



**Terms and Conditions and FAR and DEAR Flowdown Provisions for the Acquisition of Non-Commercial Items Funded Under U.S. Government Department of Energy Contracts**

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## ARTICLE I – SPECIAL PROVISIONS

**1. Definitions.** As used throughout this Article I – Special Provisions of these Terms and Conditions, the following terms shall have the meanings set forth below.

- a. “Buyer” means GENERAL ATOMICS or GA.
- b. “Buyer’s Authorized Representative” means an authorized representative of Buyer’s Purchasing Department.
- c. “DEAR” means Department of Energy Acquisition Regulation, issued as Chapter 9 of Title 48, Code of Federal Regulations.
- d. “FAR” means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- e. “Government” means the Government of the United States of America or any department, agency or instrumentality thereof, and any successor thereof.
- f. “Government Dispute” means a dispute between the Parties which implicates the conduct and potential liability of the Government.
- g. “Order” means the purchase order or subcontract issued by Buyer to Seller to which these Terms and Conditions are affixed.
- h. “Party” means each of Buyer and Seller.
- i. “Prime Contract” means the contract between Buyer and the Government.
- j. “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.
- k. “Special Tool” has the meaning set forth in Clause 9.

Except as otherwise provided in these Terms and Conditions, the term “subcontract” includes purchase orders issued by Seller under the Order, but does not include Seller’s employment relationships.

All references to “works,” “supplies,” “articles,” “products,” or “items” shall include “services,” if the Order, wholly or in part, provides for the furnishing of services.

**2. Acceptance of Order.** Any one of the following methods will constitute acceptance of the Order by Seller:

- a. acknowledgement in writing;
- b. commencement of performance by Seller; or
- c. 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 these Terms and Conditions, unless expressly accepted in writing by Buyer’s Authorized Representative.

**3. 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 Party the right to make commitments of any kind for, or on behalf of, the other Party.

**4. 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 (i) secure the lowest transportation costs, (ii) comply with the requirements of common carriers and (iii) 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.

**5. Quality Control.** Seller shall establish and maintain a quality control system in accordance with ISO 9001/2008 (or a more current update) for the goods or services purchased under the Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any known or reasonably suspected violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any goods delivered to Buyer that may be affected.

**6. 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 therefore demands 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 on 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 in delivery, Seller shall promptly (i) notify Buyer's Authorized Representative in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay, and (ii) provide Buyer with a written recovery schedule.

**7. Risk of Loss.** Seller shall assume and bear the risk of any loss of, or damage to, the supplies covered hereby until delivered to Buyer.

**8. Warranty.** Notwithstanding any inspection and acceptance by the Buyer of goods furnished under the Order, all goods furnished under the Order will be free from defects in material or workmanship and will conform to all requirements of the Order.

Seller warrants that goods ordered to specifications hereunder will conform to the specifications and to any drawings, samples, or other description furnished or adopted by Buyer in connection with the Order. If goods are not ordered to such specifications, Seller warrants that they will be fit for the purpose intended. All goods purchased hereunder are warranted to be merchantable, to be of good material and workmanship, and to be free from defect for a period of one (1) year after delivery and acceptance by Buyer, or the manufacturer's warranty period, whichever is longer.

All such warranties and guarantees, if any, shall survive inspection or test, acceptance, and payment. All statutory warranties shall apply. Warranties shall run to Buyer, its successors, assigns, and customers. Seller further warrants that all work and services furnished hereunder shall comply with the requirements of the Order and shall conform to the highest industry standards applicable to them.

**9. 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 Tool shall be properly identified by the Seller as such. Title shall pass to Buyer upon payment for the Special Tool. If Buyer provides a Special Tool to Seller for the manufacture of supplies under an Order, then Seller will hold such Special Tool in good condition, normal wear and tear excepted, 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.

**10. 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 the Parties' mutual benefit, and if such property and material is damaged or not satisfactorily accounted for, Seller will pay for all such property and material. Seller shall not use such property or material other than in the performance of the Order. Seller shall properly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and material. 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.

**11. Payment.** Unless otherwise provided in the Order, payment terms are net thirty (30) calendar days from either the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the goods and supporting documentation at destination, whichever occurs last. Seller shall issue a separate invoice for each shipment to the address specified in the Order, which invoice shall include Buyer's Order number and line item number for each item shipped. 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 entities) against any amount payable by Buyer (or any of its affiliated entities) to Seller.

**12. Diminished Manufacturing Sources.** The Parties 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 Authorized Representative in writing of any pending future action as soon as Seller has made such decision and no later than one hundred eighty (180) days in advance, whichever comes first.

**13. Writing Required.**

- a. No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless provided in writing.
- b. No oral statement of any person whosoever shall in any manner or degree, modify or otherwise affect the terms of the Order.
- c. 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 Authorized Representative.

**14. Records.** Seller agrees that its manufacturing plant, or such part of any manufacturing plant as may be engaged in the performance of this Order, and its related books, documents, papers and records shall at all reasonable times be subject to examination and audit by any person designated 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.

**15. Proprietary Information.**

- a. Seller shall not, during the term of the Order, and for a period of ten (10) 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.

- b. Notwithstanding the foregoing subclause 15(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.
- c. 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 grants Buyer an irrevocable, non-exclusive, royalty free, and worldwide license to utilize any Seller deliverables under the Order, including any technical data or computer software provided to Buyer by Seller for Buyer's use in performing its obligations under its higher-tier contract with its customer, including but not limited to the right to make modifications, create derivative works, integrate into Buyer's deliverables or to deliver to Buyer's customers, and in general to use Seller's deliverables, technical data and computer

software to work with Buyer's other contractors in performing Buyer's obligations under its higher-tier contract. Nothing herein conveys any ownership interest in Seller's intellectual property to Buyer.

- d. 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, provided however; that data, designs, ideas, or other information of Seller asserted to be proprietary by Seller that is necessary for the performance of the Order shall be disclosed and protected in accordance with the applicable DEAR clause (e.g. 952.227-14, "Rights in Data- General (DOE coverage-alternatives VI and VII)", et seq.) contained in Article II of these Terms and Conditions.

**16. 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 prior written consent in each instance.

**17. 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.

**18. Indemnity and Precautions.**

- a. Seller agrees to indemnify Buyer against any liability, including costs and expenses, for (i) any asserted trademark, copyright, or patent infringement arising from the manufacture, use, or sale of any articles furnished to Buyer under the Order, except where such articles are in accordance with Buyer's detailed design or specification and Seller gives prompt notice to Buyer of such claims which come to Seller's attention, (ii) any breach of any warranty of Seller hereunder, and (iii) any damages incurred by Buyer or any third party as a result of or arising out of the manufacture, use or sale of articles furnished by Seller under the Order.

- b. Seller agrees to accept a reduction in the profit or fee of the Order equal to any reduction in the profit or fee of the Prime Contract and to indemnify Buyer for all of Buyer's costs (both direct and indirect) which are incurred as a result of conduct by the Seller or Seller's lower-tier subcontractors in violation of "Restrictions on Obtaining and Disclosing Certain Information" (41 USC 21) (formerly known as the "Procurement Integrity Act"), as implemented in FAR Part 3.104-2

- c. Seller agrees 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:

- i. submission by Seller or its subcontractors or suppliers at any tier of any alleged or confirmed false statement, false claim, defective pricing data, or unallowable costs;
- ii. the alleged or actual violation by Seller or its employees, agents, subcontractors or suppliers at any tier of any applicable statute, regulation, or other law, including but not limited to, as applicable, the Cost Accounting Standards (41 USC 15); Truthful Cost or Pricing Data (FAR) (41 USC 21), Truth in Negotiations Act (DEARS) (10 USC 2306 (a)); Restrictions on Obtaining and Disclosing Certain Information (41 USC 21) (formerly known as the Procurement Integrity Act) Kickbacks (41 USC 87) (formerly known as the Anti-Kickback Act of 1986); Buy American (formerly Buy American Act (41 USC 83), and
- iii. any breach by Seller of any contractual requirement, including but not limited to, as applicable, FAR 52.203-13 "Code of Business Ethics and Conduct, and FAR 52.222-4, "Contract Work Hours and Safety Standards - Overtime Compensation."

- d. If Seller's work under this Order involves operations by Seller on Buyer's premises or at the site of Buyer's customer, 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 18. Further, 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 Buyer or Buyer's customer. While performing under the Order, Seller shall comply with Buyer's policies, practices and rules regarding security and protection of proprietary information and trade secrets.

## **19. Insurance.**

- a. 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: (i) 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; (ii) 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 per occurrence; and (iii) 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. Seller shall, at Buyer's request, furnish certificates of such insurance to Buyer.
- b. For (i) and (ii) above, such policies shall name Buyer as additional insured.

## **20. Taxes.**

- a. Except as may otherwise be provided herein, Seller's price shall not be adjusted by Seller for, and Seller will bear, all timely and applicable Federal, State and local taxes, duties, tariffs, assessments and other charges (hereinafter referred to as the "Taxes" collectively or the "Tax" individually) now or hereafter properly imposed on Seller in respect to the Order or transaction.
- b. Seller agrees to notify the Buyer's Authorized Representative promptly of any proposed or contemplated assessment of additional Taxes Seller believes must be borne by the Buyer as the result of an audit or other tax review by a governmental agency, prior to payment of the proposed additional Taxes. Any obligation the Buyer may have to pay the additional Tax is subject to notification permitting the Buyer to review the assessment prior to payment.
- c. Seller further agrees to take all steps necessary (as requested by the Buyer, on account of the

Buyer, and in cooperation with the Buyer) to secure the refund of any Taxes, interest, and penalties borne by the Buyer in connection with the Order, when such Taxes paid by the Buyer in whole or in part are subsequently deemed inapplicable.

## **21. Export Controls.**

- a. seller agrees to comply with all applicable U.S. export control laws and regulations including those of the U.S. Department of Energy (10 CFR Part 810), and the Nuclear Regulatory Commission (10 CFR Part 110), the Arms Export Control Act (22 USC 2751-2794), and the International Traffic in Arms Regulation (ITAR) (22 CFR 120 et seq.), and the Export Administration Act (50 USC app. 2401-2420), including the Export Administration Regulations (EAR) (15 CFR 730-774), and including the requirement for obtaining any export license, agreement or applicable exemption or exception, 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.
- b. Seller agrees to notify Buyer's Authorized Representative 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.
- c. Seller shall immediately notify Buyer's Authorized 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 the Government.
- d. 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.
- e. Where Seller is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Buyer's Authorized 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 Government investigation, that

in Seller's reasonable judgment could affect the Seller's performance under this Order.

- f. Seller shall include the terms of this clause 21 in all lower-tier subcontracts issued when technical data is provided to their lower-tier subcontractor(s).

**22. Assignments and Subcontracts.** The Order cannot be assigned, sold, or in any manner transferred by Seller without the prior written consent of Buyer. Any attempt to do so shall be null and void ab initio. For purposes of this clause 22, a change of control of Seller is construed as an assignment requiring Buyer's written consent. 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 (or any of its affiliated entities).

**23. Communications.** Buyer shall be solely responsible for all liaison and coordination with Buyer's customer, including the Government, as it affects the Prime Contract, this Order, and any other related contract. Seller shall not communicate with Buyer's customer with respect to any dispute between Seller and Buyer.

**24. 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 an actual, conflict of interest with those of Buyer. This obligation shall include the activities of the employees or agents of Seller and their family members in their interactions with the employees of Buyer and their family members, or Buyer's customer representatives, vendors, or subcontractors.

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 DEARS Subpart 909.5. 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 Order, 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 breach of this clause 24 will authorize Buyer to terminate this Order for default.

## **25. Disputes.**

a. 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. Before a Party may file suit, however, the following process for informal resolution of the dispute must occur. In the case of a dispute other than a Government Dispute, a Party seeking relief must provide a written statement of its claim and position to the other Party and the officers or other senior managerial personnel of the Parties must meet in person or via telephone to discuss the dispute. If the Parties cannot resolve the dispute despite the good faith efforts of senior management personnel for a period of a minimum of thirty (30) days, then either party may proceed to file suit.

In the unusual event that a Party is faced with the reasonable prospect of suffering irreparable harm absent emergency injunctive relief, that Party may shorten the duration of the informal dispute resolution process described above to twenty-four (24) hours.

b. Notwithstanding clause 25(a) above, for a Government Dispute, the following applies:

i. 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 claim in excess of \$100,000, an appropriate Seller certification that: (a) the claim is made in good faith, (b) the supporting data are accurate to the best of Seller's knowledge and belief, (c) the amount requested accurately reflects the Order adjustment for which Seller believes the Government is liable, and (d) 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.

ii. 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 this Order, said decision, if binding upon Buyer under the Prime Contract, shall also be binding upon Buyer and Seller with respect to this Order.

However, if Seller is adversely 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, 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 this Order

- iii. 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 attorney’s 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 may also 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.

- iv. During the pendency of any Government Dispute or any appeal or suit under the Contract Disputes Act, any monies due or becoming due to Seller under the Order that are in question 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.

- v. The Parties 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.
- vi. 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.
- vii. If this Order is issued by Buyer under a subcontract held by Buyer, 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 this 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 this Order been issued by Buyer under a Prime Contract with the Government.
- viii. If any claim of Seller under this clause 25(b) is determined to be based upon gross negligence or intentional misconduct by Seller or its subcontractors, Seller agrees to defend, indemnify, and hold Buyer harmless for any and all liability, loss, cost, or expense resulting therefrom.
- ix. 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.
- x. Pending resolution of any dispute, Seller shall proceed as directed by Buyer in writing.
- xi. The rights and obligations of this clause 25 shall survive completion of and final payment under this Order.



- 26. Applicable Laws.** The Order and any dispute arising hereunder shall be governed by the substantive law of federal procurement and, to the extent there is no applicable federal 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 Sale of Goods shall not apply to any sales transactions governed by these Terms and Conditions.
- 27. Non Waiver.** The failure of Buyer, in one or more instances, to insist 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.
- 28. Order of Precedence.** In the event of an inconsistency between provisions of the Order, the inconsistency shall be resolved by giving precedence in the following order: (a) the terms on the face of the Order, excluding these Terms and Conditions and any additional contract flowdowns or other attachments to, or referenced in, the Order; (b) this Article I - Special Provisions; (c) any additional contract flowdown provisions referenced in the Order; (d) Article II - General Provisions of these Terms and Conditions; and (e) other attachments to, or referenced in, the Order.
- 29. 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. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and clauses are to Articles and clauses of these Terms and Conditions.
- 30. Severability.** If any aspect of any of these Terms and Conditions is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the Order shall not be affected, and the rights and obligations of the Parties are to be construed and enforced as if the Order did not contain such term.
- 31. Entire Agreement.** The Order including Article I - Special Provisions, Article II - General Provisions, any special FAR or DEAR clauses, and the other attachments to, or referenced in the Order, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral between the Parties related to the subject matter of the Order. No agreement or understanding varying or extending the terms or conditions of the Order will be binding unless executed in writing by Buyer's Authorized Representative.

**ARTICLE II – GENERAL PROVISIONS**

The clauses in Part 52 of the Federal Acquisition Regulation (FAR) and Part 952 of the Department of Energy Acquisition Regulation Supplement (DEARS) set forth below, and in effect on the date of the Order, are incorporated by this reference and made a part of the Order when the condition(s) for applicability is/are met. In all such clauses, the term “Contractor” shall mean “Seller,” the term “Contract” shall mean the “Order,” and the term “Government Contracting Officer” (or equivalent phrases) shall mean “Buyer,” except that in those clauses conferring patent and data rights to the Government, the term “Government” or “Contracting Officer” retains its literal meaning and is not to be construed as “Buyer.”

It is intended that the FAR and DEARS clauses listed below shall apply to Seller, and its lower-tier subcontractors in such a manner necessary to reflect the position of Seller as a subcontractor to Buyer to ensure Seller’s obligations to Buyer and to the U.S. Government, and to enable Buyer to meet its obligations under its contracts funded by the U.S. Government.

<b>Clauses</b>	<b>Title</b>	<b>Applicability</b>
52.203-3	Gratuities	Orders exceeding \$250,000
52.203-5	Covenant Against Contingent Fees	Orders exceeding \$250,000
52.203-6	Restrictions on Subcontractor Sales to the Government	Orders exceeding \$250,000
52.203-7	Anti-Kickback Procedures <i>Except that paragraph (c)(1) does not apply</i>	Orders exceeding \$150,000
52.203-8	Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity	Orders exceeding \$250,000
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	Orders exceeding \$250,000
52.203-11	Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions	Orders expected to exceed \$150,000
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Orders expected to exceed \$150,000
52.203-13	Contractor Code of Business Ethics and Conduct	Orders exceeding \$5,500,000 with a period of performance greater than 120 days
52.203-14	Display of Hotline Posters	Orders exceeding \$5,500,000, except when the work will be performed
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	Orders exceeding \$250,000
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statement	All Orders
52.204-2	Security Requirements <i>Except that paragraph (c) does not apply.</i>	Orders involving access to classified information
52.204-9	Personal Identity Verification of Contractor Personnel	Orders requiring physical access to a Federally-controlled facility and/or access to Federally-controlled information
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	Orders valued at \$30,000 or more
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	Orders that may have Federal contract information residing in or transiting through its information system

Clauses	Title	Applicability
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	All Orders
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	All Orders
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Orders exceeding \$35,000
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations	All Orders
52.211-5	Material Requirements	All Orders
52.211-15	Defense Priority and Allocation Requirements	DPAS rated Orders exceeding \$125,000
52.215-2	Audit and Records – Negotiation	Orders exceeding \$250,000
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	Orders exceeding \$2,000,000
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data - Modifications <i>In paragraph (d)(1) the term "Contracting Officer" does not change.</i>	Orders exceeding \$2,000,000
52.215-12	Subcontractor Certified Cost or Pricing Data	Orders exceeding \$2,000,000
52.215-13	Subcontractor Certified Cost or Pricing Data – Modifications	Orders exceeding \$2,000,000
52.215-14	Integrity of Unit Prices <i>Except that paragraph (b) does not apply</i>	Orders exceeding \$250,000
52.215-15	Pension Adjustments and Asset Reversions	Orders exceeding \$2,000,000
52.215-16	Facilities Capital Cost of Money	Orders exceeding \$2,000,000 when facilities capital cost of money is proposed
52.215-17	Waiver of Facilities Capital Cost of Money	Orders exceeding \$2,000,000 when facilities capital cost of money is not proposed
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	Orders exceeding \$2,000,000
52.215-19	Notification of Ownership Changes	Orders exceeding \$2,000,000
52.215-23	Limitations on Pass-Through Charges	Orders exceeding \$2,000,000
52.216-7	Allowable Cost and Payment <i>In paragraph (a)(3), use 30<sup>th</sup></i>	Cost-reimbursement or time-and-material Orders, but not for labor-hour
52.216-8	Fixed Fee	Cost-plus-fixed-fee Orders
52.216-10	Incentive Fee	Cost-plus-incentive-fee Orders
52.219-8	Utilization of Small Business Concerns	Orders to large businesses exceeding \$250,000 that offer further subcontracting
52.219-9	Small Business Subcontracting Plan	Orders to large businesses exceeding \$700,000 that offer further subcontracting opportunities

Clauses	Title	Applicability
52.219-16	Liquidated Damages – Subcontracting Plan	Orders to large businesses exceeding \$700,000
52.222-1	Notice to the Government of Labor Disputes	All Orders
52.222-2	Payment for Overtime Premiums <i>In paragraph (a), the authorized overtime premium is \$0, unless otherwise stated in the Order</i>	Orders for cost-reimbursement exceeding \$250,000
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	Orders exceeding \$150,000
52.222-19	Child Labor – Cooperation with Authorities and Remedies	Orders exceeding \$10,000
52.222-21	Prohibition of Segregated Facilities	Orders exceeding \$10,000
52.222-24	Pre-Award On-Site Equal Opportunity Compliance Evaluation	Orders exceeding \$10,000,000
52.222-26	Equal Opportunity	Orders exceeding \$10,000
52.222-35	Equal Opportunity for Veterans	Orders of \$150,000 or more
52.222-36	Equal Opportunity for Workers with Disabilities	Orders exceeding \$15,000
52.222-37	Employment Reports on Veterans	Orders of \$150,000 or more
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	Orders exceeding \$10,000
52.222-50	Combating Trafficking in Persons	Orders exceeding \$500,000 for items acquired, or services performed, outside
52.222-54	Employment Eligibility Verification	Orders exceeding \$3,500 for services performed in the U.S.
52.222-62	Paid Sick Leave Under Executive Order 13706	All Orders
52.223-3	Hazardous Material Identification and Material Safety Data	Orders where delivery of hazardous material will be required
52.223-6	Drug-Free Workplace	All Orders
52.223-7	Notice of Radioactive Materials	Orders for radioactive materials
52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons	Orders for supplies which contain ozone depleting substances
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	Orders exceeding \$10,000
52.225-8	Duty Free Entry	Orders exceeding \$15,000 for foreign supplies imported into the U.S.
52.225-13	Restrictions on Certain Foreign Purchases	All Orders
52.227-1	Authorization and Consent	Orders exceeding \$250,000
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	Orders exceeding \$250,000
52.227-9	Refund of Royalties	Orders where the amount of royalties reported will exceed \$250
52.227-10	Filing Patent Applications – Classified Subject Matter	Orders that cover or may cover classified subject matter
52.227-11	Patent Rights – Ownership by the Contractor	Orders for experimental, developmental or research work performed by a small business or nonprofit organization

Clauses	Title	Applicability
52.227-14	Rights in Data - General	Orders where data, and rights therein, necessary to fulfill contractual requirements will be acquired, produced, or furnished
52.227-19	Commercial Computer Software License	Orders for the acquisition of commercial computer software
52.228-5	Insurance – Work on a Government Installation	Orders for work on a Government installation
52.229-3	Federal, State, and Local Taxes	Fixed-price Orders exceeding \$250,000 where performance will be wholly or partly in the U.S. or outlying areas
52.229-10	State of New Mexico Gross Receipts and Compensating Tax	Cost-reimbursement Orders performed in whole or in part within the state of New Mexico
52.230-2	Cost Accounting Standards <i>Except that paragraph (b) does not apply</i>	Orders exceeding \$2,000,000; unless an exemption applies
52.230-3	Disclosure and Consistency of Cost Accounting Practices <i>Except that paragraph (b) does not apply</i>	Orders exceeding \$2,000,000; unless an exemption applies
52.230-4	Disclosure and Consistency of Cost Accounting Practices - Foreign Concerns <i>Except that paragraph (b) does not apply</i>	Orders exceeding \$2,000,000; unless an exemption applies
52.230-5	Cost Accounting Standards - Educational Institution <i>Except that paragraph (b) does not apply</i>	Orders exceeding \$2,000,000; unless an exemption applies
52.230-6	Administration of Cost Accounting Standards	Orders where any of the following Cost Accounting Standards FAR clauses may apply: 52.230-2; 52.230-3; 52.230-4, or 52.230-5
52.232-7	Payments under Time-and-Materials and Labor-Hour Contracts <i>In paragraph (h)(2), use 30<sup>th</sup></i>	Time-and-materials, and labor-hour Orders
52.232-20	Limitation of Cost	Cost-reimbursement Orders
52.232-22	Limitation of Funds	Cost-reimbursement Orders
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Orders to small businesses
52.234-1	Industrial Resources Developed Under Title III, Defense Production Act	All Orders
52.242-1	Notice of Intent to Disallow Costs <i>Except that in paragraph (a)(2), replace the first reference to 60 days with 30 days</i>	Cost-reimbursement, fixed-price incentive, or price redetermination Orders
52.242-13	Bankruptcy <i>Except replace “a listing of Government contract numbers and contracting offices for all Government contracts” with “a listing of all Buyer Orders.”</i>	Orders exceeding \$250,000

Clauses	Title	Applicability
52.242-15	Stop Work Order <i>Except in paragraph (b)(2), replace 30 days with 15 days.</i>	All Orders
52.243-1	Changes – Fixed-Price <i>Except in paragraph (c), replace 30 days with 15 days.</i>	Fixed-price Orders
52.243-2	Changes – Cost-Reimbursement <i>Except in paragraph (c), replace 30 days with 15 days.</i>	Cost-reimbursement Orders
52.243-3	Changes – Time-and-Materials or Labor-Hours <i>Except that in paragraph (c), replace 30 days with 15 days.</i>	Time-and-materials or labor-hour Orders
52.243-6	Change Order Accounting	All Orders
52.244-6	Subcontracts for Commercial Items	All Orders
52.245-1	Government Property <i>In which “Government” means “Buyer” except: (1) in the terms “Government furnished property” and “Government property,” and (2) in subparagraph (d)(3)(i)(B), paragraph (e), subparagraph (f)(1)(ii), and subparagraph (j)(1) “Government” means “Government and/or Buyer” in paragraph (g), and subparagraphs (h)(3), (h)(4), and (i)</i>	Orders where Government property will/may be furnished or acquired
52.246-1	Contractor Inspection Requirements	Orders at or below \$250,000
52.246-2	Inspection of Supplies – Fixed-Price <i>Except that in paragraphs (c), (d) and (k) the term “Government” shall mean “Government and Buyer”</i>	Fixed-price Orders for supplies
52.246-3	Inspection of Supplies – Cost-Reimbursement	Cost-reimbursement Orders for supplies
52.246-4	Inspection of Services – Fixed-Price <i>Except that in paragraphs (c) and (d) the term “Government” shall mean “Government and Buyer”</i>	Fixed-price Orders for services
52.246-5	Inspection of Services – Cost-Reimbursement	Cost-reimbursement Orders
52.246-6	Inspection – Time-and-Materials or Labor-Hours	Time-and-materials and labor-hour Orders
52.246-16	Responsibility for Supplies	Fixed-price Orders expected to exceed \$250,000
52.246-17	Warranty of Supplies of a Noncomplex Nature <i>In the blanks at (b)(1) and (c)(1), insert “one year after acceptance.”</i>	Fixed-price Orders for supplies
52.246-18	Warranty of Supplies of a Complex Nature <i>In paragraph (b)(1) insert the words “one year after acceptance.”</i>	Fixed-price Orders for research and development
52.246-20	Warranty of Services	Fixed-price Orders for services
52.246-26	Reporting Nonconforming Items	All Orders

Clauses	Title	Applicability
52.247-63	Preference for U.S. Flag Air Carriers	Orders that may involve international air transportation
52.247-64	Preference for Privately Owned U.S.-Flagged Commercial Vessels	Orders that may involve ocean transportation of supplies
52.248-1	Value Engineering	Orders of \$250,000 or more
52.249-1	Termination for Convenience of the Government (Fixed Price) (Short Form)	Fixed-price Orders less than \$250,000
52.249-2	Termination for Convenience of the Government (Fixed Price) <i>In paragraph (c), termination inventory schedule shall be submitted no later than "60 days from the effective date of termination;" paragraph (d) is deleted; in paragraph (e), "the Seller shall submit the termination settlement proposal within 6 months," and in paragraph (l), "a request for an equitable adjustment shall be requested within 45 days."</i>	Fixed-price Orders exceeding \$250,000
52.249-5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) <i>In paragraph (c), termination inventory schedule shall be submitted no later than "60 days from the effective date of termination," in paragraph (d) "the Seller shall submit the termination settlement proposal within 6 months," and paragraph (h) is deleted.</i>	Orders with an educational or non-profit institution for research and development work on a no-profit or no-fee basis
52.249-6	Termination (Cost-Reimbursement) <i>In paragraph (d), termination inventory schedule shall be submitted no later than "60 days from the effective date of termination;" paragraph (e) is deleted; in paragraph (f), "the Seller shall submit the termination settlement proposal within 6 months," and paragraphs (j) and (n) are deleted.</i>	Cost-reimbursement Orders
52.249-8	Default (Fixed-Price Supply and Service)	Fixed-price Orders exceeding \$250,000
52.249-9	Default (Fixed-Price Research and Development)	Fixed-price Orders for research and development exceeding \$250,000
52.249-10	Default (Fixed-Price Construction)	Fixed-price Orders for construction work exceeding \$250,000
52.249-14	Excusable Delays	Cost-reimbursement, time-and-materials, and labor-hour Orders
952.204-70	Classification/Declassification	All Orders which involve classified information
952.204-71	Sensitive Foreign Nations Controls <i>In paragraph (a), second sentence, replace "60 days" with "40 days"</i>	All Orders which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations
952.204-72	Disclosure of Information <i>Used in place of DEAR clauses 952.204-2, Security Requirements, and 952.204-70, Classified/Declassification, for research involving nuclear technology</i>	All Orders with educational institutions for research work performed at their facilities that are not likely to produce classified information

Clauses	Title	Applicability
952.204-73	Facility Clearance	All Orders that require employees to have access authorization
952.204-75	Public Affairs	All Orders when unclassified information related to DOE policies, programs and activities are to be released
952.204-76	Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information	All Orders which involve classified information, access to special nuclear materials or the provision of protective services
952.204-77	Computer Security	All Orders which may provide access to computers owned, leased or operated on behalf of the DOE
952.208-70	Printing	All Orders
952.209-72	Organizational Conflicts of Interest	All Orders exceeding \$250,000 for advisory and assistance services
952.215-70	Key Personnel	All Orders when specific key personnel are required
952.216-7	Allowable Cost and Payment	Cost Reimbursement Orders and Time-and-Material Orders (other than for a commercial item)
952.225-71	Compliance With Export Control Laws and Regulations	All Orders
952.226-74	Displaced Employee Hiring Preference	All Orders (except commercial items pursuant to 41 USC 403) which exceed \$500,000
952.227-9	Refund of Royalties	All Orders when royalties reported during negotiation will exceed \$250
952.227-11	Patent Rights - Retention by the Contractor (Short Form)	All Orders for experimental, research, or developmental work performed by a small business firm or domestic non-profit organization
952.227-13	Patent Rights - Acquisition by the Government	All Orders which are not covered by the provisions of DEAR 952.227-11
952.227-14	Rights in Data-General (DOE Coverage - Alternates VI and VII)	All Orders if it is contemplated that data will be produced, furnished, or acquired under the Order
952.235-71	Research Misconduct	All Orders that involve research
952.242-70	Technical Direction	All Orders when Buyer's Representative will issue technical direction under the Order
952.247-70	Foreign Travel	All Orders when foreign travel may be required
952.251-70	Contractor Employee Travel Discounts	Cost Reimbursement Orders when significant costs for rail travel, car rental, or lodging will be required to perform the Order

~End~