

**TERMS AND CONDITIONS FOR ORDERS ISSUED UNDER
DEPARTMENT OF DEFENSE CONTRACTS**

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A. GENERAL PROVISIONS

A-1 DEFINITIONS

As used throughout this document (these "Terms and Conditions"), the following terms shall have the meanings set forth below.

- (1) "Buyer" means "General Atomics", or "GA"..
- (2) "Buyer's Purchasing Representative" means the individual who executes the Order on Behalf of Buyer.
- (3) "DFARS" means the Department of Defense FAR Supplement, issued as parts 200-299 of Chapter 3 of Title 48 Code of Federal Regulations.
- (4) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (5) "Government" means the Government of the United States of America or any department, agency or instrumentality thereof, and any successor thereof.
- (6) "Government Dispute" means a dispute between the Parties which implicates the conduct and potential liability of the Government.
- (7) "Intellectual Property" means all copyright and all rights in relation to inventions (including patents rights), registered and unregistered trademarks, trade secrets, and know how, circuit layouts, and all other rights resulting from intellectual activity,
- (8) "Order" means the purchase order or subcontract issued by Buyer to Seller to which these Terms and Conditions are affixed.
- (9) "Party" means each of the Buyer and Seller
- (10) "Prime Contract" means the contract between the Buyer and the Government..
- (11) "Seller" means the person, firm, or corporation executing the Order with the Buyer and who will furnish the supplies or services provided for in the Order.

A-2 INDEPENDENT CONTRACTOR

Seller is, and shall be deemed to be, an independent contractor and not an agent or employee of Buyer either expressly or impliedly. Seller shall have complete control over the performance of, and the details for producing the goods or accomplishing the services provided under the Order. The Order shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated in the Order. Nothing in the Order shall grant to either the Buyer or Seller the right to make commitments of any kind for, or on behalf of the other.

A-3 PACKING AND SHIPMENT

Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers and be packaged to ensure against damage from weather or transportation. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

A-4 ACCESS TO PLANTS AND PROPERTIES

If the Seller will perform work at the site of Buyer or Buyer's customer, Seller shall comply with all the rules and regulations established by Buyer or Buyer's customer, as applicable, for access to and activities in and around premises controlled by the Buyer or Buyer's customer. While performing under the Order, Seller shall comply with the Buyer's policies, practices, and rules regarding security and protection of proprietary information and trade secrets.

A-5 DELIVERY

TIME OF DELIVERY UNDER THE ORDER IS OF THE ESSENCE. If Seller fails to adhere to the delivery schedule set forth in the Order, and Buyer must therefore demand a more expeditious means of transportation than specified in the Order, Seller shall be liable for the difference in such transportation cost. This in no way affects any other rights and remedies available to Buyer related to such delivery.

Unless otherwise noted in the Order, the date of delivery shall mean the date the item is to be delivered at Buyer's facility, or if the Order is for services, the date the services are to be completed.

Buyer's needs are for the quantities specified within the Order. Items delivered in excess of the quantities ordered result in substantial administrative expense to Buyer. Therefore, articles delivered under the Order in excess of the quantity specified may be retained by Buyer at no additional cost. Buyer is under no obligation to notify Seller of any over shipments.

In the event of any anticipated or actual delay, Seller shall:

- (1) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay, and
- (2) provide Buyer with a written recovery schedule.

A-6 RISK OF LOSS

Seller shall assume and bear the risk of any loss of, or damage to, the supplies covered hereunder until delivered to Buyer.

A-7 SPECIAL TOOLS

If prices are stated separately for dies, tools and/or patterns acquired by Seller for the purpose of filling the Order (each a "Special Tool"), such Special Tools shall be the property identified by Seller as such. Title shall pass to Buyer upon payment for the Special Tool. If Buyer provides Special Tools to Seller for the manufacture of supplies under the Order, then Seller will hold such Special Tools in good condition, normal wear and tear expected, and hand over the same to Buyer, as applicable, at the completion of the Order unless Buyer directs Seller in writing to dispose of such Special Tool.

A-8 BUYER-FURNISHED PROPERTY AND MATERIAL

Property and material furnished by Buyer to Seller for use in performance of the Order is to be held by Seller for mutual benefit, and if the property and materials are damaged or not satisfactorily accounted for, Seller will pay for all such property and materials. Seller shall not use such property other than in the performance of the Order without Buyer's prior written consent.

Seller shall properly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of the Order.

A-9 ACCEPTANCE

Any one of the following methods will constitute acceptance of the Order by the Seller:

- (1) acknowledgement in writing;
- (2) commencement of performance by Seller; or
- (3) delivery in whole or in part of the items or services called for under the Order.

Seller's acceptance of the Order creates a binding contract between Buyer and Seller, which shall be governed by the provisions of the Order. No condition stated by the Seller in its acknowledgement of the Order, quotation or any other document provided by Seller shall be binding upon Buyer if in conflict or inconsistent with, or in addition to the terms and conditions of the Order, unless expressly accepted in writing by Buyer's Purchasing Representative. The rights and obligations described in the Order shall survive completion and final payment of the Order.

A-10 DIMINISHED MANUFACTURING SOURCES

Buyer and Seller recognize that component suppliers, at times discontinue or reduce manufacture of components. In the event a component is no longer to be stocked or manufactured as part of Seller's regular product line, Seller shall notify Buyer's Purchasing Representative in writing of any pending future action at least 180 days in advance.

A-11 WRITINGS REQUIRED

- (1) No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless provided in writing.
- (2) No oral statement of any person whosoever shall in any manner or degree, modify or otherwise affect the terms of the Order.
- (3) No extra charge of any kind, or change in the price or schedule of the Order will be allowed unless specifically agreed to in writing by Buyer's Purchasing Representative.

A-12 RECORDS

Seller agrees that its manufacturing plant, or such part of any manufacturing plant as may be engaged in the performance of the Order, and its related books, documents, papers, and records shall at all reasonable times be subject to examination and audit by any person designed by Buyer. Such books and records shall be maintained by Seller for a period of five (5) years after final payment is made under the Order.

A-13 PROPRIETARY INFORMATION

(1) Seller shall not, during the term of the Order, and for a period of seven (7) years thereafter, divulge to anyone other than Buyer (or such other persons as Buyer designates in writing), or, except in the performance of the Order, make use of information or knowledge relating to details of the business, or any other confidential or proprietary information, of Buyer or its affiliates, suppliers, or customers which Seller shall have obtained because of the Order, whether such information was provided in a written medium or conveyed orally or visually and identified as confidential or proprietary at the time the information was divulged. Seller shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which Seller protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer and their use is restricted to the work to be performed hereunder. Seller agrees to retain in confidence and return to Buyer on completion of the Order, all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with the Order.

(2) Notwithstanding the foregoing subclause (a), Seller shall have no obligation with respect to any confidential or proprietary information which the Seller can demonstrate (i) was in Seller's rightful possession free of any obligation of confidence prior to its first receipt from Buyer, (ii) is publicly known through no fault of Seller, (iii) is obtained from a third person who had a right to disclose it, or (iv)

was independently developed without access to any confidential or proprietary information of Buyer.

(3) No confidential data, proprietary designs, ideas, or information of Seller is to be provided to Buyer. Buyer accepts no obligation of confidence to Seller with respect to ideas, data, information, or designs divulged by Seller or equipment, operations, or designs witnessed by Buyer at Seller's plant. Seller authorizes Buyer to reproduce Seller's copyrighted material, at no cost to Buyer, for the purpose of including such material in documents provided to Buyer's customers, or prospective customers, in the normal course of Buyer's business. In the absence of further written agreement duly signed by both Parties to the Order, all information which passes from Seller to Buyer shall be treated as non confidential, including material provided in written form and marked by the originator as being confidential or proprietary.

A-14 ADVERTISING, USE OF NAME

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the goods or services provided for in the Order. Seller agrees that it shall not use Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without the Buyer's Purchasing Representative prior written consent in each instance.

A-15 PRECAUTIONS

If Seller's work under this Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause.

A-16 INSURANCE

- (1) Seller will defend at Seller's expense any suit or action, criminal or civil, arising out of Seller's performance. Seller will procure and carry: (a) automobile liability insurance protecting the Seller from automobile bodily injury, property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage; (b) general liability insurance policy which includes property damage, product, and professional liability coverage with contractual liability endorsement with limits no lower than \$1,000,000. Such policy shall be on an Occurrence Form; and (c) such insurance of employees as may be required by any Workers' Compensation act or other law, regulation or ordinance that may apply in the circumstances and shall, at Buyer's request, furnish certificates of such insurance to Buyer.
- (2) For (1) above, such policies shall name Buyer as additional insured.

A-17 PROPERTY INSURANCE

Seller shall secure and maintain for the benefit of Buyer, insurance against any loss or damage of all property and material furnished by Buyer to Seller for use in performance of the Order. Coverage will be provided on an all risk basis and value will be at replacement cost.

A-18 COMPLIANCE WITH LAWS

Seller understands and acknowledges that Buyer is committed to compliance with all domestic and foreign laws affecting its business and operations. Seller agrees that in performing its duties under the Order, Seller will conduct itself in strict adherence to all applicable laws, rules, and regulations.

A-19 EXPORT CONTROL

- (1) Seller agrees to comply with all applicable U.S. export control laws and regulations, including, the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 24012420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement,

if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

- (2) Seller agrees to notify Buyer if any deliverable under this Order is restricted by export control laws or regulations, unless such export-controlled item originates with Buyer and is incorporated into the deliverable under this Order.
- (3) Seller shall immediately notify the Buyer's Purchasing Representative if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (4) If Seller is engaged in the business of either exporting from the United States or manufacturing within the United States (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (5) Where Seller is a signatory under a Buyer export license or export agreement (e.g., Technical Assistance Agreement (TAA), Manufacturing Licensing Agreement (MLA)), Seller shall provide prompt notification to the Buyer's Purchasing Representative in the event of changed circumstances including, but not limited to, ineligibility, a known violation or potential violation of the ITAR, and the known initiation or existence of a U.S. Government investigation, that in Seller's reasonable judgment could affect the Seller's performance under the Order.
- (6) Seller agrees to provide certification to Buyer that Seller's personnel meet the definition of a U.S. Person (as defined in ITAR – 22 CFR 120.15) if required by Buyer and as necessary to comply with this clause.

- (7) Seller shall include the terms of the clause in all lower-tier subcontracts issued when technical data is provided to the lower-tier subcontractor.

A-20 ASSIGNMENTS AND SUBCONTRACTS

The Order cannot be assigned, sold, or in any manner transferred by Seller without the prior written consent of Buyer. Any attempts to do so shall be null and void ab initio. Seller agrees to obtain Buyer's approval before subcontracting the Order or any substantial portion thereof; provided that this limitation shall not apply to the purchase of standard commercial supplies or raw material. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.

A-21 COMMUNICATION WITH BUYER'S CUSTOMER

Buyer shall be solely responsible for all liaison and coordination with Buyer's customer, including the Government, as it affects the applicable Prime Contract, the Order, and any related contract. Unless otherwise directed in writing by Buyer's Purchasing Representative, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, the Buyer's Purchasing Representative, or as otherwise permitted by the Order.

A-22 CONFLICT OF INTEREST

Seller shall exercise reasonable care and diligence during the term of the Order to prevent any action or condition which could result in the appearance of, or a conflict of interest with those of Buyer. This obligation shall include the activities of the employees or agents of the Seller in their relations with the employees and the families of Buyer, their representatives, vendors, sub-contracts and third parties.

Seller warrants that Seller's performance of work under the Order will not give rise to an organizational conflict of interest, as defined in FAR subpart 9.5 and DFARS Subpart 209.5. Seller agrees that if Seller identifies an actual or potential organizational conflict of interest during the performance of the Order, Seller will immediately make full disclosure in writing to the Buyer. During the term of this Agreement, Seller agrees to not enter into contracts with the Government either as a prime or as a subcontractor that will give rise to an organizational conflict of interest as a result of Seller's performance of work under the Order.

A-23 DISPUTES

- (1) Disputes Not Based on Government Conduct.

Any dispute between the Parties other than a Government Dispute shall be resolved in a court of competent jurisdiction located in the Southern District of California (A9). The non-prevailing party in such lawsuit will pay the prevailing party its attorney's fees and other legal costs.

- (2) Disputes Based on Government Conduct:

(a) A Government Dispute will be resolved pursuant to the prime contract's "Disputes" clause, For any Government Dispute, Seller may submit a detailed claim to Buyer, including, for any claims in excess of \$100,000, an appropriate Seller's certification that: (i) the claim is made in good faith, (ii) the supporting data are accurate to the best of Seller's knowledge and belief, (iii) the amount requested accurately reflects the Order adjustment for which Seller believes the Government is liable, and (iv) the certifying official is duly authorized to certify the claim on behalf of Seller. Buyer shall, upon receipt of adequate information from Seller, submit an appropriate corresponding claim to the Government Contracting Officer pursuant to the Disputes clause of the prime contract.

(b) If a decision on a question of fact or law is issued by the Government Contracting Officer under the prime contract "Disputes" clause, whether or not based on a claim submitted by Buyer, and the decision relates to the Order, said decision, if binding upon Buyer under the prime contract, shall also be binding upon Buyer and Seller with respect to the Order. However, if Seller is affected by such decision and if Buyer elects not to appeal such decision or bring suit under the "Disputes" clause of the prime contract, Buyer shall notify Seller promptly. After receipt of such

notice by Buyer, and if Seller submits a timely request to Buyer to appeal such decision or bring suit, Buyer shall file an appeal or bring suit. If Buyer appeals such decision or brings suit, whether at its election or at Seller's request, any decision on such appeal or suit, if binding upon Buyer under the prime contract, shall be binding on Buyer and Seller as relates to the Order.

- (c) To the extent any such appeal or suit is taken or brought by Buyer at Seller's request, and to the extent requested by Buyer, Seller shall prosecute for Buyer the appeal or suit. In such event and to such extent, Seller shall select litigation counsel which must be experienced in government contracts litigation; and Seller shall pay all costs and expenses of the litigation brought on Seller's behalf, including attorneys fees. Litigation counsel so selected by Seller will represent Buyer in the suit or appeal, but Buyer agrees that Seller may direct the litigation to the extent related to Seller's claim or interest, subject to the overall supervision of the litigation and ultimate decision-making in the case by Buyer. Buyer also may select counsel to advise Buyer on, or to monitor, any appeal or suit taken or brought by Buyer at Seller's request, in which event Seller agrees to pay the reasonable costs of such counsel. Buyer shall reasonably assist Seller in any appeal or suit being directed by Seller pursuant to this paragraph, and Seller shall reimburse Buyer for its costs incurred in assisting Seller.
- (d) During the pendency of any Government Dispute or any appeal or suit under the Contract Disputes Act, any monies due or becoming due Seller may be withheld by Buyer until the dispute is finally resolved. If, as a result of any decision or judgment which is binding upon Buyer, Buyer is unable to obtain payment or reimbursement from the Government under the prime contract for, or is required to refund or credit to the Government any amount with

respect to any item of cost or fee for which Buyer has paid or reimbursed Seller, Seller shall, upon demand, promptly repay such amount to Buyer.

- (e) Buyer and Seller agree to accept the relief as to a time extension or additional compensation, obtained from the Government, if any, as well as all other aspects of the final decision under the Contract Disputes Act following appeal or the expiration of the time for appeal as full and final resolution of any Government Dispute.
- (f) Buyer's maximum liability to Seller arising from or relating to a Government Dispute or an appeal or suit brought under the Contract Disputes Act shall not exceed the amount of Buyer's actual recovery from the Government.
- (g) If the Order is issued by Buyer under a contract other than a prime contract of Buyer with the Government, and if Buyer has the right under such subcontract to appeal a decision made by the Contracting Officer under the prime contract in the name of the prime contractor, and said decision is also related to the Order, this disputes clause shall also apply to Seller to the extent allowable and in a manner consistent with its intent and similar to its application had the Order been issued by the Buyer under a prime contract with the Government.
- (h) If any claim of Seller is determined to be based upon gross negligence or intentional misconduct, Seller agrees to defend, indemnify, and hold Buyer harmless for any and all liability, loss, cost or expense resulting therefrom.
- (i) Nothing said or written in the prosecution of any claim against the Government shall constitute or be regarded as admissions or declarations against interest of either Party in any litigation between Buyer and Seller.

- (j) Pending resolution of any dispute. Seller shall proceed as directed by Buyer in writing. The rights and obligations herein shall survive completion of and final payment under the Order.

A-24 APPLICABLE LAW

The Order and any dispute arising thereunder shall be governed by the substantive law of federal procurement and, to the extent there is no applicable procurement law, the substantive and procedural laws of the State of California, except, however, that California's choice of law provisions shall not apply. The 1980 U.N. Convention on Contracts for the International Sales of Goods shall not apply to any sales transactions governed by these terms and conditions.

A-25 TECHNICAL DIRECTION AND SELLER RESPONSIBILITIES

All communication between Seller and Buyer affecting the Statement of Work or description of supplies or services to be furnished shall be through the Buyer's Purchasing Representative.

- (1) Buyer's technical personnel may, from time to time, provide written or oral technical direction. "Technical Direction" is defined as a directive to the Seller within the requirements of the scope of work of the Order which approves approaches, solutions, designs, or refinements; fills in detail or otherwise completes the general description of work; shifts emphasis among work areas or tasks; or otherwise furnishes guidance to the Seller. Technical Direction and management surveillance shall not have the right and is not authorized to impose tasks and requirements upon the Seller, additional to or different from, the general tasks and requirements stated in the Order. Technical Direction shall not commit Buyer to any adjustment of the estimated cost or other Order provisions.
- (2) In the event that Technical Direction is interpreted by the Seller to fall within the clause entitled "Changes", the Seller shall not implement such direction, but shall notify Buyer's Purchasing Representative in writing of such interpretation within ten (10) working days after the Seller receives such direction. Such notice shall include: (1) the reason upon which the Seller bases its belief that the Technical Direction falls

within the purview of the "Changes" clause; and (2) the Seller's best estimate of the cost and schedule impact that would result from implementing the Technical Direction.

A-26 NON-WAVIER

The failure of Buyer to insist, in one or more instances upon strict performance or to exercise any rights shall not waive or relinquish to any extent Buyer's right to assert or rely upon any such terms or rights on any future occasion.

A-27 INTELLECTUAL PROPERTY AND PATENT INFRINGEMENT INDEMNITY

- (1) Seller shall defend Buyer, Buyer's customers, affiliates and any subsequent owners, sellers, directors, officers, agents, employees, representatives, subcontractors, users or operators of the items delivered under the Order, the "Indemnitees", against all claims, demands, actions or causes of action that are asserted against any Indemnitee by any person or entity and that arise out of, directly or indirectly relate to or are in any way incident to the services and/or deliverables provided by Seller to Buyer thereunder, or which otherwise result in whole or in part from the act or omissions of Seller, together with all damages, liabilities, losses, costs or expenses (including attorney's fees) for all proceedings alleging infringement of any United States or foreign patent or copyright in the manufacture or sale of any item delivered under the Order whereby any Indemnitee suffers or incurs as a result thereof. Additionally, Seller shall hold said parties harmless from any resulting liabilities and losses; provided that Seller is reasonably notified in writing of such claims and proceedings, and further provided that said parties give Seller authority, information and assistance at Seller's expense for the defense of same. Seller's obligation shall not apply to items manufactured pursuant to designs developed and furnished by Buyer or to any alleged infringement arising from the use or sale of items delivered under the Order in combination with items not delivered by Seller.

- (2) When the Order is performed under the authorization and consent of the Government (see FAR 52.227-1

referenced at Section B-1), Seller's liability for infringement of such patents pursuant to such performance shall be limited to the extent of the obligation of Buyer to indemnify the Government.

A-28 INDEMNIFICATION

Seller, its subcontractors, agents, and/or employees agree to indemnify and save harmless and defend Buyer from and against any and all fines, penalties, offsets, claims, demands, actions, debts, liabilities, judgments, costs and attorney's fees, costs and profit disallowed or reduced by Buyer's customer arising out of claims on account of, or in any manner predicated upon:

- (1) submission by Seller, its subcontractors, agents, and/or employees of alleged or confirmed defective pricing data, or
- (2) costs submitted by Seller which are deemed unallowable costs, either by Buyer or applicable governmental agency, or
- (3) illegal activity due to violation of Office of Federal Procurement Act (41 U.S.C. 423, or its section 4304), or
- (4) violation by the Seller of the Code of Business Ethics and Conduct (FAR 52.203-13), or
- (5) violation of applicable statutes, regulations, and other laws, including, as applicable, the cost principles of the FAR and/or the DFARS, the Cost Accounting Standards, and the Truth in Negotiations Act. If such compliance is not maintained, Seller agrees to indemnify and hold Buyer harmless for all liability, loss, or cost resulting from Seller's noncompliance, or
- (6) violation of the Anti-Kickback Act of 1986 (41 U.S.C. Section 51-58) by Seller or any of its subcontractors, agents, and/or employees, or
- (7) violation of the Procurement Integrity Act (41 U.S.C. 423 Section 27), or
- (8) violation by the Seller of DFARS 252.225-8 "Restrictions on Acquisition of Specialty Metals" and DFARS 252.225-9 "Restrictions of Acquisition of Certain Articles Containing Specialty Metals, or
- (9) violation of any other Government or

contractual requirement of Seller, its subcontractors, agents, and/or employees, including but not limited to, Organizational Conflict of Interest (OCI) or cost or pricing data, to Buyer or any other relevant party to the Order.

A-29 ORDER OF PRECEDENCE

Unless otherwise stated in the typed provisions of the Order, in the event of an inconsistency between provisions of the Order, the inconsistency shall be resolved by giving precedence in the following order:

- (1) the Order (excluding specifications);
- (2) Article A, General Provisions of these terms and conditions;
- (3) FAR and DFARS clauses referred to in the Order;
- (4) Article B, FAR and DFARS Provisions of these terms and conditions;
- (5) the specifications of the Order.

A-30 HEADINGS

The division of these Terms and Conditions into Articles and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions. The terms "these Terms and Conditions," "hereof," "hereunder," and similar expressions in these Terms and Conditions refer to these Terms and Conditions and not to any particular Article, clause, or other portion and include any terms and conditions supplemental hereto.

A-31 SEVERABILITY

If any term in these Terms and Conditions is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if possible, rights and obligations of the parties are to be construed and enforced as if the Order did not contain such term.

A-32 SET-OFF

Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliated companies, against any amount payable at any time to Buyer or any of its affiliated companies.

A-33 LIABILITY

Seller is solely and exclusively liable to all parties for all costs incurred by Seller and its affiliates for all claims of damages against Seller and its affiliates arising out of or based on performance of the Order. Seller shall hold Buyer harmless against all liabilities or loss, demands, suits, damages and against all claims or actions, fines or judgments (including costs, attorney's and witnesses' fees and expenses incident thereto) based upon or arising out of damage, or injury (including death) to persons or property caused by or sustained in connection with the performance of the Order. Seller shall also assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required with respect to the performance of the Order.

A-34 TERMINATION FOR CONVIENENCE

Buyer may, at its option, terminate the Order, in whole or in part, for Buyer's convenience, by written notice, fax, e-mail or telegraphic notice to Seller. Upon termination hereunder, Seller shall (1) forthwith stop work under the Order on the terminated portion thereof and place no further orders or lower-tier subcontracts thereunder, (2) terminate or, if so directed by Buyer, assign to Buyer, orders or subcontracts outstanding hereunder, and (3) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct its subcontractors to do the same. Within thirty (30) days after receipt of such notice or termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim which shall include termination costs, if any, from lower-tier subcontractors, and is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:

- (1) The Order price for articles which have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination, an equitable adjustment will be made to the Order price for such articles.
- (2) The actual costs incurred by Seller prior to termination which are properly allocable or

apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of the Order other than articles whose price is paid under subparagraph (1), except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. Notwithstanding the provisions of this subparagraph (2) and subparagraph (4) below, if the Order provides for fixed hourly rates, Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of the Order.

- (3) Reasonable expenses actually incurred by Seller in settling Seller's terminated orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.
- (4) Such allowance for profit on the work performed as may be reasonable and allocable under the circumstances; provided, however, that if it appears that Seller would have incurred a loss if the Order had not been terminated, no profit shall be allowed and Buyer's payments pursuant to subparagraph (2) above will be reduced by the proportionate amount of such loss as the terminated portion of the Order relates to the entire Order.

Payments under this clause, including all payments made under the Order prior to the termination, shall in no event exceed the aggregate price specified in the Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed under (2) above or with Buyer's approval, may retain the same at an agreed price or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any orders and subcontracts that Seller has terminated in accordance with this clause.

In no event will Seller or its subcontractors or suppliers be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed by subparagraph (3) above, nor shall Seller or its subcontractors or suppliers be allowed to recover

any cost incurred prior to termination unless such cost was allocated to the Order in accordance with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

A-35 TERMINATION FOR DEFAULT

- (1) Buyer may terminate all or any part of the Order if Seller breaches any of the terms hereof including warranties or fails to make progress as to endanger performance of the Order in accordance with its terms. Termination hereunder shall be effected by written notice to Seller.
- (2) In the event Buyer terminates the Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the Order to the extent not terminated under the provisions of this clause.
- (3) Except with respect to defaults of Seller's subcontractors at any tier, Seller shall not be liable for excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and the 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 supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule.

B. FAR AND DFARS PROVISIONS

The following clauses in the FAR and the DFARS are each incorporated herein by this reference and made a part of the Order, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to the Order. To the extent that an earlier version of any clause is included in the Prime Contract or subcontract under which the Order is issued, the date of the clause as it appears in such Prime Contract or subcontract shall be controlling and said version shall be incorporated herein. In all FAR and DFARS clauses, the term "Contractor" or "prime contractor" shall mean

- (4) If the Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of (1) any completed items, and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or acquired for the performance of such part of the Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed items delivered to and accepted by Buyer shall be at the Order price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in the amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials, such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- (5) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any others provided by law or the Order.

A-36 ENTIRE AGREEMENT

These terms and conditions and the Order including other specifications or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, whether written or oral between parties related to the subject matter of the Order. No agreement or understanding varying or extending the terms and conditions of the order will be binding unless executed in writing by an authorized representative of Buyer's Purchasing Department

“Seller”, the term “Contract” or “Schedule” shall mean “Order”, and the term “Government Contracting Officer”, or equivalent phrases, shall mean “Buyer” as applicable; except that in those clauses relating to patent and data rights, the term “Government” or “Contracting Officer” shall retain its literal meaning and is not to be construed as “Buyer”, except where otherwise indicated herein. It is intended that the clauses in FAR and DFARS as listed herein shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer, to ensure Seller’s obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under its Prime Contract or subcontract. Seller agrees to flow-down, as required, all applicable FAR and DFARS clauses to its lower-tier subcontractors. Any reference to a “Disputes” clause in a referenced FAR or DFARS clause shall mean clause A-23, “Disputes” of these Terms and Conditions.

B-1 PROVISIONS APPLICABLE TO ALL NONCOMMERCIAL ORDERS

The following clauses of the FAR and DFARS are specifically incorporated herein by reference:

<u>REFERENCE</u>	<u>CLAUSE</u>
52.203-3	GRATUITIES – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
52.203-5	COVENANT AGAINST CONTINGENT FEES – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
52.203-7	ANTI-KICKBACK PROCEDURES – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000, including paragraph (c)(5) except that paragraph (c)(1) is not included in the Order. Paragraph (c) (4) is revised by deleting “The Contracting Officer may” and inserting “To the extent the Contracting Officer has affected an offset at the prime contract level or has directed Buyer to withhold any sum from the Seller, Buyer may ...”
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000. Furthermore, this clause applies if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for the Order. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act) by Seller or its subcontractors at any tier.
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000. If the Government reduces Buyer’s price or fee for violations of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (the Act) by Seller or its subcontractors at any tier, Buyer may withhold sums owed to the Seller in the amount of the reduction.
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT – This clause applies if the Order exceeds \$5,000,000.

- 52.203-14 **DISPLAY OF HOTLINE POSTER** – This clause applies if the Order exceeds \$5,000,000 and the performance period is 120 days or more.
- 52.203-15 **WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009** – This clause applies if the Order is funded by the American Recovery and Reinvestment Act of 2009.
- 52.204-2 **SECURITY REQUIREMENTS** – This clause (but excluding any reference to the “Changes” clause) applies if the Order involves access to classified information, including but not limited to “confidential,” “secret,” or “top secret” information. “Government” in paragraph (c) does not change to “Buyer.”
- Alternative I shall apply if the Seller is an educational institution.
- 52.204-10 **REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS** – This clause is applicable if the Order exceeds \$25,000.
- 52.204-11 **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 – REPORTING REQUIREMENTS** – This clause is applicable if the funding is provided by the American Recovery and Reinvestment Act of 2009. Except in paragraph (c), reports shall be provided to Buyer no later than the 5th day after the end of each calendar quarter. Reports shall be furnished to Buyer in accordance with paragraph (d)(10).
- 52.209-6 **PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT** – This clause applies if the Order exceeds \$30,000 and is not an order for commercially available off-the-shelf (COTS) items.
- 52.211-5 **MATERIAL REQUIREMENTS** – This clause applies if the Order includes supplies that are not commercial items.
- 52.211-15 **DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS** – This clause applies if the Order is a rated order certified for national defense use. The rating designation will appear on the face of the Order.
- 52.215-2 **AUDIT AND RECORDS – NEGOTIATION** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000 and (1) is a cost-reimbursement, incentive, time and material, labor hour, or price redeterminable type or any combination of these: (2) for which certified cost or pricing data are required; or (3) that require Seller to furnish reports described in paragraph (e) of the clause.
- Alternate I applies if the Order is funded under the American Recovery and Reinvestment Act of 2009.
- 52.215-10 **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA** – This clause applies when contracting by negotiation when it is contemplated that the Order is \$700,000 or more and cost or pricing data will be required. In paragraph (c)(1) the term “Contracting Officer” does not change. As required by applicable law or regulation, Seller shall provide cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed in FAR 15.406-2. In addition to any remedies provided by law, if Buyer is subjected to any liability as a result of Seller’s failure to comply with this requirement, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense (excluding Buyer’s overhead and profit) resulting from such failure.

- 52.215-11 **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS** – This clause applies when it is contemplated that cost or pricing data will be required for the pricing of contract modifications, and the clause, 52.215-10 is not applicable. This clause shall apply only for any modifications to the Order involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data in the amount of \$700,000. As required by applicable law or regulation, Seller shall provide cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed in FAR 15.406-2. In addition to any remedies provided by law, if Buyer is subjected to any liability as a result of Seller's failure to comply with this requirement, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense (excluding Buyer's overhead and profit) resulting from such failure.
- 52.215-12 **SUBCONTRACTOR COST OR PRICING DATA** – This clause is applicable when clause 52.215-10 is applicable to the Order. In addition, Seller shall indemnify and hold Buyer harmless from and against any loss, cost or damage incurred by Buyer under Buyer's contract with its customer as a result of Seller or Seller's subcontractors providing defective cost or pricing data in connection with this provision.
- 52.215-13 **SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS** – This clause applies when it is contemplated that cost or pricing data will be required for the pricing of contract modifications, and clause 52.215-11 is included in the Order. This clause shall become operative only for a modification to the Order involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data in the amount of \$700,000. In addition, Seller shall indemnify and hold Buyer harmless from and against any loss, cost or damage incurred by Buyer under Buyer's contract with its customers as a result of Seller or Seller's subcontractors providing defective cost or pricing data in connection with this provision.
- 52.215-14 **INTEGRITY OF UNIT PRICES** – This clause applies if the Order does not include the following: (1) acquisitions at or below the simplified acquisition threshold of \$150,000; (2) construction or architect engineer services under part 36; (3) utility services under part 41; (4) service contracts where supplies are not required; (5) acquisitions of commercial items; and (6) contracts for petroleum products.
- 52.215-15 **PENSION ADJUSTMENTS AND ASSET REVERSIONS** – This clause applies if it is anticipated that certified cost or pricing data will be required, or for which any pre-award or post award cost determinations will be subject to FAR part 31 dealing with cost principles and procedures for contracts, subcontracts or modifications.
- 52.215-16 **FACILITIES CAPITAL COST OF MONEY** – This clause applies if it is anticipated that the Order is subject to cost principles for contracts with commercial organizations.
- 52.215-17 **WAIVER OF FACILITIES CAPITAL COST OF MONEY** – This clause applies if Seller does not propose facilities capital cost of money in its offer.
- 52.215-18 **REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS** – This clause applies if it is anticipated that cost or pricing data will be required or for any pre-award or post-award cost determination which will be subject to FAR part 31.

- 52.215-19 **NOTIFICATION OF OWNERSHIP CHANGES** – This clause applies if it is anticipated that cost or pricing data will be required, or for which any pre-award or post-award cost determination which will be subject to FAR subpart 31.2.
- 52.219-8 **UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN OWNED SMALL BUSINESS CONCERNS** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000, unless a personal services contract is contemplated or the Order together with all of its subcontracts will be performed entirely outside of the U.S. and its outlying areas.
- 52.219-9 **SMALL BUSINESS SUBCONTRACTING PLAN** – This clause does not apply to small business concerns. It applies only if the Order exceeds \$650,000 and offers further subcontracting opportunities. Furthermore, this clause requires inclusion of the clause at 52.219-8 Utilization of Small Business Concerns, in sub-tier subcontracts.
- 52.219-16 **LIQUIDATED DAMAGES – SUBCONTRACTING PLAN** – This clause is applicable if the Order is to a large business and exceeds \$650,000 and offers further subcontracting opportunities.
- 52.222-1 **NOTICE TO GOVERNMENT OF LABOR DISPUTES**
- 52.222-3 **CONVICT LABOR**
- 52.222-4 **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION** – This clause is applicable if the Order is anticipated to exceed the simplified purchasing threshold of \$150,000 and may involve the employment of laborers or mechanics, except for additional exceptions identified at FAR 22.305.
- 52.222-19 **CHILD LABOR – COOPERATION WITH AUTHORITIES AND REMEDIES**
- 52.222-20 **WALSH-HEALY PUBLIC CONTRACTS ACT** – This clause applies if the Order is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds \$15,000 and is subject to the Walsh-Healey Public Contracts Act.
- 52.222-21 **PROHIBITION OF SEGREGATED FACILITIES**
- 52.222-26 **EQUAL OPPORTUNITY** – This clause is applicable if the Seller has been or is awarded Federal contracts or subcontracts exceeding the aggregate value of \$10,000.
- 52.222-35 **EQUAL OPPORTUNITY FOR VETERANS** – This clause applies if the Order is expected to exceed \$100,000.
- 52.222-36 **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES** – This clause applies if the Order is expected to exceed \$15,000.
- 52.222-37 **EMPLOYMENT REPORTS ON VETERANS,** – This clause applies if the Order is expected to exceed the simplified acquisition threshold of \$100,000.
- 52.222-40 **NOTIFICATION OF EMPLOYMENT RIGHTS UNDER THE NATIONAL LABOR REGULATIONS ACT** – This clause applies if the Order is expected to exceed the simplified acquisition threshold of \$150,000.

- 52.222-41 **SERVICE CONTRACT ACT OF 1965, AS AMENDED** – This clause applies if the Order is subject to the Service Contract Act of 1965 and is over \$2,500.
- 52.222-50 **COMBATING TRAFFICKING IN PERSONS**
- 52.222-54 **EMPLOYMENT ELIGIBILITY VERIFICATION** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000 unless the work is performed outside the U.S.
- 52.223-3 **HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**
- 52.223-7 **NOTICE OF RADIOACTIVE MATERIALS** – This clause applies if the Order involves supplies which are, or which contain: (a) radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.
- 52.223-11 **OZONE DEPLETING SUBSTANCES**
- 52.223-18 **ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING**
- 52.225-1 **BUY AMERICAN ACT – SUPPLIES** – This clause applies the Order if it is valued at \$3,000 to \$25,000. This clause applies to Orders in excess of \$25,000 and none of clauses prescribed in FAR 25.1101, paragraphs (b) and (c) apply (subject to specified exceptions listed in sub-paragraphs (i) through (iii)) apply.
- 52-225-3 **BUY AMERICAN ACT – FREE TRADE AGREEMENT – ISRAELI TRADE ACT** – This clause applies to the Order if it is for supplies for use in the United States, and the value is \$25,000 or more, but is less than \$203,000 and the Order is not for information technology that is a commercial item.
- 52.225-5 **TRADE AGREEMENTS** – This clause applies if the Order is valued at \$203,000 or more if the acquisition is covered by the WTO GPA and the Contracting Officer has determined that the restrictions of the Buy American Act are not applicable.
- 52.225-13 **RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**
- 52.227-1 **AUTHORIZATION AND CONSENT** – This clause applies if the Order is for supplies or services except when both complete performance and delivery are outside the U.S., its possessions and Puerto Rico. Alternate I is applicable if the Order is for research and development (R&D).
- 52.227-2 **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**
- 52.227-10 **FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER** – This clause applies if the Order covers classified subject matter or where the nature of the work or classified subject matter involved in the work reasonably might be expected to result in a patent application containing classified subject matter.
- 52.227-11 **PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR** - This clause applies if the Order is for experimental, developmental, or research work or construction that includes experimental, development or research work.

- 52.227-14 **RIGHTS IN DATA – GENERAL** – Including Alternates I, II, III, IV, and V if it is contemplated that data will be produced, furnished, or acquired under the Order.
- 52.230-2 **COST ACCOUNTING STANDARDS** – This clause except paragraph (b), applies to the Order if the value is in excess of \$700,000, and to all subcontracts of any tier, unless the Order is subject to modified coverage.
- 52.230-3 **DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES** – This clause applies if the Order is over \$700,000 but less than \$50 million and the Seller certified it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)).
- 52.230-4 **DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES – FOREIGN CONCERNS** – This clause applies to the Order if it is with a foreign concern, unless the Order is otherwise exempt from CAS (see 48 CFR 9903.201-1). Foreign concerns do not include foreign governments or instrumentalities.
- 52.230-5 **COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION** – This clause applies if the Order exceeds \$700,000 and is awarded to an educational institution, except for CAS-covered orders issued to FFRDCs operated by an educational institution unless the order is exempted (see 48 CFR 9903.201-1 (FAR Appendix)), the contract is to be performed by an FFRDC (see 48 CFR 9903.201-2(c)(5) (FAR Appendix)), or FAR 52.230-2 applies.
- 52.230-6 **ADMINISTRATION OF COST ACCOUNTING STANDARDS** – Applies if FAR 52.230-2, FAR 52.230-3 or FAR 52.230-5 applies.
- 52.242-15 **STOP WORK ORDER** – This clause applies if the Order is for supplies, services, or R&D. If this is a cost-reimbursement Order, Alternate I also applies.
- 52.244-2 **SUBCONTRACTS** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
- 52.244-6 **SUBCONTRACTS FOR COMMERCIAL ITEMS**
- 52.245-1 **GOVERNMENT PROPERTY** – This clause is applicable if the Order is: (i) a cost reimbursable, time and material, or labor-hour type order; or (ii) fixed-price order when the Buyer or the Government will provide government property, and/or (iii) order or modifications awarded under FAR Part 12 (Commercial) procedures where Government property that exceeds the simplified acquisition threshold, as defined in FAR 2.101, is furnished or where the Seller is directed to acquire property for use under the Order that is titled in the Government.
- 52.247-63 **PREFERENCE FOR U.S. FLAG AIR CARRIERS** – This clause applies to the Order whenever it is possible that U.S. Government financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the Order. This clause does not apply to the Order if it was awarded using simplified acquisition procedures or it is for commercial items.
- 52.247-64 **PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS**
- 52.248-1 **VALUE ENGINEERING** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.

THE FOLLOWING DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES ARE INCORPORATED HEREIN BY REFERENCE.

- 252.203-7001 **PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT RELATED FELONIES** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000. “Government” is not changed in this clause.
- 252.203-7002 **REQUIREMENTS TO INFORM EMPLOYEE’S OF WHISTLEBLOWER RIGHTS**
- 252.203-7003 **AGENCY OFFICE OF THE INSPECTOR GENERAL**
- 252.203-7004 **DISPLAY OF FRAUD HOTLINE POSTERS** – This clause applies if the Order exceeds \$5 million.
- 252.204-7000 **DISCLOSURE OF INFORMATION** – This clause is applicable to the Order if the Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public. In paragraph (c) “Contracting Officer” means “Contracting Officer.”
- 252.204-7008 **EXPORT- CONTROLLED ITEMS**
- 252.209-7004 **SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY** – This clause applies to the Order if it exceeds \$150,000.
- 252.209-7009 **ORGANIZATIONAL CONFLICT OF INTEREST – MAJOR DEFENSE ACQUISITION PROGRAM** – This clause applies if the Order is for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.
- 252.211-7000 **ACQUISITION STREAMLINING** – This clause is applicable if the Order is for a systems acquisition program exceeding \$1,500,000.
- 252.211-7003 **ITEM IDENTIFICATION AND VALUATION** – This clause is applicable if subassemblies, components or parts embedded within deliverables are defined as requiring DOD unique item identification as specified in the Order.
- 252.211-7007 **REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT IN THE DOD ITEM UNIQUE IDENTIFICATION (IUID) REGISTRY**
- 252.215-7002 **COST ESTIMATING SYSTEM REQUIREMENTS** – This clause applies if the Order is awarded on the basis of cost or pricing data.
- 252.219-7003 **SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)** – This clause does not apply to small business concerns. It applies if the Order exceeds \$650,000.
- 252.222-7006 **RESTRICTION ON USE OF MANDATORY ARBITRATION AGREEMENTS** – This clause applies if the Order exceeds \$1 million, utilizing funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L.111-118) except for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

- 252.223-7006 **PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS** – Applicable to the Order if it is performed, even partly, on a Department of Defense Installation. This clause is applicable if the Order requires, may require, or permits the treatment or disposal of non-DOD-owned toxic or hazardous materials.
- 252.223-7008 **PROHIBITION OF HEXAVALENT CHROMIUM**
- 252.225-7001 **BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM** – “Government” is not changed in this clause.
- 252.225-7002 **QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS**
- 252.225-7004 **REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA – SUBMISSION AFTER AWARD** – This clause applies if the Order exceeds \$650,000 and will be performed outside the U.S. or Canada.
- 252.225-7006 **QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES** – This clause applies if the Order exceeds \$650,000. Seller shall submit quarterly reports for second tier subcontracts as directed in paragraphs (b) through (e) of this clause.
- 252.225-7007 **PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES** – Applies if the Order involves the delivery of items covered by the United States Munitions List.
- 252.225-7008 **RESTRICTION ON ACQUISITION OF SPECIALTY METALS** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
- 252.225-7009 **RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
- 252.225-7013 **DUTY-FREE ENTRY** – This clause applies in lieu of FAR 52.225-8 if the Order involves supplies that will enter the customs territory of the United States if such supplies will be accorded duty-free entry under the Prime Contract.
- 252.225-7015 **RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS** -- This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000 and requires delivery of hand or measuring tools.
- 252.225-7016 **RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS** – This clause is applicable to the Order except for commercial items other than ball or roller bearings acquired as end items; or items that do not contain ball or roller bearings.
- 252.225-7021 **TRADE AGREEMENTS** – This clause applies to the Order in lieu of FAR 52.225-5 if the World Trade Organization – Government Procurement Agreement applies.
- 252.225-7025 **RESTRICTION ON ACQUISITION OF FORGINGS** – This clause is applicable if the Order is for forging items or for other items that contain forging items.
- 252.225-7027 **RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES**

- 252.225-7030 **RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE** – Applicable to the Order if it (a) requires the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a Government Owned or controlled facility.
- 252.225-7038 **RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS** – Applicable to the Order if it requires delivery of air circuit breakers for naval vessels to the Government.
- 252.225-7040 **CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES** – Applicable to the Order when performance of the Order requires that Seller’s personnel accompany U.S. Armed Forces deployed outside the United States in (1) Contingency operations (2) Humanitarian or peacekeeping operations (3) Other military operations; or (4) Military exercises designated by the combatant commander.
- 252.225-7043 **ANTITERRORISM / FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES** – Applicable to the Order if it requires performance or travel outside the United States.
- 252.226-7001 **UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS – DOD CONTRACTS** – This clause applies if the Order exceeds \$500,000 and further subcontracting opportunities may exist.
- 252.227-7013 **RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS** – This clause is applicable when technical data, but not software, will be delivered to the Government by the Buyer from the Seller. “[T]o the Contractor” has been deleted from (b)(1)(vi) and “contract or” and “thereunder” have been deleted from (b)(1)(ix). “Buyer or” is added before “Government” in (c) and (i). The second and third occurrences of “Contracting Officer” are changed to “Government” in (e)(4). “And the Government” is added after “parties” in (h)(1). In (h)(2) “sixty (60)” is changed to “fifty (50)” days. No substitutions for “Government” have been made.
- 252.227-7014 **RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION** – This clause is applicable when software and software documentation will be delivered to the Government by the Buyer from the Seller. “Buyer or” is added before “Government” in (b)(1)(i). “[T]o the Contractor” has been deleted from (b)(1)(iii) and “contract or” and “thereunder” is deleted from (b)(1)(vi). The second and third occurrences of “Contracting Officer” have been changed to “Government” in (e)(4). “And the Government” is added after “parties” in (h)(l). In (h)(2) “sixty (60)” is changed to “fifty (50)” days. No substitutions for “Government” have been made.
- 252.227-7016 **RIGHTS IN BID OR PROPOSAL INFORMATION**
- 252.227-7019 **VALIDATION OF ASSERTED RESTRICTIONS – COMPUTER SOFTWARE** – This clause is applicable if the Seller will be furnishing computer software to the Government in the performance of the Order.
- 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** – This clause is applicable if the Order requires delivery of technical data or computer software, but does not contain a time for

delivery. The obligation of Seller to deliver such technical data expires two years after the date the Buyer accepts the last item from the Seller for use in the performance of the contract. The Order will specify which technical data or computer software will be subject to deferred delivery.

- 252.227-7027 **DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE** – This clause is applicable when a firm requirement for a particular data item(s) has not been established prior to Order award but there is a potential need for the data. The obligation of Seller to deliver such data expires three years after the date the Buyer accepts the last item under the Order.
- 252.227-7028 **TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT** – In this clause, the terms “contract” and “subcontract” shall not change in meaning. This clause is applicable if the Order will require the Seller to deliver computer software or computer software documentation.
- 252.227-7030 **TECHNICAL DATA - WITHHOLDING OF PAYMENT**
- 252.227-7037 **VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA** – This clause is applicable if the Order requires the delivery of technical data, except contractual instruments for commercial items or commercial components.
- 252.227-7038 **PATENT RIGHTS – OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS)** – This clause is applicable if Seller is a large business and FAR 52.227-11 does not apply.
- 252.227-7039 **PATENTS – REPORTING OF SUBJECT INVENTIONS**
- 252.231-7000 **SUPPLEMENTAL COST PRINCIPLES**
- 252.234-7004 **COST AND SOFTWARE DATA REPORTING SYSTEM** – This clause applies to the Order if it is for a major acquisition program that exceeds \$50 million
- 252.235-7003 **FREQUENCY AUTHORIZATION** – This clause applies if the Order requires the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.
- 252.242-7004 **MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000 and it is a cost reimbursement type or fixed price with progress payments.
- 252.243-7002 **REQUESTS FOR EQUITABLE ADJUSTMENT** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000.
- 252.244-7000 **SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS)**
- 252.245-7001 **TAGGING, LABELING, AND MAILING OF GOVERNMENT-FURNISHED PROPERTY**
- 252.245-7002 **REPORTING LOSS OF GOVERNMENT PROPERTY**
- 252.246-7001 **WARRANTY OF DATA**

- 252.247-7023 **TRANSPORTATION OF SUPPLIES BY SEA** – This clause is applicable if the Order exceeds the simplified acquisition threshold of \$150,000 except for direct purchase of ocean transportation services. “Contractor” in paragraphs (b)(c)(d) and (e) is changed to “Seller” and “Contracting Officer” is changed to Buyer”. Paragraph (c), is modified to read “The Seller and its subcontractors may request that the Buyer obtain Government authorization for shipment...” In paragraph (d) “45” is changed to “60” days and “30” to “25” in paragraph (e). In paragraph (e) substitute “Buyer” for “Contracting Officer and the reference to the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590,” is deleted. Paragraph (g) is deleted.
- 252.247-7024 **NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA** – This clause applies to the Order if the Seller’s original response to the solicitation stated that no transportation by sea was contemplated. Paragraph (a) second sentence is modified to read “If, after award of the Order, the Seller learns that supplies....”
- 252.249-7002 **NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION** – This clause applies if the Order is valued at \$650,000 or more and thereafter to lower tier orders of \$150,000 or more. “Buyer” is substituted for “Contracting Officer” throughout.

B-2 PROVISIONS APPLICABLE TO NONCOMMERCIAL FIXED PRICE ORDERS

In addition to the General Provisions of Section A and the FAR and DFARS provisions of Section B-1, the following clauses of the FAR and DFARS are applicable if the Order is fixed price:

- 52.227-9 **REFUND OF ROYALTIES**
- 52.228-5 **INSURANCE – WORK ON A GOVERNMENT INSTALLATION** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000 and work will be required on a Government installation.
- 52.229-3 **FEDERAL, STATE, AND LOCAL TAXES** – This clause is applicable if the Order is to be performed wholly or partly in the U.S.; a fixed-price contract is contemplated; and the Order is expected to exceed the simplified acquisition threshold of \$150,000.
- 52.232-2 **PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS** – Applicable if the Order is for research and development.
- 52.232-11 **EXTRAS** – This clause is applicable if the Order is a fixed-price supply, fixed-price service order or a transportation order.
- 52.232-16 **PROGRESS PAYMENTS** – This clause is applicable if the Order provides for progress payments based on costs; the clause includes Alternate I if the Seller is a small business. Alternate II applies if the Order is not definitized.
- 52.232-17 **INTEREST**
- 52.243-1 **CHANGES – FIXED-PRICE** – Alternate I of this clause is applicable if the Order is a fixed-price contract for supplies. Alternate II is applicable if the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished.

- 52.246-2 **INSPECTION OF SUPPLIES - FIXED PRICE** – This clause is applicable if the Order is for supplies or services that involve the furnishing of supplies, and the amount is expected to exceed the simplified acquisition threshold of \$150,000.
- 52.246-4 **INSPECTION OF SERVICES – FIXED PRICE** – This clause is applicable if the Order is for services or supplies that involve the furnishing of services, and exceeds the simplified acquisition threshold of \$150,000.
- 52.246-16 **RESPONSIBILITY FOR SUPPLIES** – This clause is applicable if the Order is for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when the amount is expected to exceed the simplified acquisition threshold of \$150,000.
- 52.246-17 **WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE** – This clause is applicable if the Order is for noncomplex items. In paragraph (b) (1) and (c) (1) insert the words, “one year after acceptance.”
- 52.246-18 **WARRANTY OF SUPPLIES OF A COMPLEX NATURE,** – Applicable to the Order if it is for deliverable complex items. In paragraph (b) (1) insert the words, “one year after acceptance”.
- 252.243-7001 **PRICING OF CONTRACT MODIFICATIONS**
- 252.246-7001 **WARRANTY OF DATA,** Alternate II
- 252.246-7001 **WARRANTY OF DATA,** Alternate I – Applicable to the Order if it is a fixed price incentive Order.

B-3 PROVISIONS APPLICABLE TO NONCOMMERCIAL COST REIMBURSEMENT ORDERS

In addition to the General Provisions of Section A and the FAR and DFARS provisions of Section B-1, the following clauses of the FAR and DFARS are applicable if this Order is cost reimbursable:

- 52.216-7 **ALLOWABLE COST AND PAYMENT** – In paragraph (a)(1) delete “Government” and add “Buyer” in its place and delete “Contractor” and add “Seller” in its place. If the Seller is an educational institution, modify the clause by deleting from paragraph (a) the words “Subpart 31.2” and substituting them with “Subpart 31.3.” If the Order is with a State or local government, modify the clause by deleting from paragraph (a) the words “Subpart 31.2” and substituting for them “Subpart 31.6.” If the Order is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A-122, modify the clause by deleting from paragraph (a) the words “subpart 31.2” and substituting for them “Subpart 31.7.”
- 52.216-8 **FIXED FEE** – This clause is applicable if the Order is cost-plus-fixed-fee (other than a facilities or construction contract).
- 52.222-2 **PAYMENT FOR OVERTIME PREMIUMS** – This clause applies if the Order exceeds the simplified acquisition threshold of \$150,000. The authorized overtime premium in paragraph (a) is \$0, unless otherwise specified on the face of the Order.
- 52.229-10 **STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX** – Applicable if the Order is for services to be performed in whole or in part within the State of New Mexico and if the Order directs or authorizes the Seller to acquire tangible personal property as a direct cost under the Order and title to such property passes directly to and vests in the United States upon delivery of the property.

- 52.232-20 **LIMITATION OF COST**
- 52.232-22 **LIMITATION OF FUNDS** – This clause applies only if the Order is incrementally funded.
- 52.242-3 **PENALTIES FOR UNALLOWABLE COSTS** – This clause applies if the Order exceeds \$700,000, except fixed-price orders.
- 52.243-2 **CHANGES - COST REIMBURSEMENT** – This clause is applicable if the Order is a cost reimbursable contract for furnishing supplies.
- Alternate I is applicable if the requirement is for services.
 Alternate II is applicable if the requirement is for services and supplies
 Alternate V is applicable if the requirement is for research and development.
- 52.246-3 **INSPECTION OF SUPPLIES – COST REIMBURSEMENT**
- 52.246-5 **INSPECTION OF SERVICES – COST REIMBURSEMENT**
- 52.249-14 **EXCUSABLE DELAYS**

B-4 PROVISIONS APPLICABLE TO NONCOMMERCIAL TIME & MATERIAL OR LABOR HOUR ORDERS

In addition to the General Provisions of Section A and the FAR and DFARS provisions of Section B-1, the following clauses of the FAR and DFARS are applicable if the Order is a time and material or labor-hour type:

- 52.232-7 **PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR HOUR CONTRACTS**
- 52.243-3 **CHANGES – TIME AND MATERIALS OR LABOR-HOURS**
- 52.246-6 **INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR**
- 52.249-14 **EXCUSABLE DELAYS**