

TERMS AND CONDITIONS

- GENERAL



1. Formation of Contract: This proposed purchase order (herein after "order") which incorporates by reference these General Terms and Conditions, is Buyer's offer to purchase the goods and/ or services described in this offer. Acceptance is strictly limited to the terms and conditions in the offer.

2. Acceptance: Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written. If an acceptance copy of the Purchase Order is attached it must be signed and returned within 10 days. Seller's provision of the goods shall be governed solely by this contract.

3. Invoicing: Mail Original and duplicate invoices immediately after each shipment to NavCom Defense Electronics, Inc., 9129 Stellar Ct., Corona, CA 92883, Attn: Accounts Payable. Attach B/L or express Receipt. State applicable taxes separately. Each invoice shall be certified: We hereby certify that these goods were produced in compliance with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and all regulations and orders of the Administrator of the Wage and Hour Division issued under Section 214 thereof." No C.O.D. shipments shall be made unless authorized by the Buyer. Buyer may offset any of its claims against payment otherwise due to Seller. Discounts shall be calculated as of date of receipt of supplies or date of receipt of a proper invoice, whichever is later.

4. Packing and Shipment:

(a) Unless otherwise specified, all supplies to be delivered hereunder shall be boxed, crated, carted, stored, or shipped without charge and shall be suitably prepared, packaged and shipped in accordance with the governing classification and tariffs applicable thereto. All items shall be packaged in accordance with good commercial practice in a manner sufficient to insure arrival in an undamaged condition. Seller shall be responsible to Buyer for all direct and indirect costs or damages incurred by Buyer as a result of or caused by improper packaging, handling, shipping, or otherwise. Buyer's Order number, item number, and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists in duplicate must accompany supplies. Bills of lading or shipping receipts shall be sent to Buyer's traffic department on the date supplies are shipped. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

(b) Unless otherwise stipulated on the face of this Order, or as modified by routing letter from Buyer's traffic department, supplies shall be shipped "F.O.B." Seller's plant, title to the supplies to pass to Buyer upon delivery to Buyer's specified end destination regardless of the point at which the supplies may be picked up by Buyer's private carriage for transportation. Delivery in advance of Buyer's shipping date will not cause passage of title and/or establish F.O.B. point. Transportation charges on goods delivered F.O.B. destination must be prepaid and insured. No charges for unauthorized transportation will be allowed.

5. Delivery:

(a) Time is of the essence in making deliveries under this Order. When delivery is to be in accordance with Buyer's written releases, Seller shall not procure, fabricate, assemble, or ship any item except to the extent authorized by Buyer in such written releases. Seller will at its expense ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered for any reason unless the delay in delivering arises out of causes beyond the control and without fault or negligence of Seller within the meaning of the clauses hereof entitled "Default" and "Excusable Delays." Buyer reserves the right to reject all or any part of any delivery that varies from the quantity authorized by Buyer for shipment.

(b) (1) All data required under this Order must also be delivered not later than the time specified in this Order. Buyer may, at its election, so long as required data remain undelivered beyond the time so specified, withhold payment to Seller for any item previously or subsequently delivered in an amount up to ten percent (10%) of the total value of this Order. Such withholding or subsequent payment shall not be construed as waiver of any rights of Buyer under this Order. The term "data" will include, without limitation, drawings, reproductions, specifications, photographs, reproducible copy, parts lists, plans, reports, computations, and certifications.

(2) Alternatively, if this Order shows on its face that it is pursuant to a Department of Defense Prime Contract, Buyer's rights and remedies for late delivery of technical data shall be as specified in the Terms and Conditions Supplemental to this Order.

6. Anticipation of Delivery Schedule - Early Shipments:

(a) Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule.

(b) In case of shipments received by Buyer more than two weeks ahead of the Purchase Order due date, except as amended in writing, Buyer reserves the right to either delay payment on the shipment by aging the invoice from the actual due date or return the shipment at the Seller's expense.

7. Prices, Taxes, and New Material:

Seller warrants that each price for items sold to Buyer under this Order is no less favorable than that extended during the term of this Order to any other customer for the same or like items, in equal or lesser quantities on similar terms and conditions. Unless otherwise provided on the face of this Order, THE PRICES APPEARING HEREIN INCLUDE ALL PACKAGING, CRATING AND FEDERAL, STATE AND LOCAL TAXES AND ARE FIRM FOR THE DELIVERY PERIOD SHOWN. SELLER FURTHER WARRANTS THAT NONE OF THE ITEMS FURNISHED UNDER THIS ORDER ARE GOVERNMENT OR COMMERCIAL SURPLUS, USED, REMANUFACTURED OR RECONDITIONED, OR OF SUCH AGE OR SO DETERIORATED AS TO IMPAIR THE USEFULNESS OR SAFETY THEREOF, UNLESS OTHERWISE SPECIFICALLY STATED ON THE FACE OF THIS ORDER.

8. Payments:

(a) Upon the submission of proper invoices, Seller shall be paid the prices stipulated on the face of the Order for supplies delivered and accepted, or services rendered and accepted. Payment shall be subject to subsequent adjustment for shortages and allowance for articles rejected.

(b) Unless otherwise stated on the face of the Order all NET INVOICES will be paid on or about the thirtieth (30) day, but not later than the forty-fifth (45) day following Buyer's receipt of a proper invoice. Unless otherwise stated on the face of the order, DISCOUNT INVOICES may be honored in accordance with discount terms offered. The date of calculation of any cash discount offered by the Seller shall commence as of the date of receipt of a proper invoice, or the invoiced items, whichever is later. Delays in receiving invoices, errors, or omissions on invoices, or lack of supporting documentation required by the terms of this Order will be cause for withholding payment without losing any discount privilege.

9. Changes:

(a) Buyer may at any time, by a written order, and without notice to sureties, make changes within the general scope of this Order, in any one or more of the following: (1) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for Buyer in accordance therewith; (2) method of shipment or packing; (3) time and/or place of delivery; and (4) the period of performance of work; and Seller shall comply with such changes.

(b) If any such change causes an increase or decrease in the cost of or the time required for the performance of any part of the work under this Order, whether changed or not changed by any such Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be filed in writing with Buyer's Purchasing Representative within thirty (30) days from the date of receipt by Seller of the notification of change, provided however that Buyer, if it decides that the facts justify such action, may receive and act upon any such claim filed in writing at any time prior to final payment under this Order.

(c) Failure to agree on any claim for equitable adjustment under this Clause shall be a dispute and Seller may thereupon pursue any remedy which it may have according to the Disputes Clause in this Order. Pending the resolution of any such dispute the Seller shall diligently pursue performance of the Order as changed. Except as expressly provided for elsewhere in this Order, the parties agree that there should be no adjustment in the price or time for performance hereunder unless an authorized representative of Buyer's Purchasing Department shall have directed a change hereto by the issuance of a written change order to this Order. No claims for equitable adjustment under this Changes clause shall be valid unless the Seller complies with all the requirements of this Clause.

10. Stop Work Orders:

(a) Buyer may at any time by written order require Seller to stop all or any part of the work under this Order for a period of up to ninety (90) days after delivery of such stop work order, and for any further period as the parties may agree. Immediately upon receipt of such stop work order, Seller shall comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work stoppage. At any time during such period Buyer may, in whole or in part, either cancel the stop work order or terminate the work in accordance with the "Default" or "Termination for Convenience" clause of this Order.

(b) To the extent the stop order is canceled or expires, Seller shall resume work. If a stop work order is the sole and exclusive cause of a material change in cost or delivery, an adjustment shall be made in the price (excluding profit) or the delivery schedule, or both, and this Purchase Order modified accordingly; provided, however, that no adjustment in price or delivery shall be made under this provision if (1) the work would have been otherwise interrupted or delayed or (2) such adjustment is available or expressly excluded under any other provision of this Order.

(c) Any claim for adjustment under this provision must be submitted to Buyer's Purchasing Representative in writing in a specified amount within twenty (20) days after the work is terminated or the stop work order expires or is cancelled, whichever first occurs. In the event Seller is unable to submit a claim in a specified amount within such twenty (20) day period, Seller may submit a good faith, reasonable, not-to-exceed amount to be definitized by the Seller within an additional twenty (20) days.

11. Inspection - Notice of Rejection:

(a) Buyer and, if the face of this Order indicates that it is issued subject to a Government Prime Contract, representatives of the Government shall have the right to inspect and test the materials and workmanship of all supplies ordered hereunder, in accordance with acceptance criteria specified elsewhere in this Order, at anytime during the period of performance through delivery and including final acceptance at destination. In the event inspection rights reserved herein are to be conducted on Seller's premises, Seller shall provide without additional charge, safe and convenient access to and use of facilities to Buyer's employees

and, if appropriate, Government employees, as well as assistance necessary to accomplish such inspection and tests. All items or lots of items are subject to final inspection and acceptance at destination notwithstanding any payments or inspection at source. Such final inspection and acceptance shall be conclusive except as to latent defects, fraud, and such gross mistakes as amount to fraud, or Seller's warranty obligations.

(b) Any rejection of goods or material resulting from nonconformity with terms, conditions, and specifications of this Order shall be at Seller's risk and expense. Buyer may at its option, either return the defective or nonconforming lots or article or part thereof for credit or refund or require prompt correction or replacement. Return to Seller of any defective or nonconforming articles and delivery to Buyer of any corrected or replaced articles shall be at Seller's expense. If Seller fails to promptly remove such supplies or lots of supplies which are required to be removed or to promptly replace or correct such supplies or lots of supplies, Buyer may either (1) by contract or otherwise, replace or correct such supplies and charge to Seller the costs occasioned to Buyer thereby or (2) cancel this Order pursuant to the "Default" Clause of this Order. Defective or nonconforming articles shall not be corrected or replaced unless specified in Buyer's written instructions. Rejected items shall not be tendered for acceptance unless the former rejection or requirement for correction is disclosed. Except for latent defects, fraud, such gross mistakes as amount to fraud or breach of warranty, Buyer will accept or give notice in writing of any defect or nonconformity to the Seller within six (6) months after delivery or six (6) months after receipt of satisfactory final acceptance reports whichever occurs later. Acceptance shall not, in any case, constitute a waiver of or otherwise be deemed to alter or affect the clause hereof entitled "Warranty."

12. Quality Control System:

Seller agrees to provide and maintain an inspection and quality control system acceptable to Buyer. The system of quality control shall conform to the quality control requirements, including drawings, specifications, and data that are specified in this Order. Seller further agrees to maintain adequate authenticated inspection and test documents which relate to work performed under this Order. Such records shall be retained by Seller for a period of three (3) years after completion of this Order or as otherwise specified in this Order and made available without charge to Buyer upon request. Seller agrees to supply to Buyer without charge such inspection and test reports, affidavits, certifications or any other documents relating to the quality of performance under this Order as may be requested.

13. Warranty - Breach of Warranty:

(a) Seller warrants that the articles and services described in this Order will be free from defects in material and workmanship, will conform to applicable drawings, specifications, specified performance requirements, samples and other descriptions furnished or specified by Buyer, will be free from all other defects, including defects in design, to the extent such items are not of a detailed design furnished by Buyer. These warranties shall run to Buyer and/or its customers for a period of eighteen (18) months following acceptance (or such longer period as specified on the face of this Order or extended by Seller to any other customer for similar items during the term of this Order) and shall be in addition to any other warranties, express, implied or statutory.

(b) In the event Seller is required to replace or correct any component of any item as a result of a breach of the foregoing warranty, the running of the warranty period for the items of which the defective component is a part shall be suspended from the date Seller receives notice of the breach of warranty until the date the component is replaced or corrected, and this warranty shall apply to such replacement or corrected items furnished for the unexpired portion of the warranty period.

(c) Buyer's approval of a design furnished by Seller or of Seller's samples or first articles shall not be construed as a waiver by the Buyer of any requirement of the drawings, specifications, specified performance requirements, and/or other referenced descriptions applicable hereto or of any express or implied warranty. Seller shall provide to Buyer data and reports applicable to any correction or replacement under this warranty (including revision and updating of all affected data called for under this Order) and Seller shall bear the cost therefor.

(d) The Seller hereby acknowledges that Seller has represented and this Order has been entered into on the basis that Seller has reviewed and accepted the specified performance requirement(s) as set forth in this Order and that Seller assumes all risks and full responsibility for meeting said specified performance requirement(s). Accordingly, notwithstanding any conflict or inconsistency which hereafter may be found between achievement of the specified performance requirements and Seller's proposal for the item(s) being purchased herein, the Seller hereby warrants that the item(s) to be delivered or performed hereunder will meet or exceed the specified performance requirements of this Order.

(e) Seller agrees to indemnify Buyer for all liabilities, loss, costs, damages and expenses (including reasonable attorney's fees) resulting from any breach of any or all of Seller's warranties, express or implied. In the event of Seller's breach of warranty, Buyer may, at its election and in addition to any other rights or remedies it may have at law or equity or under this Order, recover from Seller any cost of removing such items from property, equipment or products in which such items have been incorporated and any additional costs of disassembly, fault isolation, failure analysis, reinstallation, reinspection and retesting and (1) return the items at Seller's risk and expense and recover from Seller the price paid therefor and, if elected by Buyer, purchase or manufacture similar items, and recover from Seller the excess costs and expenses thereof, (2) retain the items and equitably reduce their price, or (3) require Seller, at Seller's expense, to promptly replace or correct such items as directed by Buyer. Buyer may repair the items or have them repaired at Seller's expense or elect any of the remedies available to it under this Order or at law.

(f) Buyer shall give written notice to Seller of any breach of warranties in paragraph (a) of this clause within forty-five (45) days after discovery of the defect and shall, within a reasonable time after the notice, inform Seller of supplies which Seller must repair or replace under provisions of this Clause and which must comply with applicable inspection requirements of this Order.

14. Seller Design Changes:

During performance of this Order, Seller shall not make any changes in the design of items to be furnished by Seller under this Order without advance written notification to and written approval of the Buyer. The above requirement applies whether or not there is a cost impact associated with the changes and regardless of the type of change involved, including product improvements.

15. Default:

(a) Buyer reserves the right to terminate this Order by written or telegraphic notice in whole or, from time to time, in part for Seller's default (1) if Seller fails to perform timely in accordance with any of the requirements of this Order (including non-compliance with delivery schedule) or fails to make progress so as to endanger performance hereunder or (2) if Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors, and in either of these two circumstances does not cure such failure within a period of ten (10) days or such longer period as Buyer may authorize in writing after receipt of notice from Buyer specifying such failure.

(b) Any such termination will be without liability to Buyer except for completed items delivered and accepted by Buyer, payment for which can be set off against any damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited with the reasonable value thereof not to exceed Seller's cost or the contract price, whichever is less. Seller will be liable for damages caused by or resulting from its default. In addition, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs or procurement.

(c) Except with respect to defaults of subcontractors, Seller shall not be liable for any excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of the Seller. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of Buyer, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both Seller and subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

(d) If this Order is cancelled as provided in paragraph (a) of this Clause, Buyer, in addition to any other rights provided in this Clause, may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, (1) any completed supplies, and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Order as has been cancelled; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer or the Government has an interest. Payment for completed supplies delivered to and accepted by Buyer shall be at the order price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Seller and Buyer.

(e) If, after notice of cancellation of this Order under the provisions of this Clause, it is determined for any reason that the Seller was not in default under the provision of this Clause, or that the default was excusable under the provisions of this Clause, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to the clause of this Order entitled "Termination for Convenience."

(f) The rights and remedies of Buyer provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

(g) The failure of Buyer to insist upon strict performance of any of the terms of this Order or to exercise any rights herein conferred, shall not be construed as a waiver of Buyer's right to insist or rely on any such terms or rights on any future occasion.

(h) It is understood and agreed that Seller shall reimburse Buyer for reasonable attorney fees necessarily incurred by Buyer in order to enforce the provisions of this Order, or to secure costs and/or damages for the breach thereof, or in pursuing any other remedy hereunder at law or in equity.

16. Excusable Delays:

Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence; provided, that any delay or failure to perform caused by the default of a subcontractor/ supplier of the Seller at any lower tier shall be excused only if it is beyond the control of both Seller and such subcontractor/ supplier and without the fault or negligence of either and the items to be furnished are not obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule; and provided further, that Seller furnishes prompt written notice to Buyer of the occurrence of any such cause which will or may delay Seller's performance.

17. Termination for Convenience:

(a) The performance of work under this Order may be terminated in whole or from time to time in part by Buyer for its convenience. If this Order is so terminated and is a subcontract issued under a U.S. Government Prime Contract, the rights, duties, and obligations of the parties, including compensation to Seller, shall be in accordance with Part 49 of the Federal Acquisition Regulation ("FAR") and the appropriate termination clause as specified by FAR 49.502(e)(1). To the extent the Order is not so terminated, Seller shall continue performance.

(b) If the clause at FAR 52.249-2 is applicable: (1) "Contracting Officer" means Buyer's Purchasing Representative and "Government" means Buyer except in paragraph (m); (2) in paragraph (c) the term "forty-five days" is changed to "ninety days"; (3) the term "one year" in paragraph (d) is changed to "six months"; (4) if the Government is unable or unwilling to conduct any audit of Seller's books and records in a timely manner, Buyer may elect to have an audit conducted by an independent certified public accounting firm which is mutually acceptable to Buyer and Seller.

18. Pricing:

When costs are a factor in any determination of the price to be paid hereunder, including price adjustments pursuant to the Changes clause or any other provision of this Order, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation and the Department of Defense Supplement thereto as in effect on the date of this Order.

19. Material, Equipment, Tools, and Facilities - Buyers Property:

(a) Unless otherwise stated in this Order, Seller shall supply all material, tools, and facilities required to perform this Order. Title to all property furnished to Seller by Buyer or the acquisition of which was especially directed and paid for by Buyer, and any replacements thereof, or any materials affixed or attached thereto (all hereinafter collectively referred to as "Articles") shall be and remain in Buyer, with the right of possession in Buyer. Seller will identify and mark said Articles as Buyer's property and uses them only in the performance of work for Buyer. Seller shall bear the risk of loss of all Articles while in Seller's custody or control and while in the custody or control of Seller's subcontractors/suppliers and Seller shall keep Articles insured at Seller's expense against loss and damage in an amount equal to the cost of replacement.

(b) All Articles are subject to inspection and to removal and return at Buyer's written request, in which event Seller, at Buyer's expense, will prepare such Articles for shipment and deliver them to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller will promptly notify Buyer of the location of Articles located in any place other than Seller's plant. Seller shall establish and maintain a system to control, protect, preserve and maintain all Buyer-owned Articles and shall, at its expense, maintain all Articles in good condition and repair or replace them to the extent necessary for performance of this Order. Buyer does not warrant the accuracy of Articles which it furnishes and all items delivered by Seller must be in strict accordance with the requirements of this Order. Upon completion or termination of this Order, all Articles will be retained by Seller at its expense until disposition directions are received from Buyer. Seller will pay personal property taxes on all Articles in its possession.

(c) If this Order is issued under a U.S. Government Prime or lower tier contract, then the "Government Property (Fixed Price Contracts)" clause, Federal Acquisition Regulation ("FAR") clause 52.245-1, shall apply to this Order with respect to all Government-owned Articles. Nothing herein shall be construed as restricting the Government's use of or the Government's right to authorize others to use such Government-owned Articles.

20. Work Performed on Buyer's or Customer's Premises:

If Seller's work under this Order involves operations by Seller on the premises of Buyer or one of its customers, Seller shall take all necessary precautions to prevent any injury to person or property during the progress of such work. Except to the extent that the injury is due solely and directly to Buyer's or its customer's negligence, Seller shall indemnify Buyer against all loss which may result in any way from any act or omission of Seller, its agents, employees, or subcontractors, and Seller shall maintain such liability insurance as will protect Buyer from any risks and claims resulting from such loss.

21. Drawings, Specifications, and Technical Information:

(a) Buyer. All drawings, data, designs, engineering instructions, models, specifications, computer software, computer software documentation or other technical information, written, oral or otherwise, supplied by or on behalf of Buyer or prepared by Seller specifically in connection with performance of this Order (hereinafter designated "Information") shall be and remain the property of Buyer. Seller shall not use or disclose such information except in the performance of orders for Buyer and upon Buyer's request such information and all copies thereof shall be returned to Buyer. Where such Information is furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of Buyer's orders, Seller shall insert the substance of this provision in its orders. Nothing herein shall be construed as restricting the Government's use of or the Government's right to authorize others to use Government owned Information if this Order is a subcontract of any tier pursuant to a U.S. Government Prime Contract.

(b) Seller. Any information which Seller may disclose to Buyer with respect to design, manufacture, sale or use of the items covered by this Purchase Order shall be deemed to have been disclosed as part of the consideration for this Purchase Order, and Seller shall not assert any claim against Buyer by reason of Buyer's use thereof. The purchase price specified in this Purchase Order is, in part, consideration for any design work performed by Seller in connection therewith, and Seller shall not supply such design work to others without Buyer's written consent.

22. Special Obligations of Seller - Indemnity and Insurance:

In addition to any other remedies which Buyer may have, to the fullest extent permitted by law Seller shall indemnify and hold harmless Buyer, its successors, assigns, employees, agents, customers and the users of its products from and against any and all claims, damages, losses, demands, suits, actions, judgments, liabilities, defaults, or costs and expenses, including court costs and attorney fees (hereafter, "claim(s)"), as a result of the following:

(a) In the event that the Government asserts, pursuant to the clause in Buyer's Prime Contract with the Government entitled **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**, that any cost, price, or fee included in Buyer's Prime Contract should or will be reduced as a result of, or attributable to —

- (1) Cost or pricing data furnished by Seller which was not complete, accurate and current either (a) as certified in Seller's Certificate of Current Cost or Pricing Data or (b) as furnished to Buyer by Seller, whether or not certified.
- (2) Cost or pricing data furnished to Seller by its subcontractors at any tier which was not complete, accurate and current either (a) as certified in that subcontractor's Certificate of Current Cost or Pricing Data or (b) as furnished to Seller by its subcontractor, whether or not certified;
- (3) Cost or pricing data furnished to Seller by its subcontractors at any tier or prospective subcontractors at any tier which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by Seller but which was not complete, accurate and current either as certified in Seller's Certificate of Current Cost or Pricing Data or as furnished to Buyer, whether or not certified;
- (4) Any data not within (1), (2), or (3) above furnished by Seller or a lower tiered subcontractor or prospective subcontractor to Seller which was not complete, accurate and current as submitted; or
- (5) Any failure by Seller or its subcontractors at any tier to furnish data which was required to be furnished.

(b) In the event that any cost, price or fee in Buyer's Prime Contract is reduced because of any failure on the part of the Seller to comply with the provisions of the **COST ACCOUNTING STANDARDS** clause, if applicable, to the Contract.

(c) (1) In the event of any claim attributable to bodily injury, sickness, disease, or death (other than the Work itself) including the loss of use resulting therefrom, to the extent caused in whole or in part by any act or omission of Seller or anyone directly or indirectly employed by Seller or anyone for whose acts Seller may be liable, regardless of whether it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph; (2) In any and all claims against Buyer or the Government or any of their agents or employees by any employee of the Seller, anyone directly or indirectly employed by Seller or anyone for whose acts Seller may be liable, the indemnification obligation under this paragraph (c) shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Seller under worker's or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

(d) Insurance. Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, worker's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth or incorporated in this Purchase Order, with insurance carriers acceptable to Buyer, and if no amounts are so set forth, then in amounts acceptable to and approved by Buyer but in no event shall such amounts be less than minimum statutory requirements, if any. Seller will, if requested by Buyer, furnish certificates of insurance from its carrier on the foregoing coverages, which shall provide that such coverage shall not be changed without thirty (30) days advance written notification to Buyer from the carrier.

23. Patent, Trademark, and Copyright Indemnity:

Seller shall indemnify Buyer from any and all damages and costs finally awarded for infringement of any United States patent, trademark, copyright or any other intellectual property right in any suit by reason of the sale or use of any product sold to Buyer hereunder where Seller is an infringer with respect to its sale hereunder, and from reasonable expenses incurred by Buyer in defense of such suit if Seller does not undertake the defense thereof; provided, that Seller is promptly notified of such suit and, except for suits against the U.S. Government, Buyer offers Seller full and exclusive control of the defense of such suit when products of Seller only are involved therein; except that, this indemnity shall not extend to infringement resulting from Seller's compliance with Buyer's design, processes or formulas. Seller's liability for damages hereunder is limited to those computed solely on the value of any product sold to Buyer hereunder. Seller shall also indemnify Buyer's customers and agents for such infringement if and to the extent that Buyer has agreed so to indemnify them, but to no greater extent than Seller has indemnified Buyer herein and under the same conditions as set forth herein. The above is in lieu of any other indemnity or warranty, express or implied, with respect to patents, trademarks, or copyrights.

24. Buy American:

By acceptance of this Order, Seller certifies that, unless otherwise noted in the Order, all items to be delivered under the Order will have been mined, produced, or manufactured in the United States.

25. Affirmative Action Programs:

If this Order is pursuant to a U.S. Government Prime Contract, Seller, by acceptance of the Order, certifies that it has developed written affirmative action compliance programs as set forth in Part 22.804 of the Federal Acquisition Regulation, unless Seller is exempt under the terms of Part 22.804.

26. Compliance with Laws and Regulations:

(a) Seller agrees that at all times Seller shall comply with all applicable Federal, State and Local laws, executive orders, rules and regulations including, without limitation, all provisions of the Federal Acquisition Regulation and agency supplements thereto which are hereby incorporated by reference in the Terms and Conditions - Supplemental to this Order; the Occupational Safety and Health Act of 1970 as amended ("OSHA"); Toxic Substances Control Act as amended ("TSCA"); and the Fair Labor Standards Act of 1938 as amended ("FLSA").

(b) The Seller warrants that all items sold or furnished under this Order will conform to and comply with OSHA standards and regulations and have been manufactured or furnished in accordance with the FLSA and regulations issued thereunder. Seller further warrants that all chemical substances delivered under this Order will conform to and comply with the TSCA and regulations issued thereunder.

(c) Seller certifies that under this Purchase Order it shall only supply goods which were produced in compliance with all applicable requirements of orders of the United States Department of Labor, including, but not limited to, those issued under 29 U.S.C. Section 206, 207, 212 and 214. Seller agrees that Buyer shall have the right without incurring any liability to Seller to withhold payment of any invoices which fail to include the certification set forth at Clause 8 of this Order. Seller warrants that all representations and certifications furnished by Seller as required by law or regulation in connection with this Order are accurate, current and complete as of the effective date of this order. Seller agrees to indemnify and hold harmless Buyer and its customers for any loss, damage or expenses sustained because any certification or representation required by law or regulation made by Seller was false, inaccurate, incomplete, or due to Seller was false, inaccurate or incomplete or noncompliant with any applicable law or regulation.

27. Choice of Law:

(a) If this is a commercial order, irrespective of the place of negotiation, execution and performance, the construction and interpretation of this Order shall be governed by the laws of the state from which Buyer's order is issued.

(b) If this is an Order pursuant to a U.S. Government Prime Contract, the construction and interpretation of this Order shall be governed by the Federal common law of government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeal. If no such Federal law exists with respect to questions involving the interpretation and effect to be given to specific terms and conditions of this Order, this Order will be governed by the laws of the state from which Buyer's order is issued, regardless of its place of negotiation, execution, and performance.

28. Disputes:

(a) All claims, disputes, and other matters in questions arising out of or relating to this Order shall be a dispute and Buyer or Seller may thereupon pursue any remedy which it may have in any court of competent jurisdiction. Pending the resolution of any such dispute, the Seller shall diligently pursue the performance of the Purchase Order under the terms and in the manner set forth in the Order or as otherwise directed by Buyer.

(b) At Buyer's sole discretion and with its written direction, and instead of resolution in court, Buyer may require that any Dispute be (1) submitted to arbitration, the result of which will be final and binding on both parties, or, if this Order is a subcontract under a U.S. Government Prime Contract, (2) resolved by submission of a claim by Seller to the Government in the name of Buyer, with corresponding sponsorship by Buyer of an appeal to a board of contract appeal or the U.S. Claims Court of any adverse final decision by the Government contracting officer. Should Seller be required to pursue and Buyer sponsor such an indirect claim against the Government (1) the final resolution of such claim shall be binding on the Seller and no additional amount shall be sought from Buyer relating to the subject matter of such indirect claim and (2) if the claim affects Seller only, Seller shall itself prosecute such appeal and pay any and all costs to Buyer (including reasonable attorney's fees) in connection with or resulting from such claim or appeal.

29. MRB Authority:

Unless otherwise specified herein, the Seller is not delegated Material Review Board (MRB) authority.

30. Priority Rating:

When a priority rating is specified for an item, this is a rated order certified for National Defense use and Seller is required to follow all provisions of the Defense Priorities and Allocation System (DPAS) regulations (15 CFR Part 700).

31. Subcontracting:

Seller agrees that it shall not, without Buyer's written approval, subcontract this Order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase by Seller of standard commercial supplies or raw materials. Seller shall select subcontractors, including suppliers, on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Order.

32. Assignments:

Seller may not assign this Order or any portion hereof, except that claims for monies due or to become due hereunder may be assigned by Seller to a bank, trust company, or other financial institution, including any federal lending agency. Any such assignment shall cover all amounts payable under this Order and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trusts to two or more parties participating in such financing. Payments to an assignee of any monies due to or to become due hereunder shall be subject to setoff or recoupment for any present or future claim or claims which Buyer may have against Seller arising under this and any other defense contract. Seller shall supply Buyer immediately with two copies of any such assignment and shall indicate on each invoice to whom payment is to be made.