



**TERMS AND CONDITIONS FOR ORDERS FOR COMMERCIAL ITEMS OR SERVICES ISSUED UNDER
DEPARTMENT OF ENERGY CONTRACTS**

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A. GENERAL PROVISIONS

A-1 Definitions

The following definitions apply unless otherwise specifically stated:

- (1) "Buyer", "General Atomics", or "GA" - the legal entity issuing this Order.
- (2) "Purchasing" or "Procurement Representative" - Buyer's authorized representative.
- (3) "Seller" or "Contractor" or "Subcontractor" - the legal entity which contracts with the Buyer.
- (4) "This Order" or "this Contract" - this contractual instrument, including changes.
- (5) "Government" - the Government of the United States, acting in its contractual capacity.
- (6) "Prime Contract" - the Government contract under which this Order is issued.
- (7) "FAR" - the Federal Acquisition Regulation, issued as Title 48, Code of Federal Regulations Chapter 1.
- (8) "DEAR" - the Department of Energy Federal Acquisition Regulation, which implements and supplements the FAR.
- (9) "Contracting Officer" - the Government official(s) authorized to contractually commit the Government under the Prime Contract, or authorized representatives of those officials acting within the scope of their authority.

A-2 Entirety of Agreement

The provisions of this Order constitute the complete and exclusive agreement between the parties hereto and supersede all previous negotiations, discussions, communications, representations, or agreements, whether written or oral, between the Buyer and the Seller related to the subject matter hereof. The Representations and Certifications (GA Form DF-60) completed by the Seller are hereby incorporated in their entirety by reference. No agreement or understanding varying or extending the terms or conditions of this Order will be binding unless executed in writing and signed by the Buyer's Purchasing Representative. Any one of the following methods will constitute acceptance of this Order by the Seller: (1) acknowledgment in writing; (2) commencement of performance by the Seller; or (3) delivery in whole or part of the items or services called for hereunder. Seller's acceptance of this Order creates a binding contract between Buyer and Seller, which shall be governed by the provisions of this Order. No condition stated by the Seller in its acknowledgment of this Order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein, unless expressly accepted in writing by an authorized Purchasing Representative of the Buyer. The rights and obligations described herein shall survive completion of and final payment under this Order.

A-3 Publicity

Except as required by law, regulation or court order, no news release, public announcement, or advertising material concerned with this Order shall be issued or made by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

A-4 Delivery

- (1) TIME IS OF THE ESSENCE AND, EXCEPT AS OTHERWISE SPECIFIED, DELIVERY SHALL BE STRICTLY IN ACCORDANCE WITH THE DELIVERY SCHEDULE SET OUT OR REFERRED TO IN THIS ORDER. If Seller's deliveries fail to meet said schedule and Buyer elects to call upon Seller for express shipments, Seller shall be charged the difference between the freight and express rates. Items shipped to Buyer in advance of schedule without written approval of Buyer may be returned to Seller at Seller's risk and expense.

- (2) Title to items covered by this Order shall pass from Seller to Buyer at the F.O.B. point specified herein. Passing of title upon such delivery shall not constitute acceptance of the items by Buyer.

A-5 Packing, Marking and Shipping

Seller shall pack, mark, and ship all goods and supplies in accordance with the requirements of this Order and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection against damage from weather and shipment, including any applicable Federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge is payable by Buyer for containers, crating, boxing, handling, dunnage, drayage or storage unless specifically stated in this Order or otherwise agreed to by Buyer in writing. Seller shall mark each container with the number of this Order and shall enclose a packing slip with this Order number in an envelope attached to each container. Damage resulting from improper packing or shipping will be charged to Seller.

A-6 Order of Precedence

In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following descending order of preference:

1. typed provisions set forth in this Order;
2. the statement of work;
3. the preprinted portion of this Order;
4. other incorporated or referenced documents; and
5. specifications attached hereto or incorporated by reference.

Buyer's specifications shall prevail over those of the United States Government, and both of the foregoing shall prevail over specifications of Seller.

A-7 Waiver

Failure of Buyer to enforce any of the provisions of this Order, or any rights in respect thereto, or failure of Buyer to exercise any election therein

provided, shall in no way be considered to be a waiver of the right to thereafter enforce such provisions or rights or exercise any subsequent elections.

A-8 Technical Direction and Contractor 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 contract provisions.
- (2) In the event that any 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-9 Changes

- (a) Buyer may at any time without notice to the sureties, if any, issue written directions requiring additional work within the general scope of this Order, or directing the omission of or variation in work covered by this Order or any

amendment thereto. If any such direction results in a material change in the amount or character of the work under this Order, an equitable adjustment in the Order price and other such provisions of this Order as may be affected shall be made and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by Seller of the notification of change.

- (b) Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon Buyer until agreed to in writing by an authorized member of Buyer's Purchasing Department. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder unless the same is in a writing which is signed by an authorized representative of the Buyer's Purchasing Department and which expressly states that it constitutes a modification or change to this Order.
- (c) Seller shall proceed with prosecution of the work in accordance with any written direction issued under this Clause A-9.

A-10 Patent Infringement Indemnity

- (a) Seller shall defend Buyer, Buyer's customers, Buyer's affiliates and any subsequent owners, sellers, its directors, officers, agents, employees, representatives, subcontractors, users or operators of the items delivered under this Order against all claims, demands, actions or causes of action that are asserted against any Indemnity 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 hereunder, 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 this Order

whereby any Indemnity 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 expenses 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 this Order in combination with items not delivered by Seller if such alleged infringement would not have occurred from the use or sale of such items solely for the purpose for which they were designed or sold to Buyer.

- (b) When this Order is performed under the authorization and consent of the United States Government to infringe United States patents (see FAR 52.227-1 referenced at Section B), 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 or hold harmless the United States Government.

A-11 Buyer-Furnished Property

Buyer shall retain title to all property furnished to and utilized by Seller in the performance of this Order, including, but not limited to, dies, molds, jigs, tools, and materials. Seller shall label, maintain, and dispose of Buyer's property, including scrap, according to Buyer's written direction, and Seller shall be responsible for all loss or damage to Buyer's property in Seller's possession. If Seller does not receive timely written direction from Buyer concerning the maintenance and disposal of Buyer's property, including scrap, then Buyer shall be liable to Seller for the reasonable expense of maintaining, storing, or disposing of such property. This clause does not govern Seller's handling, use, maintenance or disposal of Government-furnished property that may come into Seller's possession during Seller's performance of this Order; such handling, use, maintenance or disposal is governed by the government-furnished property clause referenced in Section B of this Order.

A-12 Assignments and Subcontracts

This Order is not assignable and shall not be

assigned by Seller without the prior written consent of Buyer. Further, Seller agrees to obtain Buyer's approval before subcontracting this Order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or material. In no event shall Seller furnish to any assignee any part of this Order that is marked "Top Secret," or "Confidential."

A-13 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 to Seller.

A-14 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 this Contract. 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 this contract. 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 this contract.

A-15 Disputes/Arbitration

In the event of any dispute, claim, question, or disagreement arising from or relating to this Order or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) calendar days, then, upon notice to either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, of all its costs and fees. "Cost and Fees" means all reasonable pre-

award expenses of the arbitration, including but not limited to the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying, and telephone, court costs, witness fees, and attorneys' fees. Pending the outcome of the arbitration, the Seller shall proceed diligently with performance of the Order.

A-16 Precautions, Indemnity, and Insurance

Seller will defend at Seller's expense any suit or action, criminal or civil, arising out of Seller's performance.

Seller shall procure and carry:

- (1) 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; and
- (2) a broad form 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
- (3) such insurance of employees as may be required by any Workers' Compensation act or other law regulation or ordinance which may apply in the circumstances and shall, at Buyer's request, furnish certificates of such insurance to Buyer.

For (1) and (2) above, such policies shall name the Buyer as an additional insured.

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-17 Choice of Law

This order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however,

that California's Choice of Law provisions shall not apply.

A-18 Communication with GA Customer

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

A-19 Export Control

Seller agrees to comply with all applicable U.S. export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act (including the International Traffic in Arms Regulations (ITAR)) and the Export Administration Act (including the Export Administration Regulations), and will obtain any necessary export licenses or agreements. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services received under this Order to any foreign person or to a foreign entity, including foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the prior authority of an export license, agreement, or applicable exemption or exception.

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.

Seller agrees to notify Buyer if any deliverable (or component of any deliverable) under this Order is restricted by export control laws or regulations. Seller agrees to provide the export classification information for such deliverables or components of deliverables (e.g., the Export Control Classification Numbers or United States Munitions List category and subcategory), along with documentation or other information that supports or confirms this representation.

Seller shall immediately notify Buyer 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.

If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller hereby certifies that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

Where Seller is a signatory under a General Atomic export license or export agreement (e.g., Technical Assistance Agreement (TAA)), Seller shall provide prompt notification to Buyer in the event of changed circumstances including ineligibility, a violation or potential violation of the ITAR, or the initiation or

existence of a U.S. Government investigation that could affect the Seller's performance under this Order. Should the Seller's products or services originate from a foreign location, those products may also be subject to the export control laws and regulations of the country in which the articles or services originate. Seller agrees to abide by all applicable export control laws and regulations of that originating country.

Seller shall indemnify Buyer for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

B. FAR PROVISIONS

The following clauses in the Federal Acquisition Regulation (FAR) are each incorporated herein by this reference and made a part of this 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, during the performance of this Order. To the extent that an earlier version of any clause is included in the prime contract or subcontract under which this 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 clauses, the term "Contractor" or "prime contractor" shall mean "Seller", the term "Contract" or "Schedule" shall mean "this 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 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 United States 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 clauses to its lower-tier subcontractors. Lastly, any reference to a "Disputes" clause in a referenced FAR clause shall mean clause A-15, "Disputes/Arbitration" of these terms and conditions.

B-1 FAR PROVISIONS APPLICABLE TO COMMERCIAL ITEMS OR COMPONENTS

This Order is for the furnishing of commercial items or commercial services in accordance with FAR 52.244-6(c)(1). The terms and conditions of Section A above and the following clauses shall apply to this Order:

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|-----------|--|
| 52.203-13 | CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT – This clause applies if this Order is in excess of \$5,000,000. |
| 52.203-15 | WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 – This clause applies for Orders funded in this Act. |
| 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 5 th day after the end of each calendar quarter. Reports shall be furnished to Buyer in accordance with paragraph (d)(10). |

- 52.219-8 **UTILIZATION OF SMALL BUSINESS CONCERNS** – This clause applies if the Order (except for Orders to small business concerns) exceeds the simplified acquisition threshold of \$100,000, and offers further subcontracting opportunities. The Seller must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- 52.222-26 **EQUAL OPPORTUNITY** – This clause applies if the Order is expected to exceed \$10,000 or the aggregate value of all Government contracts and subcontracts in any 120 month period is expected to exceed \$10,000.
- 52.222-35 **EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS**
- 52.222-36 **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES**
- 52.222-39 **NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES**
- 52.222-50 **COMBATING TRAFFICKING IN PERSONS**
- 52.247-64 **PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS**

The Seller also agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to congressional officials not to benefit from contracts entered into on behalf of the United States; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, "Anti-Kickback Act of 1986"; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Government Financed Air Transportation; and 41 U.S.C. 423 relating to procurement integrity.

B-2 ADDITIONAL FAR CLAUSES

As required by FAR 52.212-5, the Seller shall comply with the following FAR clauses in this paragraph that the Buyer has indicated by a check mark, as being incorporated in this subcontract to implement provisions of law or Executive Orders applicable to acquisitions of commercial items:

[ONLY THOSE CLAUSES WHICH HAVE BEEN CHECKED SHALL APPLY TO THIS ORDER]

- (1)___ **52.203-6 - RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT, WITH ALTERNATE I**
- (2)___ **52.219-9, SMALL BUSINESS SUBCONTRACTING PLAN** - This clause does not apply to small business concerns. It applies only if this Order exceeds \$550,000 (\$1 million for construction) 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.
- (3)___ **52.219-16, LIQUIDATED DAMAGES – SUBCONTRACTING PLAN** - This clause does not apply to small business concerns. It applies only if this Order exceeds \$550,000 (\$1 million for construction) 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.
- (4)___ **52.222-3, CONVICT LABOR** - This clause is applicable if this Order is expected to exceed the simplified acquisition threshold amount of \$100,000.
- (5)___ **52.222-19, CHILD LABOR – COOPERATION WITH AUTHORITIES AND REMEDIES** - This clause may be applicable when the acquisition of supplies are expected to exceed the micro-purchase threshold.

- (6)___ **52.222-21, PROHIBITION OF SEGREGATED FACILITIES** - This clause may be applicable when 52.222-26 is included.
- (7)___ **52.222-36, AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES** - This clause may be applicable if this Order is expected to equal or exceed the amount of \$10,000.
- (8)___ **52.222-37, EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS** - This clause is applicable if this Order may be expected to exceed the simplified acquisition threshold amount of \$100,000.
- (9)___ **52.225-1, BUY AMERICAN ACT – SUPPLIES**
- (10)___ **52.225-3, BUY AMERICAN ACT – FREE TRADE AGREEMENTS – ISRAELI TRADE ACT** - This clause may be applicable if the expected value exceeds \$25,000 but less than \$194,000.
- (10a)___ **ALTERNATE I of 52.225-3** - Use Alternate I if the acquisition value is \$25,000 or more but is less than \$50,000.
- (10b)___ **ALTERNATE II of 52.225-3** - Use Alternate II if the acquisition value is \$50,000 or more but is less than \$67,826.
- (11)___ **52.225-5, TRADE AGREEMENTS** - This clause may be applicable if the expected value is equal to or exceeds \$194,000.
- (12)___ **52.225-13, RESTRICTIONS ON CERTAIN FOREIGN PURCHASES** - This clause may apply unless an exemption applies.
- (13)___ **52.239-1, PRIVACY OR SECURITY SAFEGUARDS** – This clause may be applicable in solicitations or contracts for information technology which require security of information technology and /or are for the design, development, or operation of a system of records using commercial information technology services or support services.
- (14)___ **52.249-1, TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM)** – This clause applies only if at the time of termination; this Order does not exceed \$100,000.
- (15)___ **52.249-2, TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE)** – This clause applies only if at the time of termination, the Order exceeds \$100,000.
- (16)___ **52.249-8, DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)** – This clause is applicable if this Order exceeds the simplified acquisition threshold amount of \$100,000.