

FARS / DFARS FLOW-DOWN CLAUSES FOR SUBCONTRACTS FOR COMMERCIAL ITEMS

I. The following provisions hereby amend or are supplemental to the Terms and Conditions of Purchase. These terms apply as stated in each individual section. Each capitalized term used herein and not otherwise defined will have the same meaning attributed to it in the Terms and Conditions.

A. **Article 8, Pricing and Payment.**

The first sentence is deleted and replaced with the following: "Unless otherwise stated in this Purchase Order, standard payment terms are sixty (60) days from date of receipt of a correct invoice from Seller, or the date of receipt of the Goods by Buyer, whichever is later. All payments will be made in U.S. dollars. Buyer neither guarantees nor is responsible for any liabilities incurred by any Seller's third-party designees under this Purchase Order."

B. **Article 9, Changes,** is deleted and replaced with the following:

Buyer reserves the right at any time without notice to the sureties, if any, to make changes or modifications in drawings, specifications and/or delivery schedule as to any Goods and/or Services covered by this Purchase Order. Buyer will issue the changes in writing ("Change Order"). Any increase or decrease in the price or time for performance resulting from the changes will be equitably adjusted, and the Purchase Order will be modified in writing accordingly. Seller must assert its right to an adjustment under this provision in writing, delivered to Buyer within fifteen (15) days from Seller's receipt of the written Change Order. Failure to agree on the adjustment will be deemed a dispute under this Purchase Order and such dispute will not excuse Seller from continuing performance as changed. Price increases and/or extensions of time for delivery or completion will not be binding on Buyer unless evidenced by a Change Order issued and signed by an authorized representative of Buyer and accepted by Seller.

C. **Article 10, Termination,** is deleted and replaced with the following:

(A) Termination for Default: Buyer may terminate, either in whole or in part, this Purchase Order by written notice to Seller in the event Seller fails to (i) deliver the Goods within the time specified or in accordance with the specifications, (ii) makes progress so as to endanger performance under this Purchase Order, or (iii) perform any of the other provisions of the Purchase Order. Buyer may terminate this Purchase Order if Seller does not cure such failure within ten (10) days after receipt of written notice of default. If Buyer terminates this Purchase Order in accordance with this subparagraph, Seller may be liable to Buyer for any costs associated with Buyer's purchase of Goods similar to those terminated. In the case of a partial termination for default, Seller will continue with performance of the un-terminated portion of this Purchase Order.

(B) Termination for Convenience: Buyer will have the right at any time and for any reason, without any penalty, to terminate, in whole or in part, this Purchase Order or the deliveries specified and the authorizations contained in any shipping schedule given to Seller by Buyer, provided Buyer will provide Seller thirty (30) days' prior written notice of such termination, whereupon this Purchase Order will automatically terminate immediately after the 30th day. Seller will immediately stop all work, place no further subcontracts or orders for materials, services or facilities except as reasonably necessary to complete the non-terminated portion of this Purchase Order, and will continue performance of the work not terminated. Seller will take all reasonable precautions, including as directed by Buyer, for the preservation and protection of the terminated work. Except as otherwise set forth in this provision, Buyer will have no further liability to Seller for termination.

Within forty-five (45) days following receipt of the termination notice, Seller will prepare and submit to Buyer, Seller's termination inventory schedules. The disposition of the terminated work, including but not limited to, inventory, work in process and finished goods, will be at the direction of Buyer. Further, Seller will use all reasonable efforts as directed by Buyer, to sell, use or otherwise dispose of all goods or materials remaining in inventory, and the proceeds of which will be applied to reduce any payments to be made by Buyer under this Purchase Order. Within ninety (90) days of receipt of the termination notice, or as may be extended by mutual agreement of the parties, Seller will submit to Buyer its final termination cost proposal. If Seller fails to submit the proposal within the time allowed, Buyer may reasonably determine on the basis of information available, the amount, if any, due Seller because of the termination and will pay the amount determined.

Subject to the foregoing, Seller and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount may not exceed the total Purchase Order price as reduced by (i) the amount of payments previously made, and (ii) the Purchase Order price of work not terminated. This Purchase Order will be so modified, and the Seller will be paid the agreed amount. This subparagraph will not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

If Seller and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer will pay Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed on above: the Purchase Order price for completed Goods accepted by Buyer not previously paid for, adjusted for any saving of freight and other charges.

In no event will Buyer be liable for any other incidental, special or consequential damages, overhead or other direct or indirect costs, loss of use or lost profits arising out of or related to any Purchase Order.

D. **Article 11.1** is added as follows:

11.1 Confidential U.S. Government Information. Confidential information that is owned by the U.S. Government or in which the U.S. has the right to use and which is provided to Seller either by Buyer or by the U.S. Government under this Purchase Order and unless otherwise directed in writing, will be used by Seller only in performance of its obligations under this Purchase Order. All rights, title and interest in such confidential information will remain with and vest in the U.S. Government. Seller will have no ownership rights in such confidential information nor will Seller have any right to license or sublicense the confidential information without the expressed prior permission of the U.S. Government.

E. The following new sections are added after Article 21 as follows:

22. Stop Work Order. Buyer may at any time and by written order to Seller, require Seller to stop all or any part of the work being performed hereunder for a period not to exceed ninety (90) days, or for such period as Buyer or Customer, and such Customer's government customer may agree under the prime contract ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller will immediately comply with the terms of the Stop Work Order and will take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order. Within the ninety (90) day period (or such other period as agreed to between Buyer and Customer) Buyer will either (i) cancel the Stop Work Order; or (ii) terminate the work covered as provided in Article 10, Termination. If the Stop Work Order is canceled or the ninety (90) day period expires, Seller will resume work and an equitable adjustment as to cost and/or schedule will be made in accordance with Article 9, Changes.

23. North American Free Trade Agreement (NAFTA). Seller will provide annually to Buyer by the specified due date, an accurate and complete NAFTA Certificate of Origin for those parts that qualify for NAFTA and an accurate and complete Country of Origin affidavit for all parts. The NAFTA Certificate of Origin must be completed in accordance with regulations published by the U.S. Department of Treasury in 19 C.F.R. Sec. 181. 11 et seq. and any amendments thereto, and in accordance with instructions issued annually to Seller by Buyer. If Seller fails to comply with this requirement, Buyer will charge back to Seller and Seller will promptly reimburse Buyer for all import duties, penalties, and taxes paid by Buyer as a result of Seller's noncompliance. Buyer reserves the right to charge Seller \$250US non-compliance fee per product part number.

24. Ownership of Materials. All materials, including without limitation, documents, drawings, models, sketches, designs, software, computer tapes and disks, and lists furnished to Seller by Buyer, Customer or by the U.S. Government, will remain the property of Buyer, Customer or the U.S. Government, as the case may be, and will be returned promptly upon completion of the assigned project, or at any time upon written request of Buyer, Customer or the U.S. Government. Seller agrees not to make any copies of any such materials without Buyer's permission and to return any authorized copies with the original materials.

25. U.S. Export Compliance. Certain technical data, technology, software, defense services, defense articles, and commodities (collectively, "Export-Controlled Material") are controlled by either the International Traffic in Arms Regulations ("ITAR", 22 CFR 120-130) or the Export Administration Regulations ("EAR", 15 CFR 730-774) and may require a valid license or other approval from the U. S. Department of State or Department of Commerce prior to export, transfer, re-export, or retransfer to a "Foreign National" or "Foreign Person" (as these terms are defined at EAR § 734.2(b)(2)(ii) and ITAR § 120.16, respectively). An export, transfer, re-export, or retransfer includes the provision of, or the disclosure or transmission (including oral or visual disclosure) of, Export-Controlled Material to a Foreign National or Foreign Person, whether such activity takes place in the U.S. or in another country. Export-Controlled Material provided by Buyer to Seller will identify the regulations applicable to these Export-Controlled Materials. Prior to any temporary or permanent export, transfer, re-export, or retransfer of Export-Controlled Materials to a third party, Seller must secure written approval from Buyer for such export, transfer, re-export, or retransfer. When requesting approval, Seller shall provide to Buyer a copy of, or reference to, the valid U.S. Department of State or Department of Commerce license or other approval authorizing the export, transfer, re-export, or retransfer. If Seller receives Export-Controlled Material under the authority of export authorization(s), Seller agrees to comply with all disclosed riders, conditions, provisos, and other limitations of the authorization, and must promptly notify Buyer, in writing, if Export-Controlled Material was transferred to an unauthorized Foreign National or Foreign Person.

26. Advertising. Seller will not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the Goods as described herein.

27. Equal Opportunity. As applicable, the provisions of the Equal Opportunity Clauses pursuant to Section 202 of Executive Order 11246, as amended, and 41 CFR §60-1.40; as well as 29 CFR Part 471, Appendix A to Subpart A, are herein incorporated by reference. Further, sellers who (1) are not otherwise exempt as provided by 41 CFR §60-1.5, (2) have 50 or more employees and, (3) have a contract, subcontract or purchase order amounting to \$50,000 that is necessary to the completion of a covered federal contract or subcontract are hereby notified of their obligations to file EEO Standard Form 100 and to prepare an affirmative action plan(s) as required under the regulations set forth above. **To the extent not exempt, Seller and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran**

status or disability and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. These regulations require affirmative action by covered prime contractors and subcontractors to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veterans status, or disability. The provisions and requirements of 41 CFR §60-1.4(a)(4) regarding Non-Retaliation for the Disclosure of Compensation Information are hereby incorporated by reference.

28. Governmental Requirements. Seller agrees to comply with all applicable statutes, regulations, laws, and other Governmental requirements. This Purchase Order incorporates by reference the following clauses from the Federal Acquisition Regulation (“FAR”) (48 Code of Federal Regulations, Chapter 1) and Defense Federal Acquisition Regulation Supplement (“DFARS”) (48 Code of Federal Regulations, Chapter 2), with the same force and effect as if they were included in full text. The full text of each clause is available at www.acquisition.gov. Except where the context indicates otherwise, references in the text of incorporated clauses to the “Government” or “Contracting Officer” refer to Buyer, and references to the “Contractor” refer to the “Seller.”

(i) Seller certifies that all Goods provided qualify as a “Commercial Item” pursuant to FAR § 2.101. Seller further agrees to provide Buyer with information establishing such status if requested.

(ii) Seller agrees to incorporate additional provisions beyond those identified in the flow-down clauses or to change provisions as Buyer reasonably deems necessary to comply with the applicable Prime Contract, its amendments or modifications. Seller will accept mandatory flow-down clauses in Buyer’s Prime Contract or modifications of the Prime Contract at no additional cost to Buyer, or such adjustment as the parties mutually agree.

(iii) The dates of these clauses are the dates in effect in the U.S. Government Prime Contract issued to Buyer or Buyer’s Customer. Unless specified otherwise, the term “Contractor” will mean “Seller,” the term “Contract” will mean “Order,” and the term “subcontractor” will mean Seller’s subcontractors.

II. FAR Clauses

<u>TITLE</u>	<u>FAR CITATION</u>
Definitions (Nov 2013)	52.202-1
Contractor Code of Business Ethics and Conduct (Oct 2015)	52.203-13
Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010)	52.203-15
Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)	52.203-19
Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)	52-204-21
Material Requirements (Aug 2000)	52.211-5
Utilization of Small Business Concerns (Nov 2016)	52.219-8
Certification Regarding Knowledge of Child Labor for Listed End Products (Feb 2001)	52-222-18
Child Labor-Cooperation with Authorities and Remedies (Jan 2018)	52.222-19
Prohibition of Segregated Facilities (Apr 2015)	52.222-21
Equal Opportunity (Sep 2016)	52.222-26
Equal Opportunity for Veterans (Oct 2015)	52.222-35
Equal Opportunity for Workers with Disabilities (Jul 2014)	52.222-36
Employment Reports on Veterans (Feb 2016)	52.222-37
Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)	52.222-40
Service Contract Labor Standards (May 2014) (Applicable to Subcontracts for Services)	52.222-41
Combating Trafficking in Persons Alt I (Mar 2015)	52.222-50

<u>TITLE</u>	<u>FAR CITATION</u>
Exemption from Application of the Service Contract Labor Standards to Contract for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (May 2014) (Applicable to Subcontracts for Services)	52.222-51
Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (May 2014) (Applicable to Subcontracts for Services)	52.222-53
Energy Efficiency in Energy-Consuming Products (Dec 2007)	52.223-15
Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)	52.223-18
Buy American – Supplies (May 2014)	52.225-1
Trade Agreements (Nov 2013)	52.225-5
Restrictions on Certain Foreign Purchases (Jun 2008)	52.225-13
Subcontracts for Commercial Items (Nov 2017)	52.244-6
Government Property (Jan 2017)	52.245-1
Inspection of Supplies – Fixed Price (Aug 1996)	52.246-2
Inspection of Services – Fixed Price (Aug 1996)	52.246-4
Responsibility for Supplies (Apr 1984)	52.246-16
Preference for Privately Owned U.S-Flag Commercial Vessels (Feb 2006)	52.247-64

III. DFAR Clauses (Applicable if order is placed in support of a Department of Defense prime contract)

<u>TITLE</u>	<u>DFAR CITATION</u>
Compliance with Safeguarding Covered Defense Information Controls (Oct 2016)	252.204-7008
Item Unique Identification and Valuation (Mar 2016)	252.211-7003
Buy American and Balance of Payments Program – Basic (Dec 2017) (Applies in lieu of FAR 52.225-1)	252.225-7001
Restriction on Acquisition of Certain Articles Containing Specialty Metals (Oct 2014)	252.225-7009
Duty-Free Entry (May 2016)	252.225-7013
Trade Agreements – Basic (Dec 2017)	252.225-7021
Buy American – Free Trade Agreements – Balance of Payments Program – Basic (Dec 2017)	252-225-7036
Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Sep 2004)	252.226-7001
Subcontracts for Commercial Items (Jun 2013)	252.244-7000
Notification of Potential Safety Issues (Jun 2013)	252.246-7003
Contractor Counterfeit Electronic Part Detection and Avoidance System (Aug 2016)	252.246-7007
Transportation of Supplies by Sea – Basic (Apr 2014)	252.247-7023
Notification of Transportation of Supplies by Sea (Mar 2000)	252.247-7024