawings, at the time of submission. If Buyer approves any such variation(s), he shall issue an appropriate Order modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

#### 4. Liens and Claims

Seller shall protect and defend Buyer, and the land upon which the work is to be performed, and all improvements, structures, equipment, machinery, and other property now or hereafter placed thereupon from all liens, charges, or encumbrance arising out of or in connection with the performance by Seller of the work to be performed hereunder. Buyer may, as a condition precedent to any payment hereunder, require Seller to submit complete waivers and releases of any and all claims of any person, firm, or corporation. Such releases must be submitted covering all such claims as a condition precedent to final payment.

#### 5. Material and Workmanship

a) Unless otherwise specifically provided in this Order, all equipment, material, and articles incorporated in the work covered by this Order are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Order, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and Seller may, at this option, use any equipment, material, article, or process which, in the judgment of Buyer, is equal to that named.

b) All work under this Order shall be performed in a skillful and workmanlike manner.

## 6. Requirements and Provisions at Jobsite

a) **Seller's Representatives.** Seller shall be represented in person at all times as the jobsite and during the progress of the job or by a competent superintendent satisfactory to Buyer. Seller's representative shall have authority to act for Seller in all matters concerning performance of the work.

b) **Seller's Employees.** Buyer may require Seller to remove from all connection with the work such employees as Buyer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment in connection with the work is deemed by Buyer to be contrary to the public interest.

c) **Space at Jobsite.** Seller shall be allowed reasonable space at the jobsite and access thereto and shall confine its operations to the space assigned. The work shall be done without interference with the ordinary use of streets, fairways, and passages, and the Seller shall cooperate with Buyer. Buyer's other sellers, subcontractors, or customers as may be required by the circumstances or as directed by Buyer. Seller shall, in addition, take all measures to adequately protect adjacent property.

d) **Protective Measures.** Seller shall protect the materials and work from loss, deterioration, and damage during construction and shall store and secure inflammable material from fire and shall remove oily rags, waste, and refuse from work site buildings each night, and during cold weather shall furnish all heat necessary for the proper conduct of the work. Seller shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide for safety and traffic around the site. Seller shall see that the jobsite buildings and premises are kept free at all times of debris and rubbish caused by the work.

e) **Safety Measures.** Seller shall take all reasonable steps to prevent injury to persons or property in performance of this Order. Seller shall protect the materials and work from loss, deterioration, and damage during construction. If work is to be performed on Buyer's premises, "Clause 12 entitled "Safety Regulations" shall apply in addition to this clause.

f) **Temporary Buildings.** Seller shall erect at his own expense and remove such temporary storage sheds and offices as are necessary for the work. All such temporary structures shall be subject to the approval of Buyer.

g) **Utility Connections.** Unless otherwise provided in the Order, Seller shall make all connections including meters to existing utility mains for exterior and interior electric, gas, water, sewer, and air sources only at hours approved by Buyer. Seller shall give five (5) days notice in writing of such intention. No overtime for such connections will be paid for by Buyer. Buyer will pay for all utilities required by Seller in its performance of work at the jobsite.

h) **Lines, Levels, and Measurements.** Seller shall assume full responsibility for the accuracy of all lines, levels, and measurements and their relation to bench marks, property lines, reference lines, and to the work of Buyer and other sellers. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of such conditions shall rest entirely on Seller. No variation from specified lines or levels or measurements shall be made except on the written authority of Buyer.

i) **Regulations and Safety Precautions.** All agents and employees of Seller and its subcontractors shall be subject to the reasonable rules and regulations at any time

promulgated by Buyer for the safe, orderly, and efficient conduct of operations on Buyer's property. Seller shall enforce observation of such rules and regulations and shall maintain discipline and good order among its employees, agents, and subcontractors. Representatives, agents, and employees of Seller or of any of its subcontractors employed at the jobsite or visiting the jobsite for any purpose shall be subject to such security regulations as may be in force on the project. Seller's employees, agents, and subcontractors during such times as they are on Buyer's premises shall abide by the same rules and regulations with respect to fire protection and safety that govern Buyer's employees. The Buyer's Accident Prevention Manual is available upon request.

j) **Cleanup.** Upon completion of the work, Seller shall remove all its plants, tools, materials, and other articles from the jobsite. Should Seller fail to take prompt action to this, then Buyer, without waiver of such other rights as it may have, may treat the same as abandoned property. Seller shall also sweep all floors broom-clean, clean all exterior brickwork, windows, and lights, and remove all rubbish from the jobsite.

k) **Telephone Service.** Seller shall install and maintain a telephone for his convenience at the jobsite, and at the completion of this order he shall remove the telephone. All charges in connection therewith shall be paid by Seller.

### l) Sanitary Conveniences.

- 1) Seller shall provide, on the jobsite, a suitable temporary toilet enclosure for the use of all those connected with the work, and shall maintain it in a sanitary condition. The facilities shall comply with all State regulations. The toilet shall be suitably screened.
- 2) Upon completion of the work, subject to instructions of Buyer. Seller shall remove all temporary toilet facilities.

## 7. Permits and Responsibilities

Seller shall, without additional expense to Buyer, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations in connection with the prosecution of the work. Seller shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. Seller shall take proper safety and health precautions to protect the work, the worker, the public, and the property of other. Seller shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereto which theretofore may have been accepted.

## 8. Bonds.

a) Before commencing the work, and in any event within five (5) days after the effective date of this Order, Seller shall furnish a performance and a payment bond in the penal amount of fifty percent of the price of the Order written by sureties acceptable to Buyer.

b) If any surety upon any bond furnished in connection with this Order becomes unacceptable to Buyer, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Buyer, Seller shall promptly furnish such additional security as may be required from time to time to protect the interest of Buyer and

of persons supplying labor or materials in the prosecution of the work contemplated by this Order.

## 9. Insurance.

a) **Liability.** In order to protect Buyer from and against possible liability due to any acts or omissions of employees or agents of Seller, the latter shall, as a part of its performance hereunder during the progress of the work, maintain the following insurance coverage.

- 1) Workman's Compensation insurance in the amounts required by the laws of the State or States in which the work is to be performed.
- 2) Employer's Liability insurance of not less than \$500,000 for any one person in any one accident.
- 3) (i) Comprehensive Liability Insurance (including Automobile Liability Insurance covering owned, hired, and non-owned automobiles) for limits of liability of not less than \$200,000 for one person or \$500,000 for any one occurrence as respects bodily injury and  
(ii) Not less than \$500,000 for any one occurrence as respects property damage.
- 4) If any part of the work is to be sublet, Seller shall require each subcontractor to maintain insurance of the kinds and in the amounts set forth above, except as otherwise approved in writing by Buyer.
- 5) Seller shall keep the herein-described insurance in full force and effect until the work is completed. The policies shall provide that they shall not be subject to cancellation or material change in coverage until thirty (30) days after notice is received by Buyer of Seller's intention to cancel or change the insurance. Certified copies of such policies, or certificates evidencing such insurance, shall be filed with Buyer before work is started or before such later date as Buyer shall agree to in writing. Insurance shall be obtained only from insurance companies licensed to do business in the State or States in which the work is to be performed.

## b) Fire and Extended Coverage.

- 1) Seller shall provide and maintain Builders All Risk Insurance for the full value of the work, including Transit Coverage. Buyer shall not be responsible for loss or damage of Seller's tools or equipment.
- 2) Buyer shall have the option of arranging Fire and Extended Coverage insurance once the materials, equipment, and supplies reach the jobsite. If Buyer elects this option, Seller shall continue to keep Builders All Risk Insurance in force exclusive of the Fire and Extended coverage perils.

## 10. Labor

a) Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work,

the Seller shall immediately notify Buyer in writing stating all relevant information concerning the dispute and its background.

b) Seller shall pay all Social Security Taxes, Unemployment Compensation taxes, and all other such obligations lawfully imposed on any employer of labor, and all other taxes of every kind and description whatsoever, all at its own expense, and agrees to indemnify Buyer against any liability for such obligations and taxes.

## 11. Indemnities

a) Except as otherwise provided. Seller agrees to indemnify and hold harmless Buyer and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters patent arising out of the performance of this Order or out of use of disposal by or for the account of Buyer of supplies furnished or construction work performed hereunder.

b) In addition, Seller agrees to indemnify and hold Buyer harmless from and against any losses or damage to property, equipment, or materials owned or furnished by Buyer, or for personal injury or death to any person, caused by the fault or negligence of Seller. Seller further agrees to indemnify Buyer against all claims, demands, and causes of action, suits, and litigation brought against Buyer on account of any obligation which Seller is bound for hereunder.

## 12. Safety Regulations.

The following safety instructions shall govern the conduct and operations of Seller, its agents and employees (Seller personnel) on Buyer's owned or leased premises. Failure to conform to the regulations may be cause for the termination of work operations.

a) **Industrial Security.** All Buyer and Government security regulations must be complied with by Seller personnel. Arrangements for clearance requirements will be made through Buyer's Facilities Services representative.

b) **Operations and Parking of Vehicles.** Posted speed limits on Buyer's premises must be respected. After unloading, Seller personnel must park vehicles in non-reserved sections of Buyer parking lots or jobsite areas designed by Buyer's Facilities Services representative.

c) **Health Physics.** Seller personnel working in a controlled area must be listed on a Buyer's radiological work permit. Prior to beginning work, a member of Buyer's Health Physics Services will instruct Seller personnel as to the presence of sources of radiation exposure. Seller personnel will be instructed as to the need for protective clothing and equipment, as well as to action to be taken in the event of a radiation alarm. Prior to leaving the premises each work day, Seller personnel must be checked by a member of Buyer's Health Physics Services for contamination. A wipe and/or meter survey of any Seller equipment or tooling is mandatory prior to removal of the equipment from a controlled area.

d) **Evacuation Procedures.** Seller personnel must adhere to evacuation procedures established for Buyer's personnel. Building evacuation is required on the sounding of a fire alarm, a continuous ringing bell, or the sounding of a Klaxon. Seller personnel must not reenter any building after evacuation until authorized by Buyer's emergency director or his designated representative.

e) **Fire Protection.** Prior to the start of paint spraying, welding, burning, cutting, or heat operations, arrangements must be made through Buyer's Facilities

Services representative to obtain a permit from Buyer's Fire Protection Group. No internal combustion power equipment shall be fueled inside any facility. Equipment must not be fueled while in operation. All flammable liquids stored or left onsite must be in approved safety-type containers.

f) **Obstructions and Danger Areas.** Roadways, stairs, and other access or exit points must be maintained free of obstructions. Work areas which may create hazard from falling material, arc welding flashes, or excavation, must be isolated by suitable barriers or warning devices furnished by Seller. Before overhead work is begun, the area must be secured and properly posted by warning signs furnished by Seller. If the hazard continues beyond the working day, the signs must be lighted. Seller personnel must wear hard hats when overhead work is being performed.

g) **Tools and Material.** All tools and equipment used by Seller personnel should be of an approved type and in good operating condition. Stored materials shall be filed or racked in a manner intended to prevent damage. If stored in a building equipped with sprinklers, material may not be placed within two (2) feet of the sprinkler heads. The maximum weight of material stored on floors or platforms shall not exceed the safe carrying capacity.

h) **Housekeeping.** Jobsite and work areas must be maintained free of scrap and accumulated debris. Equipment left on the jobsite must be properly stored and secured. Debris and scrap may be accumulated in a location specified by Buyer's Facilities Services representative but must be removed as required by Buyer's Facilities Services.

i) **Compressed Gas Cylinders.** Compressed gas cylinders must be used and stored in an upright position and properly secured to prevent them from falling or being damaged during work operations. All cylinders not in use must have valve protector caps in place. Use of compressed gas from cylinders must be through approved regulators.

j) **Emergencies.** Any fire, accident, or injury shall be reported immediately to Buyer using any plant phone available.

k) **Subcontracts.** Seller shall include the provisions of this Clause 12 in any subcontract covering work for Buyer on Buyer's owned or leased premises.

### 13. Progress Payments

a) Buyer will pay the Order price as hereinafter provided.

b) If progress payments are provided for in the Order, Buyer will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by Buyer, on estimates approved by Buyer. If requested by Buyer, Seller shall furnish a breakdown of the total Order price, showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates Buyer, at its discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the Order and (2) if Seller furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this Order.

c) In making such progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the work under this Order. However, if

Buyer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substantially complete, Buyer, if it considers the amount retained to be in excess of the amount adequate for the protection of Buyer, at its discretion, may release to Seller all or a portion of such excess amount. Furthermore, upon completion and acceptance of each separate item of the Order, on which the price is stated separately in Order, payment may be made therefor without retention of a percentage.

d) All material and work covered by progress payments made shall thereupon become the sole property of Buyer, but this provision shall not be construed as relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of Buyer to require the fulfillment of all the terms of the Order.

e) Upon completion and acceptance of all work, the amount due Seller under this Order shall be paid upon the presentation of a properly executed voucher and after Seller shall have furnished Buyer with a release, if required, of all claims against Buyer rising by virtue of this Order, other than claims in stated amounts as may be specifically excepted by Seller from the operation of the release.

f) If this Order is for cost reimbursement commercial construction work, this Clause number 13, "Progress Payments," shall be deleted and the following clause number 14, "Payments," shall be inserted in lieu thereof:

### 14. Payments

a) Seller shall keep daily records of the number of work men on the job, hours worked, material used, and equipment rented, and shall obtain the signature of Buyer's representative on the site to such records on a daily basis.

b) Payments shall be made to Seller as the work progresses, but not more frequently than monthly in amounts approved by the Buyer. Seller shall submit properly executed invoices in such reasonable form and detail as required by Buyer with a supporting statement of costs incurred for performance of this Order and claimed to constitute allowable costs.

c) Payment of a fixed fee, if any, shall be as specified in the schedule of this Order, except that after payment of 85% of the fixed fee set forth in the schedule Buyer may withhold payment of fee until a reserve shall have been set aside in an amount which Buyer, considers necessary to protect the interest of Buyer, but such reserve shall not exceed 15% of the total fixed fee or \$100,000, whichever is less.

d) Upon receipt and approval of the final invoice designated by Seller as the "Completion Invoice" and upon submittal by Seller of all appropriate releases of all claims against Buyer arising by virtue of this Order, Buyer shall pay to Seller any balance of allowable costs and any part of the fixed fee which has been withheld pursuant to subparagraph (c) of this clause.