

## SUPPLEMENTAL PURCHASING TERMS AND CONDITIONS FLOWDOWN CLAUSES FOR COMMERCIAL ITEMS PURCHASED IN SUPPORT OF CVN 80 AND 81

1. **RATED ORDER.** If this is a “rated order” certified for national defense use, Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulations (15 C.F.R. Part 700).

2. **CERTIFICATIONS.** By accepting or performing this Purchase Order, Seller certifies that:

a. Neither Seller nor any of its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency. “Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

b. Neither Seller nor any of its affiliates are owned or controlled by the government of a country that is a state sponsor of terrorism.

c. Seller: (i) is in compliance with Sec. 202 of Executive Order 11246, as amended by Executive Order 11375, and subsequent Executive Orders and the Rules and Regulations set forth by the Secretary of Labor in effect as of the date of this Executive Order; (ii) does not and will not provide or maintain at any of its establishments, nor permit its employees to perform their services at any location under its control where there are maintained segregated facilities; and (iii) agrees that a breach of this Certification violates the Equal Employment clause of Executive Order 11246. “Segregated Facilities” means facilities which are in fact segregated on a basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Seller agrees to: (1) obtain an identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; and (2) maintain such certifications in its files. The penalty for making a false representation is prescribed under 18 U.S.C. 1001 and any such false representation shall be a material breach of this Purchase Order.

d. If it has participated in a previous prime contract or subcontract subject to FAR 52.222-26, “Equal Opportunity,” that Seller has filed all required compliance reports.

e. If it has previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), that Seller has developed and has on file at each establishment affirmative action programs required by such rules and regulations.

f. If Seller is registered in the System for Award Management (“SAM”), the size or socioeconomic representations and certifications in SAM (or any other successor system) are current, accurate and complete as of the date of Seller’s offer.

g. To the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Purchase Order. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of Seller with respect to this Purchase Order, Seller shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of Seller to whom payments of reasonable compensation were made. Submission of this certification and disclosure is a prerequisite for making or entering into this Purchase Order imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required

to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure. As used in this Certification, "Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8) and the remaining terms are defined in FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions."

**3. EQUAL EMPLOYMENT OPPORTUNITY.** Buyer and Seller shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or expression, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity or expression, national origin, protected veteran status or disability. Seller shall include this Section 3 in each lower-tier subcontract it issues.

**4. CERTIFICATES OF CONFORMANCE.**

a. Seller shall include with each shipment of Goods a Certificate of Conformance as follows:

I certify that on *[insert date]*, the *[insert Seller's name]* furnished the supplies or services called for by Purchase Order No. *[insert Purchase Order number]* via *[insert Carrier]* on *[identify the bill of lading or shipping document]* in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document. I further certify that, except as stated below, the supplies have been mined, produced, or manufactured in the United States and, if the supplies contain specialty metals, the supplies comply with the restrictions on specialty metals, as implemented through the Department of Defense Federal Acquisition Regulation Supplement.

Date of Execution: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

The following Goods supplied under this Purchase Order have not been mined, produced, or manufactured in the United States:

Item Number or Identifier: \_\_\_\_\_

Country of manufacture: \_\_\_\_\_

Buyer will not accept shipments of Goods that do not contain a properly executed Certificate of Conformance as required in this Section 4.

**5. EXPORT CONTROLS AND ECONOMIC SANCTIONS.**

a. Seller agrees to comply with all applicable export control and economic sanctions laws including, but not limited to: (i) the Export Administration Regulations ("EAR") administered by the U.S.

Department of Commerce; (ii) the International Traffic in Arms Regulations (“ITAR”) administered by the U.S. Department of State; (iii) the various economic sanctions programs administered by the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC regulations”) and the U.S. Department of State’s Office of Terrorism Finance and Economic Sanctions Policy; and (iv) any and all export controls or economic sanctions maintained by the European Union (“EU”), United Kingdom or any other governmental authority to which Seller is subject (collectively “Export Control Laws”).

b. Seller shall obtain and maintain any and all authorizations, licenses and registrations required under the aforementioned Export Control Laws, including those required for the sale under this Purchase Order to Buyer. Seller will furnish Buyer with: (i) documentation identifying any articles, services, software, technology and/or technical data subject to these Export Control Laws; (ii) written confirmation of the relevant Export Classification Control Numbers (“ECCNs”), U.S. Munition List (“USML”) category numbers or other export classification designators for each such item; and (iii) copies of any related export licenses or authorizations. If Seller sources such items outside the United States, then Seller shall notify Buyer and take all necessary measures to comply with all foreign Export Control Laws that may relate to the sale or transfer of the same.

c. Seller shall clearly and appropriately label any controlled technical data (including, but not limited to, drawings, designs, specifications, blueprints, computer-aided design (CAD) information and other technical documents or electronic information related to the production, manufacture or maintenance of a controlled article) that it provides to Buyer as controlled pursuant to the EAR, ITAR and/or other applicable laws. Seller shall provide any controlled technical data communicated to Buyer using secure communication protocols designed for the purpose of complying with the Export Control Laws. Under no circumstances should such information be emailed using systems that are not designed for the secure communication of controlled technical data.

d. Seller agrees that it will not source any articles, services, software, technology or technical data that originate from any country, government, organization or person that is: (i) subject to U.S., EU or British economic sanctions or other applicable sanction regimes; or (ii) debarred or restricted pursuant to the aforementioned Export Control Laws, or the U.S. Department of Defense Federal Acquisition Regulation Supplement.

e. Seller is solely and exclusively responsible for safeguarding all export controlled articles, services, software, technology or technical data until Buyer receives the items at issue. This includes both exports to a non-U.S. destination and allowing non-U.S. persons to access such items while located within the United States. Seller will also take appropriate steps to ensure that no export controlled articles, services, software, technology or technical data can be shipped to a controlled country (or otherwise accessed by unauthorized foreign nationals) without the appropriate export licenses. Where Seller is shipping a controlled article, Seller shall use a carrier that maintains procedures designed to comply with the Export Control Laws, and provide any required notifications to the carrier that the shipment involves controlled items.

f. If Seller is a signatory to a Technical Assistance Agreement (“TAA”) or Manufacturing License Agreement (“MLA”) with Buyer, Seller shall promptly notify Buyer of any changed circumstances that would require modifying the terms of such an agreement, including any potential violation of the terms of the agreement, any ineligibility to export, any investigation into alleged violations of any of the Export Control Laws, any self-disclosure of potential export controls violations, any addition of foreign personnel to any project covered by such an agreement or any other circumstances that may affect Seller’s ability to perform pursuant to the terms of the agreement.

g. Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List maintained by any U.S., EU or British agency, or if any government denies, suspends or revokes its export privileges.

h. Seller shall prepare and provide accurate invoices and documentation for each shipment that will allow Buyer to comply with the export and import requirements administered by U.S. Customs & Border Protection (“CBP”). Such invoices and/or documentation shall include: (i) Seller’s name and address; (ii) the terms of sale; (iii) the total quantity of goods being shipped; (iv) a description of the goods being shipped; (v) the country of origin of the goods; (vi) the valuation of the goods; (vii) the currency in which the goods are priced; and (viii) any discounts that have been included for the shipment that are not otherwise reflected in the unit price.

i. Seller shall promptly notify Buyer in writing of any suspected violation of the aforementioned Export Control Laws of which it becomes aware. Seller further agrees that it will fully cooperate in any investigation by or on behalf of Buyer related to the subject matter of the Purchase Order, including by providing full access to relevant personnel and records to aid Buyer in the identification and evaluation of any suspected violation, following reasonable notice from Buyer.

j. Seller shall indemnify, defend and hold harmless Buyer and Buyer’s parent companies, subsidiaries, affiliates, shareholders, members, partners, directors, managers, officers, employees, insurers, agents, customers, successors and assigns from and against any and all claims, demands, actions, losses, injuries, damages, liabilities, obligations, penalties, costs and expenses, including attorneys’ fees, experts’ fees and other costs of defending any claim, demand or action (including costs of investigation of potential violations of the Export Control Laws) (collectively, “Losses”) that may arise as a result of Seller’s breach of any of the provisions within this Section 5.

**6. COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to examine any of Seller’s or any subcontractors’ records that pertain to, and involve transactions relating to, this Purchase Order. Seller shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this Purchase Order or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this Purchase Order. If this Purchase Order is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals or to litigation or the settlement of claims arising under or relating to this Purchase Order shall be made available until such appeals, litigation, or claims are finally resolved. As used in this Section 6, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require Seller to create or maintain any record that Seller does not maintain in the ordinary course of business or pursuant to a provision of law.

**7. MARKING REQUIREMENTS.** Seller shall place the following statement on documents containing technical data controlled by either the Arms Export Control Act or the Export Administration Act: “WARNING – This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. Sec. 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S. ., App 2401, et seq. Violations of these export laws can result in severe criminal penalties. Disseminate in accordance with terms of OPNAVINST 5510.161.” Additional marking requirements may be included elsewhere in this Purchase Order.

**8. SUSPECT/COUNTERFEIT PARTS.**

a. “Suspect/counterfeit electronic parts” are electronic parts that may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. The term “suspect/counterfeit electronic parts” also includes refurbished parts, with or without false labeling, that are represented as new parts or any parts that are designated as suspect by the U.S. Government, including but not limited to parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP).

b. Seller will ensure that suspect/counterfeit electronic parts are not incorporated into any Goods. The intentional or unintentional use, incorporation, or delivery of suspect/counterfeit electronic parts is strictly prohibited. This includes a suspect/counterfeit electronic part being provided either as an end item deliverable or as a component or subcomponent of an end item deliverable under this Purchase Order.

c. Seller represents and warrants that it has policies and procedures in place to ensure that none of the Goods furnished to Buyer under this Purchase Order are or contain "suspect/counterfeit electronic parts." Seller further certifies, to the best of its knowledge and belief that no "suspect/counterfeit electronic parts" have been or will be furnished to Buyer by Seller under this Purchase Order.

d. If Seller becomes aware or suspects that it has furnished suspect/counterfeit electronic parts or if Buyer determines, including as a result of alerts from the U.S. Government, that Seller has supplied suspect/counterfeit electronic parts to Buyer and so notifies Seller, Seller shall immediately replace the suspect/counterfeit electronic parts with parts acceptable to Buyer and conforming to the requirements of this Purchase Order. Notwithstanding any other provision of this Purchase Order, Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit electronic parts, including without limitation all costs incurred by Buyer relating to the removal of such suspect/counterfeit electronic parts, the reinsertion of replacement parts and any testing necessitated by the reinstallation of Seller's Goods after suspect/counterfeit electronic parts have been exchanged. The Parties agree that Seller will pay Buyer's actual costs and Buyer's labor at Buyer's fully-burdened hourly rates (as appropriate). All such costs shall be deemed direct damages.

e. Buyer may, at its discretion:

i. Remove and/or retain all Goods supplied by Seller that are suspected of being or containing suspect/counterfeit parts pending reporting to the appropriate law enforcement authorities and final disposition of the Goods by them. Seller shall be liable for all costs relating to Buyer's removal and retention of the suspect/counterfeit parts.

ii. Turn over to the appropriate authorities (*e.g.*, without limitation, the Defense Criminal Investigative Service, Naval Criminal Investigative Service, Federal Bureau of Investigation, Offices of the Inspector General, etc.) any Goods suspected of being or containing suspect/counterfeit parts and reserves the right to withhold payment for the Goods pending the results of any investigation or proceedings related to the matter.

f. Seller's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Purchase Order.

g. Seller shall insert a clause containing substantially similar terms of this provision in all subcontracts under this Purchase Order.

## **9. CONFLICT MINERALS DISCLOSURE.**

a. Pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations, Buyer is required to identify the presence and source of Conflict Minerals (gold, tantalum, tin or tungsten) contained in Buyer's manufactured Goods. Buyer has implemented a comprehensive Conflict Minerals compliance program, which includes posting relevant information for suppliers at this website: <http://www.huntingtoningalls.com/who-we-are/ethics-compliance/conflict-minerals/>. It is a requirement of this Purchase Order that Seller shall be familiar with this information and make all reasonable efforts to assist Buyer in identifying the presence and source of Conflict Minerals contained in the Goods sold by Seller to Buyer, as described further below.

b. As of the time of award of this Purchase Order, Seller represents that:

- i. The Goods Seller will be supplying under this Purchase Order do not contain (a) gold or (b) tantalum, tin, or tungsten (derivatives of columbite-tantalite (coltan), cassiterite, and wolframite); or
- ii. Alternatively, if the Goods contain gold, tantalum, tin, or tungsten, Seller agrees to provide the Buyer one of the following completed forms prior to delivery of the Goods:
  - (1) The Global E-Sustainability Initiative Conflict Minerals Reporting Template (“GeSI CMRT”) available at <http://www.conflictreesourcing.org/conflict-minerals-reporting-template/>, with “Product” selected under the “Declaration Scope or Class” field;
  - (2) Written documentation about the source of Conflict Minerals in the Product(s) that provides substantively similar information to that requested by the GeSI CMRT.
- c. If the status of any Goods changes during performance of this Purchase Order so that the representation or information provided pursuant to paragraph (a) of this provision is no longer accurate, then Seller must within 20 days complete and submit updated, accurate and current information to Buyer.
- d. If Buyer determines that any representation made by Seller pursuant to this provision is inaccurate or incomplete in any respect, or Seller fails to timely submit the information required by this provision, then Buyer may, at its option, either withhold up to 10% of the Purchase Order price until such information is provided or terminate this Purchase Order pursuant to the provision of this Purchase Order titled “Termination for Default.”

**10. GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (GIDEP).** If this Purchase Order is over \$500,000, Seller shall participate in the appropriate interchange of the GIDEP in accordance with GIDEP S0300-BU-GYD-010 dated April 2008. Data entered will be retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve Seller from complying with any other requirements of this Purchase Order. GIDEP materials, software and information are available without charge from the GIDEP Operations Center, P.O. Box 8000, Corona, California 92878. For further information, see this web site: <http://www.gidep.org.8>.

## **11. DISPUTES.**

- a. If Buyer elects to prosecute any dispute involving this Purchase Order under the disputes procedure applicable to the U.S. Government prime or higher-tier contract, Seller shall cooperate fully with Buyer in prosecuting the dispute. Seller shall be bound by the final outcome of the disputes procedure if:
  - (i) Buyer has afforded Seller an opportunity to participate in Buyer’s prosecution of the dispute; or
  - (ii) Buyer, having decided to discontinue its own prosecution of the dispute, has afforded Seller an opportunity to continue to prosecute the dispute in Buyer’s name. Buyer and Seller shall each bear their own costs of prosecuting any dispute. Pending the final resolution of any dispute arising out of or relating to this Purchase Order, Seller shall proceed diligently with performance of this Purchase Order, including the delivery of Goods.
- b. For all other disputes, the Parties shall strive to settle amicably and in good faith any dispute arising in connection with this Purchase Order using the following escalation process: (1) by the technical and contractual personnel for each Party; (2) by executive management of each Party; (3) by mediation, or (4) by a court of competent jurisdiction in the State of Wisconsin.
- c. Pending resolution of any dispute hereunder, Seller shall proceed diligently with the performance of work, including the delivery of Goods in accordance with Buyer’s direction, as long as Buyer continues to pay Seller for Goods accepted at the Purchase Order price.

## 12. INSPECTION.

a. Except as otherwise provided in this Purchase Order, Seller shall maintain an inspection and quality control system acceptable to Buyer to be performed on Goods delivered under this Purchase Order. As part of the system, Seller shall prepare records evidencing all inspections made under the system and the outcome. Buyer, Buyer's customer, and/or the Government shall have the right to perform reviews and evaluations as reasonably necessary to ascertain Seller's compliance with an inspection or quality control system that is acceptable. The right of review, whether exercised or not, does not relieve Seller of its obligations under this Purchase Order.

b. Buyer, Buyer's customer, and/or the Government has the right to inspect and test all Goods to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Buyer assumes no contractual obligation to perform any inspection and test for the benefit of Seller. If Buyer, Buyer's customer, or the Government performs an inspection or test on the premises of Seller or a subcontractor of Seller, Seller shall furnish, and shall require its subcontractors to furnish, at no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspection and test. Buyer reserves the right to charge to Seller any additional cost of inspection or test charged by Buyer's customer when (1) Goods are not ready at the time such inspection or test is required by this Purchase Order or has been otherwise scheduled by mutual agreement of the Parties, or (2) reinspection or retest of the Goods is necessitated by prior rejection.

c. Buyer has the right either to reject or to require correction of nonconforming Goods by providing written notice within a reasonable period of time after delivery. Goods are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with requirements of this Purchase Order. Buyer may reject nonconforming supplies with or without disposition instructions.

d. Seller shall remove Goods rejected or required to be corrected; however, Buyer may require or permit correction in place, promptly after notice, by and at the expense of Seller. Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

e. Seller, at its own expense, shall promptly rectify any defects discovered during any inspection or test.

f. If Seller fails to promptly remove, replace, or correct rejected Goods that are required to be removed or to be replaced or corrected, Buyer may either:

- i. Remove, replace, or correct the Goods and charge the cost to Seller; or
- ii. Terminate this Purchase Order for default.

g. If Buyer elects to correct the deficiencies in the Goods, then the Parties agree that Seller will pay Buyer's actual costs and Buyer's labor at Buyer's fully-burdened hourly rates (as appropriate). If Seller fails to correct or replace the Goods within the delivery schedule, Buyer may require their delivery with an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

h. Goods that have been reworked or repaired by Seller after having been rejected by Buyer shall be identified as "Resubmitted." Seller shall annotate the packing slip with the words "Resubmitted Material," the reason for the previous rejection, and the Buyer Inspection Report, Discrepancy Report, or Quality Notification Number if known. If the Goods were inspected at source and rejected, such information shall also be annotated on the packing slip.

i. Seller shall flow down the substance of this provision to all of its subcontractors under this Purchase Order.

j. Neither Buyer's in-process inspection nor Buyer's approval of any of Seller's drawings, procedures or other submittals shall: (i) constitute acceptance of any work; or (ii) relieve Seller of complying fully with all of the requirements of this Purchase Order.

### **13. INSURANCE.**

a. During the period of performance of this Purchase Order, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Workers' Compensation insurance coverage as required by the most current laws of the state or foreign jurisdiction in which the work is performed.

b. Seller shall also maintain, at its sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.

c. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Purchase Order and Seller shall provide evidence that the required insurance is in place in the form of a certificate of insurance (COI). COIs are only required to be submitted for the following:

i. Whenever performance requires work on a Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.

ii. Whenever performance requires driving onto a U.S. Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the automobile insurance coverage with a Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.

iii. Seller shall maintain appropriate coverage under the Longshore and Harbor Workers' Compensation Act if any Seller employee will be within the production environment on the premises of Buyer's customer.

iv. Seller shall maintain Defense Base Act Workers' Compensation if work is being performed on a U.S. military base on foreign soil.

v. When the Purchase Order invokes milestone payments Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.

vi. When the Purchase Order includes ship-in-place terms, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.

vii. When, as part of the Purchase Order, Buyer provides Seller material, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.

viii. When the Purchase Order is for transportation, handling and/or disposal of asbestos, radiological or any other hazardous waste, material or substances, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.

ix. When the Purchase Order is for tugs and ship towing services, ship pilots or crews, Seller shall, at its sole cost and expense, procure and maintain Marine Liability Insurance,



Workers' Compensation insurance, and appropriate coverage under the Longshore and Harbor Workers' Compensation Act.

x. When the Purchase Order is for facility construction/renovation projects or excavation services, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance. Builders Risk Insurance is also required.

d. When Comprehensive General Liability is required it shall have at a minimum Combined Single Limit of \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.

e. For Purchase Orders stated in subparagraph (c) where a COI is required for Comprehensive General Liability insurance coverage shall name Buyer as an additional insured.

f. Coverage shall not exclude claims brought in the United States and all insurance required as a part of this Purchase Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.

g. All coverage required hereunder shall be primary and not contributory to any other insurance available to Buyer, and Seller's insurers shall provide a waiver of subrogation in favor of Buyer for each required coverage hereunder. Seller waives statutory immunity from workers' compensation as respects the additional insured requirements for Comprehensive General Liability only.

#### **14. CHANGES.**

a. Buyer, may at any time by written order make changes (a "Change Order") within the general scope of this Purchase Order including but not limited to the following items:

- i. drawings, designs, specifications, planning, and/or other technical documents;
- ii. method of shipment, packaging, or packing;
- iii. place of delivery;
- iv. reasonable adjustments in quantities or delivery schedules or both;
- v. place of inspection;
- vi. place of acceptance; and, if services are procured with the Goods:
- vii. description of services to be performed;
- viii. time of performance (i.e., hours of the day, days of the week, etc.) of the services; and
- ix. place of performance of the services.

b. If the change causes an increase or decrease in the cost or time required to perform this Purchase Order, the Parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Purchase Order in writing accordingly.

c. Any claim for adjustment shall be unconditionally waived unless asserted in writing and delivered to Buyer within fifteen (15) days of the receipt of the written Purchase Order; if Seller claims the cost of any property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.

d. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.

e. Seller shall immediately proceed with the performance of this Purchase Order as changed. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" provision. Seller shall not be entitled to any claim for changes unless authorized in writing by Buyer.

**15. EQUITABLE ADJUSTMENTS; WAIVER AND RELEASE OF CLAIMS.** Whenever Seller, after receipt of a proposed Change Order made pursuant to the "CHANGES" clause or after assertion of a constructive change under the "NOTIFICATION OF CHANGES" clause, submits any claim for equitable adjustment under the foregoing, such claim shall include all types of adjustments in the total amounts to which the foregoing entitle Seller, including but not limited to adjustments arising out of delays or disruptions or both caused by such change. In support of any Seller request for equitable adjustment brought under the "CHANGES" clause or any other clause of this Purchase Order, Seller shall provide Buyer sufficient detail to reasonably support Seller's proposal for a request for equitable adjustment or which Buyer's customer should require in evaluating such request. Further, Seller agrees that, if required by Buyer, it will execute a release, in form and substance satisfactory to Buyer, as part of the supplemental agreement providing an equitable adjustment. Failure of Seller and Buyer to agree on any proposed adjustment shall not excuse Seller from diligently proceeding with performance of this Purchase Order.

**16. TERMINATION FOR DEFAULT.**

a. Buyer may terminate this Purchase Order in whole or in part at any time without liability to Seller if:

i. Seller is unable to meet the required delivery schedule; or

ii. Seller materially fails to perform any of the other provisions of this Purchase Order or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, including the completion of those items within the time set forth elsewhere in this Purchase Order and in either of these two circumstances does not cure such failure within a period of seven (7) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, or

iii. Becomes insolvent or fails to provide additional assurances of financial solvency when it reasonably appears that Seller is or will not be financially solvent and additional assurances are requested by Buyer.

b. If Buyer terminates part of the work under this Purchase Order, Seller shall continue performance of this Purchase Order to the extent not terminated.

c. Seller shall, upon termination by Buyer due to default by Seller, return any payments Seller received under this Purchase Order for the terminated work.

d. If, after a default termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer.

e. The rights and remedies of Buyer provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity or otherwise provided under this Purchase Order.

**17. SUSPENSION OF WORK.** Buyer may, by written notice, direct Seller to suspend work under this Purchase Order at any time. Upon receipt of such notice, Seller shall immediately comply with its terms and, during the work suspensions, take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the suspension notice. If the suspension of work ordered under this provision results in an increase in the time required for, or in Seller's cost properly allocable to the performance of any part of this Purchase Order, Buyer shall make an adjustment in the delivery schedule or Purchase Order price or both. Seller shall assert its right to an adjustment no later than 15 days after the work suspension is lifted.

**18. PROPERTY OF BUYER, BUYER'S CUSTOMER, OR GOVERNMENT.**

a. If property of Buyer, Buyer's customer, or the Government is furnished in conjunction with this Purchase Order, it shall be furnished "as is." Accordingly, Buyer disclaims any warranty of suitability and or serviceability. Unless otherwise noted in this Purchase Order, Seller shall assume the risk of, maintain adequate insurance, and be responsible for, any loss, destruction of or damage to property provided to Seller by Buyer, Buyer's customer, or the Government while such property is in Seller's possession or control. Excluding property authorized to be consumed in the performance of this Purchase Order, Seller shall return such property in as good a condition as when received except for reasonable wear and tear, or in the case of property to be overhauled or repaired, in such better condition as may be required by the terms of this Purchase Order. Seller shall control and maintain Government, Buyer, or Buyer's customer furnished property in accordance with a system that meets the requirements of FAR 52.245-1.

b. Seller shall use Buyer-, Buyer's customer-, or Government-furnished property only for performing this Purchase Order, unless otherwise provided for in this Purchase Order or approved by Buyer. Seller shall not modify, cannibalize, or make alterations to the furnished property unless this Purchase Order specifically identifies the modifications, alterations or improvements as work to be performed.

c. Buyer, Buyer's customer, or Government shall retain title to all furnished property. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer, Buyer's customer, or the Government, nor shall furnished property become a fixture or lose its identity as personal property by being attached to any real property.

d. Seller shall immediately discharge any lien, other than a lien held by Buyer, Buyer's customer, or the Government on furnished property.

e. The requirements related to accounting for furnished property also shall apply to scrap generated from Seller's use of such property, provided, however, that Buyer may authorize or direct Seller to omit such scrap from inventory disposal schedules.

**19. PROPRIETARY INFORMATION.**

a. Proprietary Information for purposes of this Purchase Order, means all knowledge of a confidential or proprietary nature (no matter how communicated or stored) Buyer furnishes to Seller, including, but not limited to, any item identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking, or stamp identifying the data as Buyer's Proprietary Information, and includes any information marked with a restrictive legend as prescribed in DFARS 252.227-7013 or 252.227-7014 or in FAR 52.227-14.

b. Seller will treat all Proprietary Information transferred in connection with this Purchase Order, all copies of Proprietary Information, and all improvements, modifications, and derivations of Proprietary Information, as Buyer's property regardless of the medium on which such Proprietary Information is stored or communicated. In making copies of Proprietary Information, Seller will preserve any legend, marking, or stamp contained on the Proprietary Information that identifies the data as Buyer's Proprietary Information. Unless otherwise provided in this Purchase Order, Seller further agrees to affix the following legend "Fairbanks Morse Engine Private/Proprietary Level I" on:

i. all improvements, modifications, and derivations of Proprietary Information;  
and

ii. any Proprietary Information extracted from Buyer's computer systems or otherwise provided by Buyer to Seller if not already marked.

c. Seller may disclose Proprietary Information to its subcontractors as required for the performance of this Purchase Order, provided each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Purchase Order relating to Buyer's Proprietary Information.

d. If a separate proprietary information or non-disclosure agreement relating to the subject matter of this Purchase Order exists between the Parties, all data, knowledge and information furnished by one Party to the other Party shall be protected pursuant to such proprietary information or non-disclosure agreement.

e. If no separate proprietary information or non-disclosure agreement exists between the Parties, Seller will keep Buyer's Proprietary Information confidential and, except as provided herein, (i) not disclose such Proprietary Information to any other person except to its officers, agents and employees who are under an obligation to keep such Proprietary Information confidential and have a need to know such Proprietary Information to fulfill Seller's obligation under this Purchase Order, and (ii) treat such Proprietary Information with the same degree of care as Seller uses in handling its own proprietary or confidential information and – in all events – with not less than reasonable care. Seller will use Buyer's Proprietary Information only for purposes necessary for performing this Purchase Order and will return Proprietary Information to Buyer upon completion of the work to be performed under this Purchase Order unless Buyer expressly agrees to the contrary in writing.

f. Unless otherwise provided in DFARS 252.227-7013 or 252.227-7014 or 252.227-7015 or 252.227-7016, or if no separate proprietary information or non-disclosure agreement exists between the Parties, no information furnished to Buyer (whether documentary, oral, visual or otherwise) shall be considered confidential or proprietary or require any particular handling or precaution or have any restriction on Buyer's right to use, modify, reproduce, perform, display, release, or disclose such information in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

g. Upon discovery by Seller of any inadvertent or accidental disclosure of Buyer's Proprietary Information, Seller shall notify Buyer promptly and take all commercially reasonable steps to retrieve such disclosed Proprietary Information and to cease and prevent any further disclosure of the Proprietary Information.

h. As used herein, Proprietary information shall not include information that (i) was known by Seller prior to disclosure by Buyer, (ii) is or becomes generally available to the public other than by means of breach by Seller of the terms hereof, (iii) Seller receives from a third party that is not subject to any confidentiality obligation to Buyer, or (iv) that Seller develops on its own without reference to any Proprietary Information. In addition Seller shall not be deemed in breach of the provisions hereof to the extent it is required to dispose any Proprietary Information pursuant to law or court order (in which Seller shall provide prompt written notice to Buyer of such obligation).

**20. PATENT, TRADEMARK, TRADE SECRET, AND COPYRIGHT INDEMNITY.**

a. In addition to any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will indemnify and hold harmless Buyer, Buyer's parent and affiliates and their respective officers, directors, employees, and customers ("Indemnified Parties") from and against any and all liabilities, claims, losses and expenses arising out of third party claims to the extent relating to claims of patent, copyright, or trademark infringement or allegation of trade secret misappropriation (collectively or individually, "Claim") resulting from the manufacture, or sale (including any re-sale) of any product or service Seller provides to Buyer. Seller shall, at its own cost, defend Buyer against such Claims, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred.

b. Notwithstanding the foregoing, when this Purchase Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Purchase Order shall be coextensive with Buyer's liability.

**21. COMPUTER SOFTWARE AND DATABASES.** Seller shall test all computer software and/or databases (including the media it is delivered on), as defined in the clause entitled Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (DFARS 252.227-7014), for computer viruses before delivery of such software and/or databases in any medium or in any system. All software and/or databases delivered by Seller shall contain no known viruses that are detectable with the latest version of commercially available virus detection software. In addition, Seller shall test any software and/or databases received from Buyer or Buyer's customer for viruses prior to use in performing this Purchase Order. Seller shall provide Buyer with immediate written notice of any viruses detected in Buyer-provided software and/or databases. Unless otherwise agreed in writing, any license agreement covering the use of any computer software and/or databases delivered under this Purchase Order must be paid-up and perpetual, shall not contain any routine to disable the computer software and/or databases in the future, and shall permit transfer to Buyer's customer. No copy-protection devices, codes, or systems shall be used that would prevent Buyer or Buyer's customer from copying delivered software and/or data; however, a license agreement or other Purchase Order terms may specify a maximum number of copies that may be made. Any limited rights or other legend(s) permissibly applied under this Purchase Order shall be digitally included on the same media as the delivered software and/or databases, and also displayed in human-readable form on a visible surface of the media carrying the digital software and/or databases.

**22. LIMITATION OF LIABILITY.**

a. In no event shall Buyer be liable to Seller (i) for any punitive, exemplary or other special damages arising under or relating to this Purchase Order or the subject matter hereof (ii) for any indirect, incidental or consequential damages (including, without limitation, loss of use, income, profits or anticipated profits, business or business opportunity, savings, data, or business reputation) arising under or relating to this Purchase Order or the subject matter hereof, regardless of whether such damages are based in contract, breach of warranty, tort, negligence or any other theory, and regardless of whether Buyer has been advised of, knew of, or should have known of the possibility of such damages.

b. The maximum aggregate liability of Buyer to Seller arising out of or relating to this Purchase Order shall not exceed the purchase price paid to Seller for the Goods at issue in the claim.

**23. TOXIC SUBSTANCES/HAZARDOUS MATERIAL.** Buyer will not accept, store or dispose of any toxic substances or hazardous material except as and to the extent, if at all, expressly provided for in this Purchase Order. In particular, paints, primers, or coatings on Goods required by this Purchase Order that contain the following constituents shall not be shipped without prior written approval by Buyer: arsenic, mercury, methylene chloride, methyl ethyl ketone (MEK), lead, and chromium, their compounds, or organo-metallic material. Materials known or suspected of containing or coming in contact with

asbestos, polychlorinated biphenyls (PCBs), or mercury or mercury containing compounds shall not be provided without Buyer's prior written permission. If invoked specifications and standards permit other materials in lieu of these materials, they shall be used.

**24. INDEMNIFICATION - GOVERNMENT REQUIREMENTS.** In addition to any other remedies provided for in this Purchase Order, Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates, Buyer's customer, the Government, and their respective officers, directors, and employees (collectively, for the purposes of this provision, "Buyer Indemnitees") from and against any and all liabilities, claims, losses and expenses arising out of the failure of Seller, its employees, subcontractors or agents, in conjunction with this Purchase Order:

a. To furnish complete, accurate or current cost or pricing data when such data were required by law or regulation in the negotiation of this Purchase Order or any modifications thereto; or

b. To comply with applicable laws, statutes, regulations, ordinances, or rules.

Seller shall, at its own cost, defend the Buyer Indemnitees against such claims, losses, and liabilities, and, it shall pay the Buyer Indemnitees' reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred.

**25. FORCE MAJEURE.** Neither Party shall be liable to the other Party for delays resulting from causes beyond its control and without its fault or negligence, including but not restricted to acts of God or of the public enemy, war, acts of terrorism, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Seller shall not be liable for delays of subcontractors or suppliers of Seller when arising from causes beyond the control and without the fault or negligence of both Seller and such subcontractors or suppliers and only when Seller could not have obtained the supplies or services from other sources in sufficient time to permit Seller to meet the required delivery schedule. Upon the happening of any circumstances or causes aforesaid, the affected Party shall notify the other Party as soon as possible in writing. Any relief shall be limited to an extension of delivery dates or times of performance to the extent caused thereby.

**26. RELEASE OF INFORMATION AND ADVERTISING.** Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Purchase Order or the subject matter, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use Buyer's or Buyer's customer's name or in any other way identify Buyer or Buyer's customer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

**27. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable foreign and United States federal, state, and local laws, statutes, rulings, ordinances, orders and regulations in performing this Purchase Order.

**28. DELIVERY OF SELLER DATA.** All drawings, procedures, manuals, forms, test reports, software (including software documentation) and other data that is required to be delivered under this Purchase Order ("Seller Data") shall comply with the terms of this Purchase Order. Nothing in this Purchase Order constitutes a license to Buyer of Seller's intellectual property rights (including those underlying Seller Data), but Seller shall comply with all necessary licensing requirements under DFARS 252.227-7013 and 252.227-7014. Seller Data shall be delivered to Buyer on or before the time specified in this Purchase Order, or if no time is specified, prior to the delivery of the Goods. Seller shall submit Seller Data to the Buyer address shown on the first page of this Purchase Order unless otherwise specified in this Purchase Order. If no delivery information is specified or Seller is unsure of where to send the Seller Data, Seller shall contact Buyer's authorized purchasing representative for further instructions. When furnished

with the shipment, Seller shall enclose all required Seller Data in the first box of the shipment and mark the shipment, *CERTIFICATES AND/OR TEST REPORTS ENCLOSED*.

## 29. SPECIAL REQUIREMENTS.

a. The following restrictions shall apply to Seller and Seller's subcontractors. Accordingly, Seller shall insert the following clauses in all subcontracts awarded by Seller under this Purchase Order:

i. **MERCURY EXCLUSION.** Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with hardware or supplies furnished under this Purchase Order.

ii. **POLYCHLORINATED BIPHENYLS PROHIBITION.** Seller shall not employ equipment or use material that is known or suspected of containing polychlorinated biphenyls.

iii. **PROHIBITION OF YELLOW WRAPPINGS OR PROTECTION DEVICES.** Seller shall not use yellow wrapping material or attached yellow protection devices such as caps or plugs.

iv. **BRASS AND COPPER BLACK OXIDE COATED THREADED FASTENER PROHIBITION.** Seller shall not use brass or copper black oxide coated threaded fasteners when installing or replacing threaded fasteners in the accomplishment of any work required by this Purchase Order.

b. In lieu of flowing down these requirements, Seller may put in place a system or process acceptable to Buyer which insures that the goods and services Seller delivers meet these requirements, e.g. testing components for mercury contamination. Violations of any of the requirements of this provision will be cause for rejection of the goods. In addition to the requirements of this provision, Seller shall flow down such other clauses of this Purchase Order when required by the specific terms of the clause, e.g. DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

c. Violations of any of the requirements of this provision will be cause for rejection of the goods at Buyer's sole discretion.

## 30. CAST COPPER NICKEL AND PERVASIVE COMMODITY SPECIAL REQUIREMENTS.

a. **Mandatory Source Requirements.** Seller shall ensure that Level I products, cast Copper-Nickel (CuNi) products, Butt Weld and Socket Pipe Fittings are obtained only from manufacturers or other suppliers approved by Buyer and listed on the following link: [http://supplier.huntingtoningalls.com/sourcing/res\\_technical.html](http://supplier.huntingtoningalls.com/sourcing/res_technical.html). Approved lists are provided for: Butt Weld and Socket Weld Pipe Fittings Manufacturers, Forging Manufacturers, Fastener Manufacturers and Distributors, CuNi Foundries, Casting Foundries with In-House Machining Capability, and Level I Manufacturers. Butt Weld and Socket Weld Pipe Fittings are considered herein to be included in the Pervasive Commodities Program. Examples of these Fittings include, but are not limited to, parts of standard dimensions used in the assembly of a piping system, such as couplings, elbows, tees, crosses, caps, unions, reducers, and flanges. Seller and its suppliers shall only use Buyer approved manufacturers for Butt Weld and Socket Weld Pipe Fittings provided under this Purchase Order.

b. **Non-Mandatory Buyer Approved Manufacturers.** Seller is encouraged, but not required, to purchase other forging, fasteners and casting material with in-house machining capability from suppliers listed on the following link: [http://supplier.huntingtoningalls.com/sourcing/res\\_technical.html](http://supplier.huntingtoningalls.com/sourcing/res_technical.html).

c. Seller's use of a mandatory or an approved manufacturer does not relieve the Seller of its obligation to deliver a Good that conforms to all of the requirements of this Purchase Order.

d. Specific certifications, test reports, or other non-hardware deliverables shall be provided by Seller as specified in the Purchase Order.

e. **Cast CuNi Products.** Seller and its suppliers shall only use Buyer approved CuNi foundries in the performance of this Purchase Order.

f. In addition to, or in conjunction with, testing required elsewhere in this Purchase Order, Seller shall invoke the following supplemental requirements on orders at any level for CuNi castings from a foundry approved by Buyer or Buyer's customer or both:

i. For each heat, the foundry shall test and have available a chemical test report for an "A" (beginning of furnace charge pour) and "B" (end of furnace charge pour) test specimen. The test reports and the specimen shall be identified as "A" and "B" in addition to the heat number traceability.

ii. Mechanical test bars shall be poured no sooner than 50% through the furnace charge pour.

iii. The foundry or supplier shall maintain the "A" and "B" test specimens, the mechanical test bars, and the test results as objective quality evidence, subject to audit and further analysis by Buyer and/or Buyer's customer.

(1) Retention time shall be a minimum of seven (7) years following certification of the heat.

(2) Notify Buyer for disposition instructions prior to disposal of records and specimens.

iv. Buyer's products may be poured in the same heat; however, the heat shall be unique to Buyer. No other customer's product shall be included in the heat.

v. Chemistry and mechanical test report submittal shall be in accordance with the requirements contained elsewhere in this Purchase Order. If chemical test reports are required to be submitted, the "B" chemistry test results shall be submitted, unless otherwise specified.

### **31. TRANSMISSION ABROAD OF NAVAL NUCLEAR PROPULSION INFORMATION.**

a. This provision applies only if, during the performance of this Purchase Order, Seller will have access to Naval Nuclear Propulsion Information ("NNPI") as defined in OPNAVINST 9210.3. All defined terms in this provision shall have the same meaning as those terms are defined in Part I of SBF P9152 (<https://spars.huntingtoningalls.com/procurement/procforms.html>). Seller shall review OPNAVINST 9210.3 and DoD Pamphlet 5230.25PH and abide by the applicable requirements of those publications.

b. If Seller has Foreign Nationals and/or Representatives of a Foreign Interest who work within or have access to its premises, Seller shall have a Technology Access Control Plan which:

i. Denies Foreign Nationals, Representatives of a Foreign Interest, and unauthorized U.S. Citizens and U.S. Nationals access to Naval Nuclear Propulsion Information; and



- ii. Permits only authorized U.S. Citizens, U.S. Nationals, Foreign Nationals and/or Representatives of a Foreign Interest access to Technical Data other than Naval Nuclear Propulsion Information or restricts access to Naval Nuclear Propulsion Information and/or Technical Data only to U.S. Citizens and U.S. Nationals who have a need-to-know.
- c. Seller shall have an active certification number under the U.S./Canada Joint Certification Program pursuant to DoD Pamphlet 5230.25PH and shall provide the active certification number and expiration date to the Buyer.
- d. Seller shall not disclose NNPI to Foreign Nationals. U.S. Citizens and U.S. Nationals representing a foreign government, foreign private interest or other Foreign Nationals, are considered to be included in the definition of Foreign Nationals for industrial security purposes and the purpose of the restrictions contained in this Section 31.
- e. Disclosure of Restricted Data as defined in the Atomic Energy Act of 1954 as amended, relating to the Naval Nuclear Propulsion Program to employees of Seller granted Limited Clearances under the provisions of DOD 5220.22M, National Industrial Security Program Operating Manual (NISPOM) is denied.
- f. Any issue or release of NNPI beyond parties with a need to know and necessary for the performance of this Purchase Order, whether or not ordered through an administrative or judicial tribunal, shall be brought to the attention of Buyer.
- g. Buyer shall be immediately notified of any litigation, subpoenas, or requests which either seek or may result in the release of NNPI. If a court or administrative order makes immediate review by Buyer impractical, Seller will take all necessary steps to notify the court or administrative body of the Navy's interest in controlling the release of such information through review and concurrence in any release.
- h. In addition to the requirements of this Section 31, the Seller shall comply with all other requirements relative to Naval Nuclear Propulsion Information (NNPI) wherever located in this Purchase Order.
- i. Seller agrees to insert this "Transmission Abroad of Naval Nuclear Propulsion Information" clause including this paragraph (i) in all of its subcontracts issued under this Purchase Order.

**32. ADDITIONAL SECURITY REQUIREMENTS.** If Seller will have access to classified information, in addition to complying with any other security requirements contained in this Purchase Order, Seller shall not disclose "Restricted Data" as defined in the Atomic Energy Act of 1954 as amended, relating to Navy Nuclear Propulsion Program to employees who have been granted Limited (interim) Clearances except under the provisions of DoD 5220.22M, National Industrial Security Program Operating Manual (NISPOM).

**33. ACCESS TO ONLINE ADP SYSTEMS.** If Seller is involved in the design and fabrication of FORD Class Ship's hull structure units, Seller shall provide representatives of the Government, at Seller's facility, a computer workstation and access, on a not-to-interfere basis, to Seller's internal Automatic Data Processing (ADP) system in order for the Government to perform its inspection and oversight responsibilities of construction of a hull structure. System accessibility will be limited to viewing data as established between the subcontractors and the government. Seller shall provide the necessary training to enable two (2) Government representatives to operate the computer workstation and competently access and review Seller's computer-aided design products and drawings. Seller shall include this clause in all subcontracts involving the design and fabrication of FORD Class Ship's hull structure units.

**34. ANTI-TERRORISM STANDARDS.** Seller shall ensure that any services to be delivered in a Department of Defense (“DoD”) occupied space or ship are governed by the requirements set forth in DoD Instruction 2000.16, DoD Antiterrorism Standards.

**35. CONTINUING TERMS AND SEVERABILITY.** The “Proprietary Information,” “Suspect/Counterfeit Parts,” “Indemnification – Government Requirements,” “Patent, Trademark, Trade Secret, And Copyright Indemnity,” the indemnification provisions, and the “Disputes,” provisions shall survive termination or cancellation of this Purchase Order. If any provision in this Purchase Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

**36. NON-WAIVER.** Buyer’s failure at any time to enforce any provision of this Purchase Order shall not constitute a waiver of the provision or prejudice Buyer’s right to enforce that provision at any subsequent time against Seller. No payment made shall be deemed an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Buyer’s right to later reject the same. Any and all of the rights and remedies conferred upon Buyer under this Purchase Order shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller’s breach of contract.

**37. BANKRUPTCY.** In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, Seller agrees to furnish to Buyer, by certified mail, written notification of the bankruptcy or insolvency proceeding. This notification shall be furnished within five days of the initiation of such proceedings, and shall include the date of filing, the identity of the court in which the petition was filed, and a listing of all of Buyer’s Purchase Orders against which final payment has not been made. This obligation remains in effect until final payment under this Purchase Order. In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, ceases operations, or fails to respond to notices under this Purchase Order, Buyer may, at Buyer’s sole discretion, pay to Seller’s subcontractors at any tier those amounts Seller owes to such subcontractors under this Purchase Order to obtain such subcontractor’s performance owed to Seller in connection with this Purchase Order and Buyer shall be entitled to set-off such amounts Buyer pays to such subcontractors from any amount owed to Seller under this Purchase Order.

**38. PROGRAM MANAGEMENT.**

a. When requested by Buyer, Seller will develop and maintain in a form acceptable to Buyer, a comprehensive Program Management Plan (“PMP”). At its election, Buyer may provide at no cost to Seller assistance in the development of the PMP.

b. The PMP will contain a comprehensive activity-based schedule for all major software/hardware deliverables required by this Purchase Order. Seller shall update the PMP at regular intervals but no less than monthly to ensure its currency.

c. Seller will make its PMP available to Buyer in a format specified by Buyer for review at reasonable times and places.

**39. OBSOLESCENCE.** If, during the performance of this Purchase Order, Seller becomes aware that any equipment, assemblies, subassemblies, parts, components, or items sold under this Purchase Order will be going out of production or will no longer be commercially available, Seller shall promptly notify Buyer and specifically identify those items by name or title, part number(s), function, and name and location of manufacturer.

**40. COMPLIANCE WITH WORKSITE RULES.** *(applicable only if Seller will be performing work on Buyer’s property, a worksite under Buyer’s control, Buyer’s customer’s property, a worksite under Buyer’s customer’s control, or a third party’s worksite in connection with performance under this Purchase Order).*

a. While on Buyer’s property/worksite, Seller shall comply with all of Buyer's applicable safety and security rules and regulations to include but not limited to the most recent version of Buyer's safety handbook, EH&S Handbook for New employees, contractors & visitors of Newport News Shipbuilding. Prior to performing Production Work on Buyer’s Newport News, Virginia, property, or at other locations if informed by Buyer that Seller must be “safety qualified” to perform the work, Seller shall also coordinate with Buyer’s Environmental, Health, and Safety (EH&S) Department (O27) to complete the qualification process, and comply with the requirements of Buyer’s “Contractor EH&S Resource Manual” which is available under Supplier Resources at this web site: [http://supplier.huntingtoningalls.com/sourcing/Contractor\\_Safety/index.html](http://supplier.huntingtoningalls.com/sourcing/Contractor_Safety/index.html). “Production Work” is defined as operations that involve hazards to personnel, including but not limited to construction, demolition, “hot work,” work in enclosed and confined spaces, blasting, painting, material handling, working with hazardous materials or equipment, efforts in direct support of Buyer’s Production Work, and similar operations.

b. If in performance of this order Seller performs work at a third party’s worksite, Seller shall comply with all rules and regulations of that worksite, including safety and health rules and procedures, and the use of required personal protective equipment. Seller guarantees strict compliance by all its employees, agents and lower tier subcontractors while on the third party’s premises.

c. In addition to any other remedies Buyer may be entitled to, Buyer may, without additional notice and an opportunity to cure:

i. Terminate this Order for default if Seller fails to comply with any part of this Section 41 after 7 days prior written notice and Seller having failed to cure; or

ii. Expel from Buyer’s property/work site, any employee, subcontractor or agent of Seller found violating any part of this Section 41.

d. Access by non-U.S. citizens to Buyer's property/worksite is prohibited unless approved in writing by Buyer.

**41. FAR/DFARS CLAUSES.**

a. The following clauses set forth in the Federal Acquisition Regulation (“FAR” available at <http://www.acquisition.gov/FAR>) and the Department of Defense FAR Supplement (“DFARS” available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>), in effect as of the date identified below are incorporated herein by reference with the same force and effect as if they were given in full text. For purposes of this Purchase Order, the following clauses shall operate, impose the obligations and responsibilities of the Parties and be interpreted as if “Government” means “Buyer,” “Contracting Officer” means an authorized representative of Buyer’s purchasing department, “Contract” means this “Purchase Order,” “Offeror” means “Seller,” “Contractor” means “Seller,” and “Disputes clause” means the Disputes clause of this Purchase Order. Seller shall also include these FAR and DFARS clauses in each lower-tier subcontract it issues, as applicable.

b. “COTS item” means any item of supply (including construction material) that is: (i) a commercial item (as defined in paragraph (1) of the commercial item definition FAR 2.101); (ii) sold in substantial quantities in the commercial marketplace; and (iii) offered to Buyer under this Purchase Order without modification, in the same form in which it is sold in the commercial marketplace.

FAR	Clauses	Date
52.202-1	Definitions	NOV 2013
52.203-6	Restrictions on Subcontractor Sales to the Government, (applies to Purchase Orders with a value over \$150,000)	SEP 2006
52.203-7	Anti-Kickback Procedures (Alternate I) (except paragraph (c)(1), applies to Purchase Orders with a value over \$150,000)	MAY 2014

52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	MAY 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (applies to Purchase Orders with a value over \$150,000)	OCT 2010
52.203-13	Contractor Code of Business Ethics and Conduct (applies to Purchase Orders that have a: (i) value exceeding \$5.5 million; and (ii) performance period of more than 120 days)	OCT 2015
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (applies to Purchase Orders funded under the American Recovery and Reinvestment Act)	JUN 2010
52.203-16	Preventing Personal Conflicts of Interest (applies to Purchase Orders that exceed \$150,000 and in which Seller employees will perform “acquisition functions closely associated with inherently governmental functions” as defined in the clause)	DEC 2011
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017
52.204-2	Security Requirements (applies to Purchase Orders that involve access to classified information; exclude reference to Changes clause in paragraph (c))	AUG 1996
52.204-9	Personal Identity Verification of Contractor Personnel (applies to Purchase Orders requiring access to a Federally-controlled facility or information system)	JAN 2011
52.204-21	Basic Safeguarding of Covered Contractor Information Systems (applies to Purchase Orders (including those for acquisition of commercial items, other than COTS items), in which the Seller may have “Federal contract information,” as that term is defined in paragraph (a) of this clause, residing in or transiting through its information system)	JUN 2016
52.209-6	Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (applies to Purchase Orders with a value over \$35,000 for other than COTS items)	OCT 2015
52.211-5	Material Requirements	AUG 2000
52.211-15	Defense Priority and Allocation Requirements	APR 2008
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications	OCT 2010
52.219-8	Utilization of Small Business Concerns	NOV 2016
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	MAY 2014
52.222-19	Child Labor – Cooperation with Authorities and Remedies	OCT 2016
52.222-21	Prohibition of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-35	Equal Opportunity for Veterans (applies to Purchase Orders with a value equal to or exceeding \$150,000)	OCT 2015
52.222-36	Affirmative Action for Workers with Disabilities (applies to Purchase Orders with a value over \$15,000)	JUL 2014
52.222-37	Employment Reports on Veterans (applies to Purchase Orders with a value equal to or exceeding \$150,000)	FEB 2016
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (applies to Purchase Orders with a value over \$10,000)	DEC 2010
52.222-50	Combating Trafficking in Persons	MAR 2015
52.222-54	Employment Eligibility Verification (applies to Purchase Orders for services that have a value of more than \$3,500 and include work performed in the United States)	OCT 2015

52.223-3	Hazardous Material Identification and Material Safety Data	JAN 1997
52.223-5	Pollution Prevention and Right-to-Know Information (applies to Purchase Orders that require performance, in whole or in part, on a federal facility)	MAY 2011
52.223-7	Notice of Radioactive Materials (applies to Purchase Orders involving the delivery of radioactive materials)	JAN 1997
52.223-15	Energy Efficiency in Energy-Consuming Products (applies to Purchase Orders for energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program)	DEC 2007
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	AUG 2011
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.227-1*	Authorization and Consent (applies to Purchase Orders with a value over \$150,000)	DEC 2007
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (applies to Purchase Orders with a value over \$150,000; the first reference to “Government” in paragraph (b) means Buyer and/or the U.S. Government)	DEC 2007
52.227-9*	Refund of Royalties (applies when reported royalties exceed \$250)	APR 1984
52.227-10*	Filing of Patent Applications – Classified Subject Matter (applies to Purchase Orders that cover classified subject matters)	DEC 2007
52.228-5	Insurance – Work on a Government Installation (applies to Purchase Orders that require work on a Government installation; Seller shall provide Buyer with copies of Seller’s proofs of insurance)	JAN 1997
52.232-39	Unenforceability of Unauthorized Obligations	JUN 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (applies if Seller is a small business concern)	DEC 2013
52.234-1	Industrial Resources Developed Under Defense Production Act Title III	SEP 2016
52.236-13	Accident Prevention	NOV 1991
52.237-2	Protection of Government Buildings, Equipment and Vegetation (applies to Purchase Orders involving work to be performed on a government installation)	APR 1984
52.244-6	Subcontracts for Commercial Items	JAN 2017
52.245-1	Government Property (Alternat I)	JAN 2017
52.247-63	Preference for U.S.-Flag Carriers (applies to Purchase Orders that may involve international air transportation)	JUN 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	FEB 2006
52.248-1	Value Engineering (applies to Purchase Orders with a value equal to or exceeding \$150,000)	OCT 2010
52.249-2	Termination for Convenience of the Government (Fixed-Price) (in paragraph (c), the term “120 days” is changed to “30 days,” in paragraph (d) the term “15 days” is changed to “45 days” and the term “45 days” is changed to “90 days,” in paragraph (e), the term “1 year” is changed to “60 days”, and in paragraph (l), the term “90 days” is changed to “30 days”)	APR 2012
<b>DFARS</b>	<b>Clauses</b>	<b>Date</b>
252.203-7002	Requirements to Inform Employees of Whistleblower Rights	SEP 2013
252.203-7003	Agency Office of the Inspector General (applies if FAR 52.203-13 applies)	DEC 2012
252.204-7000	Disclosure of Information	DEC 1991
252.204-7003	Control of Government Personnel Work Product	APR 1992
252.204-7005	Oral Attestation of Security Responsibilities (applies to Purchase Orders that require access to classified information)	NOV 2001
252.204-7010	Requirement for Contractor to Notify DoD if the Contractor’s Activities are Subject to Reporting Under the U.S.-International Atomic Energy	JAN 2009

	Agency Additional Protocol (applies to Purchase Orders that are subject to the provisions of the U.S.-IAEA AP)	
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (applies to Purchase Orders involving “covered defense information” as defined under paragraph (a) of the clause)	OCT 2016
252.204-7015	Disclosure of Information to Litigation Support Contractors	MAY 2016
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material (applies to Purchase Orders unless it is known that the item being purchased contains no precious metals)	DEC 1991
252.211-7000	Acquisition Streamlining (applies to Purchase Orders over \$1,500,000)	OCT 2010
252.211-7003	Item Unique Identification and Valuation (applies to Purchase Orders for items that require unique item identification)	MAR 2016
252.211-7006	Passive Radio Frequency Identification (applies if Seller is shipping goods directly to the government, the items being shipped are of the type identified at paragraph (b) of the clause and the items are being shipped to locations identified at paragraph (b))	JUN 2016
252.211-7007	Reporting of Government-Furnished Property	AUG 2012
252.223-7001	Hazard Warning Labels (applies to Purchase Orders that require delivery of hazardous materials)	DEC 1991
252.223-7006	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials—Basic (applies only when performing work on a DoD facility)	SEP 2014
252.223-7008	Prohibition of Hexavalent Chromium	JUN 2013
252.225-7001	Buy American Act And Balance Of Payments Program – Basic (applies if Seller will be delivering an end product that will go directly to the government as-is (e.g., a spare part))	DEC 2017
252.225-7002	Qualifying Country Sources as Subcontractors	DEC 2016
252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies (applies to Purchase Orders for items covered by the U.S. Munitions List)	SEP 2006
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (applies to Purchase Orders for items containing specialty metals; except paragraphs (d) and (e)(1))	OCT 2014
252.225-7012	Preference for Certain Domestic Commodities (applies to Purchase Orders for items identified at paragraph (b) of the clause)	DEC 2016
252.225-7013	Duty-Free Entry (applies to Purchase Orders for qualifying country components or nonqualifying country components for which Seller estimates that duty will exceed \$200 per unit)	MAY 2016
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (applies to Purchase Orders for hand or measuring tools that will be delivered directly to the government)	JUN 2005
252.225-7019	Restriction on Acquisition of Anchor and Mooring Chain (applies to Purchase Orders for items containing welded shipboard anchor and mooring chain, four inches or less in diameter)	DEC 2009
252.225-7021	Trade Agreements – Basic (applies if Seller will be delivering an end product that will go directly to the government as-is (e.g., a spare part))	DEC 2012
252.225-7025	Restriction on Acquisition of Forgings (applies to Purchase Orders for forging items or items containing forging items)	DEC 2009
252.225-7033	Waiver of United Kingdom Levies (applies to Purchase Orders with UK firms exceeding \$1 million)	APR 2003
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States (applies to Purchase Orders involving work or travel outside the United States)	MAR 2006
252.225-7048	Export-Controlled Items	JUN 2013

252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (applies to Purchase Orders with a value exceeding \$500,000)	SEP 2004
252.227-7013*	Rights in Technical Data – Noncommercial Items (Alternate II) (applies to Purchase Orders for technical data any portion of which was developed in any part at government expense)	FEB 2014
252.227-7014*	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (applies to Purchase Orders for noncommercial computer software or noncommercial computer software documentation any portion of which was developed in any part at government expense)	FEB 2014
252.227-7015*	Technical Data–Commercial Items (Alternate I) (applies to Purchase Orders calling for the delivery of technical data for commercial items developed in any part at private expense)	FEB 2014
252.227-7016*	Rights in Bid or Proposal Information	JAN 2011
252.227-7017*	Identification and Assertion of Use, Release, or Disclosure Restrictions (applies to Purchase Orders involving the delivery of technical data and/or computer software)	JAN 2011
252.227-7019*	Validation of Asserted Restrictions – Computer Software (applies to Purchase Orders for computer software)	SEP 2011
252.227-7025*	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	MAY 2013
252.227-7037*	Validation of Restrictive Markings on Technical Data (applies to Purchase Orders involving the delivery of technical data)	JUN 2013
252.234-7004	Cost and Software Data Reporting System – Basic (applies to Purchase Orders over \$50 million)	NOV 2014
252.235-7003	Frequency Authorization – Basic (applies to Purchase Orders requiring radio frequency authorization)	MAR 2014
252.239-7001	Information Assurance Contractor Training and Certification (applies to Purchase Orders involving performance of information assurance functions)	JAN 2008
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services (applies to Purchase Orders that require securing telecommunications)	DEC 1991
252.243-7002	Requests for Equitable Adjustment	DEC 2012
252.244-7000	Subcontracts for Commercial Items	JUN 2013
252.245-7001	Tagging, Labeling, and Marking of Government-Furnished Property (applies if FAR 52.245-1 applies)	APR 2012
252.245-7002	Reporting Loss of Government Property (applies if FAR 52.245-1 applies)	APR 2012
252.245-7003	Contractor Property Management System Administration (applies if FAR 52.245-1 applies)	APR 2012
252.245-7004	Reporting, Reutilization, and Disposal (applies if FAR 52.245-1 applies)	SEP 2016
252.246-7001	Warranty of Data – Basic	MAR 2014
252.246-7003	Notification of Potential Safety Issues (applies to Purchase Orders for: (i) critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)	JUN 2013
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System (applies to Purchase Orders that require delivery of electronic parts or assemblies containing electronic parts)	AUG 2016
252.246-7008	Sources of Electronic Parts (applies to Purchase Orders for electronic	DEC 2017

	parts or assemblies containing electronic parts, unless Seller is the original manufacturer)	
252.247-7023	Transportation of Supplies by Sea	APR 2014
252.247-7024	Notification of Transportation of Supplies by Sea	MAR 2000
252.249-7002	Notification of Anticipated Contract Termination or Reduction (applies to Purchase Orders of \$150,000 or more)	OCT 2015

\*For clauses marked with an asterisk (\*), no substitution of parties for “Government” and “Contracting Officer” apply. References to the “Government” shall mean the U.S. Government and references to the “Contracting Officer” shall mean the U.S. Government Contracting Officer.

**42. AMENDMENTS REQUIRED BY PRIME CONTRACT.** Buyer may modify these general provisions to add or delete any provisions that are not reflected in the applicable Prime Contract in subsequent amendments to the Prime Contract. Accordingly, Seller agrees that upon the request of Buyer it will negotiate in good faith with Buyer relative to modifications to this Purchase Order to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contractor with the provisions of amendments to such Prime Contract. If any such modification to this Purchase Order causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Purchase Order, an equitable adjustment shall be processed pursuant to the "Changes" clause of this Purchase Order.