

STANDARD TERMS AND CONDITIONS FIXED PRICE PURCHASE ORDERS



American Ordnance

We do what we say.®

1. DEFINITIONS. As used in this Purchase AGREEMENT:

- a. "Buyer" - The legal entity issuing this AGREEMENT is American Ordnance LLC (AO).
- b. "Seller" - The legal entity which contracts with Buyer.
- c. "Government" - The Government of the United States.
- d. "Contracting Officer" - The Government Contracting Officer for the prime contract, or authorized representative.
- e. "Prime Contract" - The Prime Contract shall mean the contract between Buyer and US Government or Buyer and its higher-tier contractor who has a contract with the US Government
- f. "FAR" - The Federal Acquisition Regulation.
- g. "AGREEMENT" - The Purchase Order, these terms and conditions, including any supplements thereto, and all specifications and other documents referred to herein.

2. PARTIES. This AGREEMENT is by and between AMERICAN ORDNANCE LLC (AO) a Delaware limited liability company, its subsidiaries and affiliates, ("Buyer"), and the party contracting to provide Products and/or services ("Products") hereunder ("Seller"). This AGREEMENT together with all documents and written provisions expressly incorporated herein by reference shall constitute the entire and exclusive understanding and agreement between the parties, and replaces and supersedes any prior or contemporaneous communications, representations, or AGREEMENTS, whether oral or written, with respect to such subject matter. Only the Buyer's authorized Procurement Representative has the authority to amend the AGREEMENT. Such amendments must be in writing. Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Buyer's authorized Procurement Representative.

3. AGREEMENT ACCEPTANCE. Seller's unqualified acceptance of this AGREEMENT is evidenced by either: (i) signing and returning to Buyer a written acknowledgment of this AGREEMENT, (ii) commencing work under such AGREEMENT, or (iii) acceptance of payment. By acceptance of this AGREEMENT as just defined, Seller agrees to be bound by and comply with all terms and conditions of this AGREEMENT, including any supplements thereto, and all specifications and other documents referred to herein. Any other terms offered by Seller in its acceptance of this AGREEMENT are hereby expressly rejected by the Buyer.

4. PRICE AND INVOICING.

- a. Seller shall furnish the Product indicated in this AGREEMENT at the prices and in the period specified herein. All prices shall include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, except sales taxes, all of which are to be separately shown where applicable. Seller will not charge to Buyer any sales or use taxes on any Products, unless required by state law. Buyer will use all goods or services for resale or in industrial processing or manufacturing or will attach them to taxable goods for sale.
- b. Seller certifies that the prices charged for the Product ordered hereunder will be as low as the lowest prices charged by the Seller to any customers purchasing similar products in the same or smaller quantities and under like circumstances.
- c. Invoicing: Seller shall invoice in duplicate with supporting documentation to include the purchase order number with each shipment.

5. PACKING, MARKING AND SHIPPING.

- a. No charge shall be made by Seller for packaging or storage unless specified on the face of this AGREEMENT.
- b. Unless otherwise specified, all Products shall be packaged, marked, and otherwise prepared in accordance with the Procurement Specifications, Technical Data Package (TDP), applicable laws and regulations, and good commercial practices.
- c. To the extent it may be lawful to do so, Seller shall use commercially reasonable efforts to obtain fair and reasonable shipping rates.

- d. Seller shall mark containers or packages with necessary handling, and loading instructions, shipping information, Buyer's Purchase Order number, item and account number, shipment date, and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment. Bills of lading shall include Buyer's Purchase Order number.
- e. Failure of the Seller to provide any required samples or documentation prior to or with the shipment of Products as stated in this AGREEMENT or in the referenced Quality Assurance Provisions, if any, may result in the assessment by the Buyer of a penalty for each occurrence. Buyer shall have the right to set off any such penalty against any amount owed Seller by Buyer under this AGREEMENT or any other AGREEMENTs between the parties.

6. DELIVERY AND TITLE.

- a. Time is of the essence in the performance of this AGREEMENT. Subject to Article 28, Excusable Delays, Buyer may charge Seller for Buyer's premium transportation costs if necessary to meet Buyer's contract delivery schedule(s).
- b. Unless otherwise stated on the face of the Purchase Order, all Products delivered under this AGREEMENT shall be shipped FOB Destination, and Seller shall prepay all transportation charges.
- c. Seller assumes all risk of loss until Products are delivered to the locations specified in this AGREEMENT. Title of the Product shall pass to Buyer upon arrival of such Product at the delivery locations specified herein, subject to acceptance per Article 7, Inspections and Acceptance; Nonconforming Products below.
- d. Buyer may return, or store at Seller's expense, any Products delivered more than ten (10) days in advance of the delivery date specified for such Products unless early delivery is authorized in writing by the Buyer.
- e. Buyer shall have no obligation to accept over shipments. In the event of an over shipment, Buyer may, at its options: (i) retain Products shipped in excess of the quantities stated in this AGREEMENT, at the price set forth in this AGREEMENT, (ii) return such items to Seller at Seller's expense, or (iii) place into storage the excess quantities of Products at Seller's risk and expense.
- f. Seller agrees to immediately notify Buyer of any delays in meeting the required delivery schedule and the reasons therefore. If Buyer approves a revised delivery date, Seller shall pay any additional transportation charges and Seller shall extend to Buyer an equitable reduction in the AGREEMENT price. The Buyer, in addition to any other remedies provided by this AGREEMENT, reserves the right to deduct an amount of 1.5% of the invoice amount for any delivery made after the scheduled delivery date. Acceptance of late deliveries or waiver of the above stated deduction does not constitute a waiver of any rights by the Buyer.
- g. Schedule Deceleration. Buyer may, for his convenience, extend any part of or the entire delivery schedule as listed on this AGREEMENT by as much as four weeks, at no additional cost to the Buyer, by notifying the Seller in writing a minimum of two weeks prior to the scheduled date to be moved out. Seller shall insure that the shipment takes place so that the scheduled quantity arrives at the Buyer's facility on or no more than ten days prior to the due date.

7. INSPECTION AND ACCEPTANCE; NONCONFORMING PRODUCTS.

- a. All Products, including raw materials, components, intermediate assemblies, tools, equipment, and end Products, may be inspected and tested by Buyer, its customers, higher tier contractors, and (in the case of Products purchased for a U. S. Government contract or subcontract) the U. S. Government, at all reasonable times and places. If the AGREEMENT specifies that any inspection or testing is to be made on Seller's premises, Seller shall provide without additional charge, all reasonable access, facilities and assistance for such inspections and test. In its internal inspection and testing of the Products, Seller shall provide and maintain an inspection system acceptable to the Buyer and Buyer's customers covering the product hereunder. All inspection records relating to the Products shall be available to the Buyer and the Buyer's customer during the performance of this AGREEMENT. Unless specified elsewhere, Seller shall maintain, for a period of seven (7) years after the completion of the last delivery or acceptance of the last lot whichever is longer, quality and inspection records, purchase order files for supplies, equipment, material, or services including supporting documentation, invoices and supporting memoranda.
- b. Final inspection and acceptance by Buyer shall be at destination unless otherwise specified in this AGREEMENT. Such inspection shall be in accordance with the stated requirements of this AGREEMENT. If rejection of a shipment would result from Buyer's normal inspection level under such procedures, Buyer may, at its option, conduct an above-normal level of inspection and charge the seller the reasonable costs thereof. If a lot is rejected, Buyer may screen, rework, repair, and/or test lot at Seller's expense.
- c. No Inspection (including source inspection), tests, approval (including design approval) or acceptance of the Products shall relieve Seller from responsibility for any defects in the Products or other failures to meet the requirements of this AGREEMENT, or for latent defects, fraud, such gross mistakes as amount to fraud, and Seller's warranty obligations. Buyer's failure to inspect, accept or reject Products or failure to detect any nonconformity by inspection shall not relieve Seller from its obligations or any liability, nor impose liabilities on Buyer, its agents or customers.
- d. If the Buyer determines at its sole discretion that any of the Products are nonconforming or otherwise do not meet the requirements of this AGREEMENT, Buyer, at its option and at Seller's expense, may, without limiting any other remedies available to Buyer, require Seller to: (1) rescind this AGREEMENT as to such Products; (2) reject such Products and require the delivery of replacements; (3) retain and correct, any Products that do not conform to the requirements of this AGREEMENT, even if Buyer does not discover the nonconformity until after Buyer uses such goods or manufactures Products made with such goods. Deliveries of replacements shall be accompanied by a written notice specifying that such Products are replacements. If Seller fails to deliver required replacements promptly, Buyer may terminate this AGREEMENT for cause as provided in Article 19(b) hereof. Buyer's right to reject nonconforming deliveries extends to those which arrive late, in the incorrect quantity, or improperly labeled. The Buyer may charge the Seller for expenses of inspection for Products which do not conform to the AGREEMENT. The risk of loss of nonconforming Products remains with the Seller.

8. PAYMENT.

- a. Unless otherwise stated on the face of the Purchase Order, Payment terms are Net 45 days after final acceptance by Buyer's Incoming point of Inspection.
- b. Unless otherwise specified in this AGREEMENT, Progress or Performance Based Payments are not authorized under this AGREEMENT.
- c. Payment of Invoices by the Buyer shall not constitute acceptance of the Products delivered under this AGREEMENT. Invoices shall be subject to appropriate adjustment should Seller fail to meet any of the requirements for this AGREEMENT. Buyer may, at its option and in addition to any other rights provided under this AGREEMENT, withhold payment of up to ten percent (10%) of the total value of this AGREEMENT or individual invoices until Seller satisfactorily fulfills all documentation requirements herein; i.e., provides all required objective quality evidence, and fulfills all other reporting requirements.
- d. Buyer may set off any amount owed by Seller or Seller's affiliates to Buyer against any amount owed Seller by Buyer under this AGREEMENT or any other AGREEMENT between Buyer and Seller, provided Buyer gives Seller prompt written notice of the set off.

9. WARRANTY-QUALITY.

- a. In addition to any other warranties provided at law, express or implied, and without limiting any other warranties that may appear in this AGREEMENT, Seller expressly warrants that all Products shall be manufactured, provided and transported in full and complete conformity and in compliance with all the requirements of this AGREEMENT, specifications, drawings, designs, samples and other descriptions or requirements as Buyer may furnish or specify. Seller expressly warrants that all Products furnished by it or any of its subcontractors or suppliers at any tier shall be (1) merchantable, (2) fit and sufficient for the purposes intended, and (3) free from all deficiencies in materials, workmanship and design, whether or not the Seller has supplied the design for the Products sold hereunder. The warranty period shall commence upon Buyer's acceptance, use or operation of the Products, whichever is later, and continue for a period of (1) year thereafter.
- b. All warranties of Seller or Seller's subcontractors or suppliers at any tier shall run to Buyer and Buyer's customer. Should Seller or Seller's subcontractor or suppliers warranty run for a longer period, Seller shall extend such longer warranty period to Buyer.
- c. This warranty shall survive inspection, test, acceptance, and payment.
- d. Buyer may, at its option, either return for full refund or credit, require prompt correction or replacement of defective or nonconforming Products or replace the nonconforming Products with similar Products from another source and charge the costs occasioned to the Buyer thereby to the Seller. Correction or replacement shall be made at Seller's expense and no correction or replacements of defective or nonconforming products shall be made unless approved by Buyer. Products required to be corrected or replaced shall be subject to this warranty and a new warranty period and to Article 6, Delivery and Title, above, to the same extent as products originally delivered under this AGREEMENT.

10. DISCLOSURE OF INFORMATION.

- a. Any information that Seller discloses or may hereafter disclose to Buyer in connection with the purchase of Products covered by this AGREEMENT, shall not be deemed confidential or proprietary information, and shall be acquired free from any restrictions other than a claim for patent infringement as part of the consideration for this AGREEMENTs, unless Buyer otherwise agrees in writing.
- b. Seller shall maintain as strictly confidential, all technical information, drawings, specifications, prototypes, financial and economic data, and other information that Buyer may disclose to Seller, or that Seller develops in connection with the goods and services supplied under this AGREEMENT or pursuant to a Purchase Order, whether or not identified as confidential or proprietary information. Seller shall not disclose any such information without Buyer's prior written consent, except as may be legally required. Should Seller be legally compelled to disclose any such information, it shall immediately notify Buyer and use all available efforts to resist such disclosure or, if such resistance is unsuccessful, to obtain a protective order.
- c. Upon completion or termination of this AGREEMENT, Seller shall promptly return to Buyer all materials, confidential and proprietary information, classified information, and any copies thereof, and all of Buyer and Buyer's Customer's Property in accordance with Article 45(d), below. The obligations under this Article 10 shall survive the cancellation, termination or completion of this AGREEMENT.
- d. The Seller shall not publicly release any information regarding this AGREEMENT without Buyers prior written approval.

11. SUBCONTRACTS. Seller shall not subcontract for complete or substantially complete parts of the work called for by this AGREEMENT without Buyer's prior written approval.

12. COMPLIANCE WITH LAWS.

- a. Seller represents, warrants and certifies that it shall comply with all applicable international, federal, state, and local laws, ordinances, rules, executive orders and regulations. Such compliance is agreed to be a material element of the performance of this AGREEMENT. Seller further certifies that it shall comply with all laws, rules regulations and executive orders, and any subsequent amendments, including but not limited to, International Traffic in Arms Regulation (ITAR) the Occupational Safety and Health Act, the Resources Conservation and Recovery Act, Employment of the Disabled, Equal Opportunity, Employment of Veterans, Employment Discrimination due to Age, and Utilization of Disadvantaged Business Enterprises, and all applicable requirements of the Federal Fair Labor Standards Act. Without limitation, Seller certifies that all of its activities in providing Products under this AGREEMENT conform and comply with the latest applicable environmental, health, and safety laws and regulations, and any other pertinent international, federal, state, or local statutes, laws, rules or regulations with respect to

chemical substances, hazardous materials, and environmental matters. In addition, for any goods shipped to European destinations, Seller shall comply with the "European AGREEMENT Concerning the International Carriage of Dangerous Goods."

- b. Products supplied under this AGREEMENT may be exported worldwide; including countries that prohibit the importation of goods manufactured with child labor or forced, indentured or convict labor. Seller represents, warrants, and certifies that no goods or services supplied under this AGREEMENT have been or will be produced using forced, indentured or convict labor, or the labor of persons in violation of the minimum working age or minimum wage, hour of service, or overtime laws of the country of manufacture. If Buyer determines that Seller has failed to comply with the requirements of this Article 12, Buyer may terminate this AGREEMENT without further compensation to Seller, and Seller shall defend, indemnify and hold harmless Buyer and Buyer's affiliate, agents, and customers in accordance with the provisions of Article 14, Indemnification, below.
 - c. Seller will defend, indemnify and hold harmless Buyer and Buyer's affiliates, agents, and customers from any loss, damages, or costs arising from or caused in any way by any actual violation of any federal, state, or local law, ordinance, rule, or regulation, or failure by the Seller to (1) have any chemical substances sold hereunder included in the list of approved chemical substances published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act; or (2) provide a completed Material Safety Data Sheet (OSHA Form 20 or equivalent) for any chemical substances sold hereunder as required by any federal, state or local law, ordinance, rule or regulation.
13. **LIEN WAIVERS.** Seller warrants that all Products sold hereunder shall be free of any claim of any nature by any third person or entity, and that Seller shall convey clear and marketable title to Buyer. Seller shall furnish, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this AGREEMENT.
14. **INDEMNIFICATION.** Seller shall defend, indemnify, and hold harmless Buyer and Buyer's affiliates, agents, and customers from any and all damages, liabilities, claims, losses, suits, legal actions, investigations, or any threat of the same, and any costs incurred in connection therewith, including but not limited to, attorney fees and litigation expenses, arising out of or related to Seller's performance of this AGREEMENT or any breach by Seller of this AGREEMENT, or which may result in any way from any accident, injury, libel, or property damage, including but not limited to response or remedial action costs associated with damage to the environment or to natural resources, by reason of any act or omission by Seller, its agents, employees, or subcontractors, except to the extent that the accident, injury, libel, or property damage is due solely and directly to Buyer's negligence. Buyer may, at its sole option: (i) tender such claim to Seller to defend using legal counsel acceptable to Buyer, or (ii) defend such claim by legal counsel of Buyer's choosing and Seller shall reimburse Buyer for all costs of such defense. In either case Seller shall indemnify and hold Buyer harmless from and against all damages arising out of or relating to such claim. If Buyer tenders the defense of a claim to Seller and Seller accepts such defense, then Seller shall be conclusively deemed to have agreed that such claim is subject to indemnification hereunder, and that Seller has no claim or counterclaim against Buyer, all of which Seller shall be deemed to have waived. If Seller assumes the defense of a claim and thereafter fails to vigorously defend such claim, Buyer shall have the right, at its option, to assume the defense of such claim and Seller shall remain obligated to indemnify Buyer hereunder. If Seller assumes the defense of a claim, Seller shall not settle or compromise such claim without Buyer's prior written consent. Seller shall at all times maintain such liability, property damage, and employee liability insurance in a sufficient amount that will protect Buyer from any or all of the foregoing risks, and upon Buyer's request shall supply certificates of insurance.
15. **INTELLECTUAL PROPERTY INDEMNIFICATION.** Seller shall defend, indemnify, and hold harmless Buyer and Buyer's, affiliates, agents, and customers from any and all damages, liabilities, claims, losses, suits, legal actions, investigations, or any threat of the same, that the manufacture or furnishing of Products under this AGREEMENT, or that the sale or use of such Products constitutes an infringement of any patent, trade secret, trademark, service mark, copyright, or related application, or other intellectual property or proprietary information infringement. If any Product is enjoined in any manner due to such infringement, Seller shall, at its own expense and at its option, either: (i) procure for Buyer and its customers the right to continue using said Products, (ii) replace the infringing item with a non-infringing equivalent, (iii) modify the item so that it becomes non-infringing, or (iv) upon showing an inability to do any of the foregoing, remove the Product and refund the purchase price and any related transportation and installation costs. Seller shall at all times maintain such intellectual property insurance in a sufficient amount that will protect Buyer from any or all of the foregoing risks, and upon Buyer's request shall supply certificates of insurance.
16. **ASSIGNMENT.** Seller shall not assign this AGREEMENT or any rights under this AGREEMENT, voluntarily or involuntarily or by operation of law, without the prior written consent of Buyer, and no purported assignments by Seller shall be binding on Buyer without such written consent.
17. **NOTICE OF LABOR DISPUTES.** Whenever an actual or potential labor dispute delays, or threatens to delay, the timely performance of this AGREEMENT, Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute. Buyer has the right to cancel this AGREEMENT without liability to the Seller and obtain the Products or Services elsewhere if the Seller's labor disruption causes a delay exceeding 30 days.
18. **CHANGES.**
- a. Buyer may at any time, by written notice, stop work or make other changes in Seller's Products to be provided under this AGREEMENT. Such changes include, but are not limited to: (i) quantities, (ii) drawings, designs, or other specifications, (iii) packing, method of shipment, or time or place of delivery; and (iv) the amount of property furnished by the Buyer or the Buyer's Customer.
 - b. Subject to Article 28, Excusable Delays (Force Majeure), below, if such changes cause an increase or decrease in the cost of performance of this AGREEMENT, the parties shall promptly negotiate in good faith an equitable adjustment, and the AGREEMENT shall be modified in writing accordingly. Except where an extension is granted in writing by Buyer, any claim for adjustment under this Article 18 shall be deemed to be absolutely and unconditionally waived unless asserted in writing within twenty (20) days from the date of receipt by Seller of the change. Seller shall submit to Buyer in writing any claim for an adjustment under this Article 18 as soon as is reasonably possible, along with a specification of the amount claimed with supporting cost figures.
 - c. Seller may not make any changes to this AGREEMENT without Buyer's express written consent. Buyer's engineering and technical personnel are not authorized to change the Products ordered under this Agreement or any other provision of this AGREEMENT. No change Order will be binding on Buyer unless issued by an authorized representative of Buyer's procurement department.

- d. Nothing in this Article 18, including any disagreement with Buyer as to the equitable adjustment to be made, shall excuse Seller from proceeding with performance of this AGREEMENT as changed.
- e. No changes in process or qualified design, or substitutions of materials or accessories may be made without Buyer's prior written consent. No charges for extras will be allowed unless Buyer has agreed to such extras in writing and the price agreed upon.

19. TERMINATION.

- a. For Buyers Convenience. Buyer may terminate, for its convenience or the convenience of its Customer, all or any part of this AGREEMENT at any time by written notice to Seller. Upon such termination settlement shall be made in accordance with the principles contained in Federal Acquisition Regulation (FAR) 52.249-2 in effect as of the date of this AGREEMENT, except that Seller must submit any claim for equitable adjustment for termination to Buyer within forty-five (45) days after the effective date of termination, or such claim shall be absolutely and unconditionally waived.
- b. For Default by Seller. Subject to Article 28, Excusable Delays, should Seller fail to deliver any goods or services pursuant to the schedule(s) set forth in this AGREEMENT, prosecute the work so as to endanger performance of this AGREEMENT, or fail to comply with any provision contained in this AGREEMENT; such a failure shall be deemed a default by Seller. In the event of Seller's default, Buyer may, in its sole discretion: (i) terminate all or part of this AGREEMENT without further compensation to Seller by providing written notice, (ii) obtain substitute or replacement Products without notice to Seller, and/or (iii) thereafter reject any late goods or services tendered by Seller, even if conforming. Seller shall be responsible for all general, consequential, and incidental damages that Buyer may incur as a result of Seller's failure to meet delivery schedules, including, but not limited to, lost profits, the cost of obtaining goods from an alternate source and/or expedited or premium freight or transportation costs. Alternatively, Buyer in its sole discretion may extend the delivery schedule and/or waive other deficiencies in Seller's performance. In either case, Seller shall extend to Buyer an equitable reduction in the AGREEMENT price. If Buyer approves a revised delivery date, Seller shall pay any additional transportation charges. The rights and remedies of Buyer provided in this Article 19 shall not be exclusive, nor deemed an election remedies, and are in addition to any other rights and remedies provided under this AGREEMENT, or allowed by law. Seller's warranty, intellectual property, confidentiality, and related obligations under this AGREEMENT, and all of Buyer's rights and remedies for any breach by Seller, shall survive Buyer's termination due to Seller's default.
- c. If this AGREEMENT is terminated as provided in this Clause 19 (b), the Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and deliver to the Buyer (1) any completed Products, and (2) such partially completed Products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as the Seller has specifically produced or specifically acquired for performance of this AGREEMENT.
- d. If this AGREEMENT is terminated as provided in Clause 19 (b), the Buyer, in addition to the rights specified in 19 (c) shall be entitled to payment from the Seller equaling all amounts Buyer has paid to Seller for performance of the contract less the price for any completed items Buyer acquires under Clause 19 (b) plus the cost to the Seller of any items Buyer acquires under Clause 19 (b).
- e. If, after notice of the termination of this AGREEMENT under this Article 19 (b) it is determined that the failure to perform is subject to Article 28 Excusable Delay, such notice of default shall be deemed to have been issued pursuant to Clause 19 (a) hereof, and the rights and obligations of the parties hereto shall be governed by Clause 19 (a).

20. NO WAIVER. The failure of Buyer to insist upon the performance of any provision of this AGREEMENT, or to exercise any right or privilege granted to the Buyer under this AGREEMENT, shall not be construed as waiving such provision or any other provision of this AGREEMENT, and the same shall continue in full force and effect. If any provision of this AGREEMENT is found to be illegal or otherwise unenforceable by any court or other judicial or administrative body, the other provisions of this AGREEMENT shall not be affected thereby, and shall remain in full force and effect.

21. GOVERNING LAW, JURISDICTION AND VENUE. The UN Convention of Contracts for the International Sale of Goods (CISG) shall *not* govern the rights and obligations of the parties under this AGREEMENT. Rather, Irrespective of the place of performance, this AGREEMENT shall be interpreted, governed, construed and enforced in accordance with the federal common law of government contracts as enunciated, limited and applied by federal judicial bodies and Boards of Contract appeals, and other judicial and quasi-judicial agencies of the federal government, including (without limitation) duties of good faith, fair dealing, reasonable action engrafted by such bodies, courts and boards upon the rights, duties, privileges and obligations of the Government and Contractor under FAR and DFAR clauses. To the extent that the Federal law of Government contracts, as just defined, is not determinative, the laws of the state in which the Product is delivered to shall apply, without regard to its conflicts of law principles. Seller waives any objection based on lack of personal jurisdiction, improper venue or *forum non conveniens*.

22. DEMILITARIZATION. Seller agrees to comply with and be bound by the provisions of the Defense Demilitarization Manual, DoD 4160.21-M-1(current revision) which is incorporated herein by reference, for all work performed under this AGREEMENT.

23. DISPUTES/CLAIMS.

- a. Claims for Adjustment. For any claims seeking an equitable adjustment or other relief in excess of \$100,000 submitted by Seller under this AGREEMENT, Seller shall submit to Buyer a signed certificate that states as follows, substituting Seller's legal name where indicated: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the AGREEMENT adjustment for which [the Seller] believes that American Ordnance LLC is liable; and that I am duly authorized to certify the claim on behalf of [the Seller]." If requested by Buyer, Seller shall identify the portion of its claim for which it believes the Government is liable and shall execute the certification above, substituting "the Government" for "American Ordnance LLC" as to such amount.
- b. Government Decisions; Definition of Pass-Through Preconditions. If Seller presents a Request for Equitable Adjustment or certified claim to the Buyer, and Buyer believes in good faith that Buyer should be entitled to recover from the Government in whole or in part what the Seller seeks from the Buyer (a "Pass-Through Claim"), then the Buyer may notify the Seller that Buyer regards all (or the relevant part) of the Seller's REA or claim to be a Pass-Through Claim. If the Seller disagrees, then whether the Seller's REA or claim is a Pass-Through Claim shall be determined by arbitration under subsection d. below. If the parties

agree (or the arbitrator determines) that the Seller's REA or claim is (in whole or in part) a Pass-Through Claim, then the parties agree to submit the Pass-Through Claim under the Buyer's sponsorship for decision by the Contracting Officer under the Prime Contract "Disputes" clause. The Buyer shall offer the Seller a fair and reasonable Sponsorship Agreement under which the Seller is assured of the opportunity (at its own expense) (i) to present all evidence and arguments in its possession that it believes in good faith to be pertinent to said decision, (ii) to appeal any decision with which the Seller disagrees to any court or board of competent jurisdiction, (iii) to appeal any adverse decision to a higher court until all appeals have been exhausted, and (iv) to do the foregoing with legal counsel chosen by Seller who is also acceptable to the Buyer, such acceptance not to be unreasonably withheld or delayed. If the Buyer tenders such a Sponsorship Agreement to Seller, and Buyer honors its obligations there under, then Seller shall be entitled to recover on its Pass-Through Claim only if it executes and honors the Sponsorship Agreement within such time constraints as Buyer may reasonably specify, and any decision rendered under the Prime Contract Disputes clause that is binding upon the Buyer shall also be binding upon Buyer and Seller with respect to this AGREEMENT, unless such decision is based upon Non-Germane Considerations.

- c. Non-Germane Considerations. A Government Decision is based upon a Non-Germane Consideration if it is based upon facts or defenses that would not be germane in determining whether Seller is entitled to recover an equitable adjustment, damages, or other remedies from the Buyer if Seller sought such remedies in a separate legal action. Examples of Non-Germane Considerations include (1) the inability of Buyer to obtain reimbursement from the Government on a claim made by Seller under the Changes clause because Buyer had previously executed a release that waived its right to recover through such a claim against the Government, and (2) the inability of Buyer to obtain reimbursement from the Government on a delay claim made by the Seller because of concurrent delay that is the result of acts or omissions of the Buyer and its other subcontractors, but is not due to any fault or neglect of the Seller. Disputes as to whether a Government Decision is based upon Non-Germane Considerations shall be resolved by arbitration under subsection d. below.
- d. Resolution of Other Disputes. Any dispute between Buyer and Seller that is not resolved pursuant to the foregoing provisions of this AGREEMENT shall upon written notice, be referred to the respective representatives for each party. The parties, through their representatives and/or senior management shall confer in good faith to attempt to resolve the matter. If the parties are unable to fully resolve the dispute, then the matter shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association upon the demand of either party. Arbitration proceedings shall be conducted by a sole arbitrator, who must be an attorney with at least 10 years of experience in the litigation of federal contract claims. Arbitration proceedings shall be conducted in _____ (insert a major city near Seller's offices) if the demand for arbitration is made by the Buyer, and in _____ (insert a major city near the Buyer's offices) if the demand for arbitration is made by the Seller. Either party may seek preliminary equitable relief in any court of competent jurisdiction pending the decision of the arbitrator.
- e. Seller to Continue Performance. Seller shall proceed diligently with performance of this Purchase Order pending final resolution of any request for relief, claim, dispute, appeal or action arising under or in connection with this AGREEMENT and pending such resolution shall comply with Buyer's written direction, if any, on the matters at issue.

24. SURVIVORSHIP. On termination of this AGREEMENT for any reason, all warranty, infringement, confidentiality, dispute, indemnification, and liability obligations and limitations, and those terms, which by their nature are intended to survive, will survive. Termination will not prejudice either party to require performance of any obligation due at the time of termination.

25. INDEPENDENT CONTRACTOR RELATIONSHIP. Buyer and Seller are independent contractors of one another. Nothing in this AGREEMENT is intended to or will constitute either party as an agent, legal representative, or partner of the other for any purpose.

26. RIGHTS IN INVENTIONS AND INTELLECTUAL PROPERTY.

- a. Any invention or intellectual property that Seller first makes or conceives in the performance of this AGREEMENT or under a Purchase Order, or which is derived from or based on the use of information supplied by Buyer, shall be considered a "work made for hire" and shall also be Buyer's Property, which Buyer shall own solely and exclusively. Seller shall execute any document and take all appropriate measures, as Buyer deems necessary, to perfect Buyer's title to the same.
- b. All such Buyer's Property shall remain Buyer's personal property, unless the parties otherwise agree in writing. All of Buyer's Property furnished to Seller shall be deemed to be proprietary property of the Buyer and shall remain Buyer's personal property, whether or not it is marked as such with any restrictive legend.

This paragraph shall apply if the Products are hardware or software to be designed or developed and such design or development is paid for by Buyer, whether itemized separately or included in the price for one or more Products to be furnished. Seller shall disclose and assign on demand, and it does hereby assign, to Buyer any and all inventions, improvements, or developments, each whether patentable or not, which it may make or assist in making in the course of such development. Seller assigns, and agrees hereafter on demand to assign, to Buyer, all patents, copyrights, and applications for patents or copyrights, in connection with any such invention, improvement, or development and to do all acts and to execute all instruments which Buyer may request. Seller shall cause every appropriate person employed by or associated with it to enter into an AGREEMENT under which such person shall disclose and assign to Seller or Buyer all inventions and execute all papers and do all acts deemed necessary by Seller or Buyer relative to assignment and patent protection of such inventions. In addition, all information, ideas, results, and data developed by Seller as a result of developmental work contemplated by this section shall be transmitted by Seller only to Buyer and shall become the exclusive property of Buyer.

27. WORK ON BUYER'S OR ITS CUSTOMER'S PREMISES.

- a. Seller shall comply with all of Buyer's and/or Buyer's customer's safety and security procedures for all work that Seller, its employees, agents, or subcontractors may perform on either Buyer's or its customer's premises. Seller shall also take all necessary precautions to prevent the occurrence of any injury to person or damage to property during the performance of such work on Buyer's or its customer's premises. Seller shall at all times be responsible for the safety of its employees and operations. Seller shall defend, indemnify, and hold harmless Buyer and/or Buyer's customer against any claim that results from any act or omission by Seller, its employees, agents, and subcontractors, which is related to its work on Buyer's or its customer's premises. Seller shall maintain comprehensive general liability, automobile liability, and employers' liability insurance with limits as Buyer may reasonably require, as well as appropriate workers' compensation insurance. Upon

Buyer's request, Seller shall provide to Buyer verification that the required insurance is in effect during any period while this AGREEMENT or any Purchase Order issued hereunder remains in effect.

- b. Seller shall comply with any and all federal, state, or local drug or alcohol abuse and/or drug testing statutes or regulations for any of its employees who perform work on Buyer's or its customer's premises.
- c. Seller shall conduct a criminal background investigation of its employees before assigning such employee to perform work on Buyer's or its customer's premises. Buyer may request, at its discretion, from Seller documentation of the completion of the investigation for any employee assigned to work on Buyer's or its customer's premises. Seller shall not assign any person to perform work on Buyer's or its customer's premises who has been convicted of any felony, or any crime of dishonesty or violence, whether the crime is a felony or a misdemeanor.
- d. Seller shall impose the requirements of this Article 28 with its agents and subcontractors who will perform work on Buyer's or its customer's premises pursuant to this AGREEMENT or under a Purchase Order.
- e. If Seller fails to comply with any of the provisions of this Article 27, Buyer may immediately expel Seller's employee(s) from Buyer's or its customer's premises and Buyer may also terminate this AGREEMENT or any Purchase Order for default.
- f. Whenever performing on-site services, the Seller shall at all times keep its work areas, including its storage areas, free from the accumulations of waste material or rubbish. In addition, prior to completion of the work, the Seller shall remove any rubbish from its work areas and all of its tools, scaffolding, equipment, and materials that are not the property of the Buyer or the Buyer's Customer. Upon completion of the service, the Seller shall leave its work areas in a clean, neat and good condition satisfactory to the Buyer.
- g. The Buyer and the Buyer's Customer have the right to conduct surveillance of the Seller's work when such work is being performed on the premises of the Buyer or the Buyer's Customer. Notwithstanding the Seller's responsibility for the safety of its employees and operations under this AGREEMENT, the Buyer or the Buyer's Customer has the authority to stop any work or practice that, if allowed to continue, could reasonably be expected to result in the death or serious physical harm to any person, generate major system damage, or endanger in any way the property or mission of the Buyer or Buyer's Customer. This authority allows for the stoppage of any work or practice until such time that the perceived danger has been eliminated to the satisfaction of the Buyer or the Buyer's Customer.
- h. The presence of the Buyer or Buyer's Customer and the fact that the Buyer or Buyer's Customer conducts or provides any inspections, investigations, surveys, oversight, concurrence, approvals, advice or recommendations shall not affect the Seller's responsibility for safety under this AGREEMENT.
- i. The Buyer or the Buyer's Customer may at anytime deny the Seller or Seller's employee's access to the premises of the Buyer or the Buyer's customer if it is deemed to be not in the public interest to allow such access because of the misconduct of the Seller or its employees for reasons of safety or security. Any such denial shall be without liability to the Buyer.

28. EXCUSABLE DELAYS (FORCE MAJEURE). Neither party shall be in default of its obligations under this AGREEMENT by reason of any delay or failure to perform if the delay or failure is with the fault or negligence of that party including as examples, any of the enumerated causes listed in FAR 52.249-14 (a) Excusable Delays (APR 1984). Seller shall promptly notify Buyer when an excusable delay has occurred or when Seller reasonably believes that such occurrence of an excusable delay is inevitable. If the work suspension or any material change in delivery schedule lasts more than thirty (30) calendar days, the Buyer may cancel the subject Purchase Order without liability to the Seller by providing written notice to the Seller.

29. PROHIBITION OF GRATUITIES.

- a. Seller represents and warrants that it and its officers, employees, agents and representatives have not offered or given, and agrees that it and its officers, employees, agents and representatives will not offer or give, any kickbacks or gratuities in the form of entertainment, gifts, or otherwise to any officer or employee of Buyer or Buyer's customer with a view toward securing this or any other Purchase Order, any favorable treatment with respect to the awarding or amending of this or any other Purchase Order, or the making of any determination with respect to Seller's right or duties.
- b. For any breach of Seller's obligations under this Clause, Buyer shall have, in addition to any other rights provided by this AGREEMENT, the right to terminate any or all AGREEMENTS with Seller for cause, and to recover from Seller the amount of any gratuity, plus all reasonable costs (including attorney fees) incurred in seeking such recovery. (Seller is also advised that, if this AGREEMENT is issued under a prime contract or subcontract of the Government, any gratuity offered or given in violation of this Clause may also entail liabilities of Seller under applicable statutes, regulations, or other Purchase Order provisions.)

30. INSOLVENCY. Buyer may terminate this Purchase Order for default if the Seller files a voluntary petition under any federal or state bankruptcy act, is adjudicated a bankrupt, becomes insolvent or commits an act of bankruptcy, or engages in any act which reasonably causes the terminating party to deem itself insecure.

31. LIMITATION OF LIABILITY. Notwithstanding any other provisions of this AGREEMENT, under no circumstances shall Buyer be liable or held responsible for consequential, incidental, special, or indirect loss or damage including whether such loss or damage arises from contract, negligence, recklessness, strict liability, or otherwise. In no event, however, shall any liability of Buyer exceed the price allocable to the Product that initially gives rise to the claim. **The foregoing shall constitute the sole and exclusive remedy of Seller, and the sole and exclusive liability of Buyer. Seller hereby waives, releases, and renounces all other rights, claims, and remedies against Buyer.**

32. BUYER'S REMEDIES. Buyer's remedies are cumulative and in addition to all remedies set forth herein or otherwise legally available. Buyer may exercise its remedies either individually or cumulatively. Buyer's remedies shall include, but not be limited to, incidental and consequential damages and the cost of

any recall campaigns or other corrective actions. Buyer's selection of any particular remedy, or its forbearance in exercising any remedy available to it, shall not constitute an election or waiver of any other remedy.

33. **CHANGE IN OWNERSHIP.** As used herein, a "Change in Ownership" shall occur if: (a) a person or group of persons acting in concert directly or indirectly acquire more than 50% of Seller's or Seller's parent's voting power subsequent to the date that the parties enter into this AGREEMENT; (b) Seller or Seller's parent sells, leases, transfers or otherwise disposes of substantially all of Seller's or Seller's parent's assets, or of the assets relating to the Product Seller produces for Buyer under this AGREEMENT; (c) Seller or Seller's parent becomes involved in a merger, reorganization, consolidation, share exchange, recapitalization, business combination, liquidation or dissolution or similar transaction; or (d) Seller or Seller's parents is the subject of a tender or exchange offer for any of the outstanding shares of its capital stock. Seller shall provide notice to Buyer of any pending or possible Change in Ownership, as soon as Seller becomes aware of the events giving rise to the Change. If Seller is or becomes the subject of a Change in Ownership, Buyer may at its discretion terminate this AGREEMENT or a Purchase Order for default under Article 19(b) above, Seller's Default, at no cost to Buyer, and notwithstanding any termination, Seller shall take all measures reasonably necessary to protect Buyer's Property and any proprietary information. Pending termination or in lieu of termination, Buyer may require that Seller provide adequate assurance of performance.
34. **AUTHORIZATION.** Seller represents and warrants to Buyer that Seller has the authority and right to enter into this AGREEMENT without breaching or violating any fiduciary, contractual, statutory, or other legal obligations.
35. **THIRD PARTY BENEFICIARIES.** Nothing in this AGREEMENT, expressed or implied, is intended to confer any rights, benefits, remedies, obligations, or liabilities on any individual or entity other than the parties to this AGREEMENT, or their respective successors or assigns.
36. **ORDER OF PRECEDENCE.** Any inconsistency in this AGREEMENT shall be resolved by giving precedence in the following order: (a) the Purchase Order; (b) Statement of work; (c) Special Provisions, if any; (d) Attachments, Exhibits, or Annexes, if any, and; (e) these Standard Terms and Conditions..
37. **SEVERABILITY.** In the event that any provision of this AGREEMENT or any Purchase Order may be invalid, unlawful or incapable of being enforced by a rule of law or public policy, all other provisions shall, nonetheless, remain in full force and effect.
38. **SECTION HEADINGS.** Section headings are for the convenience of the parties only and shall not be used to construe or interpret the terms and conditions contained herein.
39. **IMPORT and EXPORT COMPLIANCE.** Seller shall comply with all laws, ordinances, rules and regulations governing the import and export of the Seller's Product provided under this AGREEMENT and any components and raw materials used in the manufacture of the Products. This includes, but not limited to, the International Traffic-in-Arms Regulations ("ITAR"), 27 CFR 55, and the Foreign Corrupt Practices Act, with respect to the Products furnished hereunder. Seller certifies that it has not and will not pay, offer or agree to pay, for the purpose of soliciting, promoting or otherwise securing the sale of defense Products and services to or for the use of the armed forces of an international organization or non-U.S. country, any: (i) fees or commissions in excess of \$1,000, or (ii) political contribution (including any gift, rebate or payment of expenses) to a non-U.S. person or entity. If Seller intends to conduct work for Buyer in a foreign country, including but not limited to the use of Seller's own facility outside of the U.S., or the use of a foreign affiliate or unrelated subcontractor, Seller shall provide advance written notification to Buyer. Seller is responsible for obtaining all import and export control licenses required by law, regulation or as otherwise requested by the Buyer. Seller shall flow the substance of this clause in any subcontracts. Seller will defend, indemnify and hold harmless Buyer and Buyer's affiliates, agents, and customers from any loss, damages, or costs arising from or caused in any way from the Seller's failure to comply with any law, ordinance, rule, or regulations governing the import or export of the Products provided under this AGREEMENT and any components or raw materials used in the manufacture of the Products.
40. **PRIORITY RATINGS.** When a priority rating is specified on the face of the Purchase Order for a product or service, this is a rated order certified for national defense use and Seller shall follow all provisions of the then-current Defense Priorities and Allocations System Regulations (DPAS), including delivering such Products or Services to Buyer before delivering any non-defense Product.
41. **PROHIBITED GOODS AND SERVICES.** The U.S. Government prohibits the importation of goods or the purchase of services, and certain financial transactions, from certain countries, which list may change from time to time. Seller represents and warrants that it and its officers, employees, agents and representatives have not purchased or otherwise obtained, and agrees that it and its officers, employees, agents and representatives will not purchase or otherwise obtain goods or services, either directly or indirectly, from any prohibited country in providing goods or services to Buyer under this AGREEMENT. Seller may obtain an updated list of such countries by visiting the U.S. Treasury Department's website at <http://www.treas.gov/ofac/>.
42. **COMMUNICATION WITH BUYER'S CUSTOMER.** The Buyer shall be solely responsible for all liaison and coordination with the Buyer's customer, including the U.S. Government, as it affects the applicable Prime Contract, this AGREEMENT, and any related contract. The Seller is hereby advised that changes to this AGREEMENT can only be made by the Buyers Authorized Procurement Representative. No other employee or representative of the Buyer or the Buyer's Customer, whether in the act of technical supervision or administration is authorized to make any commitment to the Seller or to instruct the Seller to perform, stop, or terminate work, or to incur any obligation under this AGREEMENT.
43. **ELECTRONIC CONTRACTING.** The Buyer may issue and transmit Purchase Orders and attachment (s) electronically and execute such Purchase Orders by electronic signature in lieu of a hard copy Purchase Order. Such electronic transmission may be the only document that the Seller will receive for placement of any Purchase Order. Both parties agree that the validity of the Purchase Order, and acknowledgement by Seller, shall not be contested on the basis that the documents contain an electronic signature.
44. **PARTS OBSOLESCENCE.** The Buyer may desire to place additional orders for items purchased hereunder. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this AGREEMENT.

45. **BUYERS PROPERTY.** Except when the AGREEMENT bears a U.S. Government prime contract number, Seller shall maintain and administer a program for the maintenance, repair, protection, and preservation of Buyers Property that is acceptable to the Buyer. Seller assumes risk of and shall be responsible for any loss or damage to Buyer's property except for reasonable wear and tear and except to the extent that such property is incorporated in the Products delivered under this AGREEMENT. The Buyer makes no warranty, express or implied, with respect to the serviceability and or suitability of property of performance of this AGREEMENT. Any repairs, replacements or refurbishments shall be at the Seller's expense. Upon completion of this AGREEMENT or at such earlier times as Buyer may request, Seller shall submit, in acceptable form, inventory schedules covering all items of Buyer's property pertaining to this AGREEMENT. In addition, upon the request of the Buyer, the Seller may be required to furnish a list of all Buyer property required to support any follow-on requirement. This list shall be in an acceptable format and identify the category, quantity and acquisition cost. The Seller shall not use the Buyer's property in the performance of any other AGREEMENT without the prior written approval of the Buyer.

46. **SPECIAL U.S. GOVERNMENT PROVISIONS.** The provisions set forth hereunder shall apply only if this AGREEMENT bears a U.S. Government prime contract number. By acceptance of this AGREEMENT, Seller hereby agrees to flow down the applicable FAR clauses to its lower-tier subcontractors.

- a. Audits. Seller agrees that its books and records and its plans or any such part thereof as may be engaged in the performance of this AGREEMENT, shall at all reasonable times be subject to inspection and audit by any person designated by the head of any executive department of the U. S. Government.
- b. Quality Control. Except as otherwise provided in this AGREEMENT, Seller's system of Quality Control during the performance of this AGREEMENT shall be in accordance with the specifications as are required by Buyer's prime contract or higher tier AGREEMENT.
- c. Modification. Seller agrees it will negotiate AGREEMENT modification(s) in good faith to incorporate additions, deletions, and changes to the clauses set forth below if Buyer deems them necessary to comply with Buyer's Contract or modifications to Buyer's Contract. If any such modification to this Purchase Order causes an increase or decrease in the cost, or the time required for the performance, of any part of the work under this AGREEMENT, an equitable adjustment shall be made pursuant to the "Changes" clause of this Purchase Order.
- d. Government Property. Seller shall maintain and administer a program for the maintenance, repair, protection, and preservation of Buyer and Government property in accordance with FAR 52.245-1, June 2007. Seller assumes risk of and shall be responsible for any loss or damage to Government property except for reasonable wear and tear and except to the extent that such property is incorporated in the Goods delivered under this AGREEMENT. The Buyer or Government makes no warranty, express or implied, with respect to the serviceability and or suitability of property of performance of this AGREEMENT. Any repairs, replacements or refurbishments shall be at the Seller's expense. Upon completion of this Order or at such earlier times as Buyer may request, Seller shall submit, in acceptable form, inventory schedules covering all items of Buyer and Government property pertaining to this AGREEMENT. In addition, upon the request of the Buyer, the Seller may be required to furnish a list of all Buyer and Government property required to support any follow-on requirement. This list shall be in an acceptable format and identify the category, quantity and acquisition cost. To the extent that such use will not interfere with Seller's performance of this or other AGREEMENTS from Buyers, this clause shall not limit the use by the Seller of property to which the Government has title in the production of end items on direct Government Order; however, nothing herein will be deemed to contravene the rights of the Government under FAR 52.245-1.
- e. Executive Order 13201. Notification of Employee Rights Concerning Payment of Union Dues or Fees. The Seller shall comply with Executive Order 13201 dated February 17, 2001 and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.
- f. FAR Clauses. The following clauses of the FAR are incorporated herein by reference, as applicable, and made part hereof with the same force and effect as if they were given in full text, including any notes following the clause citations, to this AGREEMENT. The date of each clause is specified; however, the clause n effect in the Buyer's Contract with its Customer on the date of this AGREEMENT, if necessary, to each such clause shall be made to be consistent with the intent of the changes set forth below. In the following FAR and DFARS clauses, unless otherwise, "Contractor" or "Offeror" shall mean "Seller", "Government" or "United States" shall mean "Buyer", "Contract" shall mean this AGREEMENT, and "Contracting Officer", "Administrative Contracting Officer" and "ACO" shall mean "Buyer's Representative", unless otherwise noted.

I. CLAUSES APPLICABLE TO ALL PURCHASE ORDERS

FAR	52.202-1	Definitions (July 2004)
FAR	52.203-3	Gratuities (April 1984)
FAR	52.203-5	Covenant Against Contingent Fees (April 1984)
FAR	52.203-8	Cancellation, rescission or recovery of funds for illegal or improper activities (January 1997)
FAR	52.203-13	Contractor Code of Business Ethics and Conduct
FAR	52.204-4	Printed or Copied Double-Sided on Recycled Paper (August 2000)
FAR	52.208-6	Marking of Leased Vehicles (April 1984)
FAR	52.209-3	First Article Approval – Contractor Testing (September 1989)
FAR	52.209-4	First Article Approval – Government Testing (September 1989)

FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (December 2001)

FAR 52.211-1 Availability of Specifications (August 1998)

FAR 52.211-5 Material Requirements (August 2000)

FAR 52.211-15 Defense Priority & Allocation Requirements (September 1990)

FAR 52.213-4 Terms and Conditions – Simplified Acquisitions (December 2007)

FAR 52.215-1 Instructions to Offerors – Competitive Acquisitions (January 2004)

FAR 52.215-9 Changes or Additions to Make or Buy Program (October 1997)

FAR 52.215-18 Revision or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pension (July 2005)

FAR 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (October 1997)

FAR 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (October 1997)

FAR 52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (September 2005)

FAR 52.219-28 Post-Award Small Business Program Representation (June 2007)

FAR 52.222-1 Notice to the Government of Labor Disputes (February 1997)

FAR 52.222-3 Convict Labor (August 1996)

FAR 52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (July 2005)

FAR 52.222-8 Payrolls and Basic Records (February 1988)

FAR 52.222-11 Subcontracts (Labor Standards) (July 2005)

FAR 52.222-12 Contract Termination – Debarment (February 1988)

FAR 52.222-13 Compliance with Davis Bacon and Related Act Regulations (February 1988)

FAR 52.222-19 Child Labor – Cooperation with Authorities and Remedies (August 2007)

FAR 52.222-20 Walsh-Healey Public Contracts Act (December 1996)

FAR 52.222-21 Prohibition of Segregated Facilities (February 1999)

FAR 52.222-26 Equal Opportunity (March 2007)

FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (December 2004)

FAR 52.222-41 Service Contract Act of 1965 (November 2007)

FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

FAR 52.222-43 Fair Labor Standards Act and Service Contract Act-Price (November 2000)

FAR 52.223-3 Hazardous Material Identification and Material Safety (January 1997)

FAR 52.223-4 Recovered Material Certification (October 1997)

FAR 52.223-5 Pollution Prevention and Right –to-Know Information (August 2003)

FAR 52.223-6 Drug-Free Workplace (May 2001)

FAR 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products (August 2000)

FAR 52.223-10 Waste Reduction Program (August 2000)

FAR 52.223-11 Ozone Depleting Substances (March 2001)

FAR 52.223-12 Refrigeration Equipment and Air Conditioners (May 1995)

FAR	52.224-2	Privacy Act (April 1984)
FAR	52.225-1	Buy America Act –Supplies (June 2003)
FAR	52-225-3	Buy American Act-North American Free Trade AGREEMENT-Israeli Trade Act (August 2007)
FAR	52.225-8	Duty Free Entry (February 2000)
FAR	52.225-10	Notice of Buy American Act/Balance of Payments Program Requirement-Construction Materials (May 2002)
FAR	52.225-11	Buy American Act- Construction Materials under Trade Agreements (August 2007)
FAR	52.225-13	Restrictions on Certain Foreign Purchases (February 2006)
FAR	52.227-3	Patent Indemnity (April 1984)
FAR	52.227-13	Patent Rights-Acquisition by the Government (December 2007)
FAR	52.228-4	Workers' Compensation and War-Hazard Insurance Overseas (April 1984)
FAR	52.228-5	Insurance-Work on a Government Installation (January 1997)
FAR	52.228-7	Insurance – Liability to Third Persons (March 1996)
FAR	52.228-8	Liability and Insurance – Leased Motor Vehicles (May 1999)
FAR	52.229-3	Federal, State and Local Taxes (April 2003)
FAR	52.232-17	Interest (June 1996)
FAR	52.232-23	Assignment of Claims (January 1986)
FAR	52.232-25	Prompt Payment (October 2003)
FAR	52.237-2	Protection of Governments Buildings, Equipment and Vegetation (April 1984)
FAR	52.237-3	Continuity of Services (January 1991)
FAR	52.242-13	Bankruptcy (July 1995)
FAR	52.242-15	Stop-Work Order (August 1989)
FAR	52.242-17	Government Delay of Work (April 1984)
FAR	52.243-1	Changes – Fixed Price – Alternate II (April 1984)
FAR	52.244-5	Competition in Subcontracting (December 1996)
FAR	52.244-6	Subcontracts for Commercial Items (March 2007)
FAR	52.245-1	Government Property (Fixed-Price Contracts) (June 2007)
FAR	52.246-2	Inspection of Supplies-Fixed Price (August 1996)
FAR	52.246-3	Inspection of Supplies – Cost Reimbursement (March 2001)
FAR	52.246-4	Inspection of Services – Fixed Price (August 1996)
FAR	52.247-63	Preference for US Flag - Air Carriers (June 2003)
FAR	52.247-64	Preference for Privately Owned US Flag Commercial Vessels (February 2006)
FAR	52.248-1	Value Engineering (February 2000)
FAR	52.252-2	Clauses Incorporated by Reference (February 1998)
FAR	52.252-6	Authorized Deviations in Clauses (April 1984)
FAR	52.253-1	Computer Generated Forms (January 1991)

DFARS 252.204-7000 Disclosure of Information (December 1991)

DFARS 252.204-7003 Control of Government Personnel Work Product (April 1992)

DFARS 252.204-7005 Oral Attestation of Security Responsibilities (November 2001)

DFARS 252.208-7000 Intent to Furnish Precious Metals as Government-Furnished Material (December 1991)

DFARS 252.209-7001 Disclosure of Ownership or Control by the Government of a Terrorist Country (October 2006)

DFARS 252.209-7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Terrorist Country (December 2006)

DFARS 252.211-7005 Substitutions for Military or Federal Specifications and Standards (November 2005)

DFARS 252.223-7001 Hazard Warning Labels (December 1991)

DFARS 252.223-7002 Safety Precautions for Ammunition and Explosives (May 1994)

By accepting of this order, Seller hereby certifies that it and its sub tier contractors (if any) are, on the date of this order, in compliance with DOD Contractors Safety Manual for Ammunition and Explosives, DOD 4145.26-M as mandated by the DFAR clause 252.223-7002, Safety Precautions for Ammunition and Explosives; or with NAVEAS OP 5, or AMCR 385-100:

Seller shall immediately notify Buyer in writing:

1. If, subsequent to the date of this order, Seller or Seller's sub tier contractors (if any) receives a "Non-Compliance" rating as a result of a Government Safety Audit (whether related to this order or not).
2. If ammunition and explosives utilized for performance of this order are handled at any location other than the location(s) seller identified in its offer, DFAR clause 252.223-7003, Change In Place of Performance-Ammunition and Explosives, will apply.
3. If a mishap involving Ammunition and Explosives occurred.

DFARS 252.223-7004 Drug-Free Workforce (September 1988)

DFARS 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives. (September 1999)

DFARS 252.225-7001 Buy American Act and Balance of Payments Program (June 2005)

DFARS 252.225-7002 Qualifying Country Sources as Subcontractor (April 2003)

DFARS 252.225-7014 Preference for Domestic Specialty Metals (June 2005)

DFARS 252.225-7025 Restriction on acquisition of forgings (July 2006)

DFARS 252.225-7030 Restriction on Acquisition of Carbon, Alloy and Armor Steel Plate (December 2006)

DFARS 252.227-7000 Non-Estoppel (October 1966)

DFARS 252.227-7013 Rights in Technical Data-Noncommercial items (November 1995)

DFARS 252.227-7018 Rights in noncommercial technical data and computer software-Small Business Innovation Research (SBIR) Program (June 1995)

DFARS 252.227-7019 Validation of Asserted Restrictions – Computer Software (June 1995)

DFARS 252.227-7027 Deferred Ordering of Technical Data or Computer Software (April 1988)

DFARS 252.227-7033 Rights in Shop Drawings (April 1966)

DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (September 1999)

DFARS 252.231-7000 Supplemental Cost Principles (December 1991)

DFARS 252.232-7010 Levies on Contract Payments (December 2006)

DFARS 252.243-7001 Pricing of Contract Modifications (December 1991)

DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (March 2000)

DFARS 252.249-7002 Notification of anticipated contract terminations or reductions (December 2006)

II. CLAUSES APPLICABLE TO PURCHASE ORDERS OVER \$10,000

- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (September 2006)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)
- FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (September 2006)

III. CLAUSES APPLICABLE TO PURCHASE ORDERS OVER \$25,000

- FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (September 2006)
- DFARS 252.225-7012 Preference for Certain Domestic Commodities (January 2007)

IV. CLAUSES APPLICABLE TO PURCHASE ORDERS OVER \$100,000

- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (September 2006)
- FAR 52.203-7 Anti-Kickback Procedures (July 1995)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (September 2007)
- FAR 52.215-2 Audit and Records – Negotiations (June 1999)
- FAR 52.219-8 Utilization of Small Business Concerns (May 2004)
- FAR 52.227-1 Authorization and Consent (December 2007)
- FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (December 2007)
- DFARS 252.203-7001 Prohibition of Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (December 2004)
- DFARS 252.247-7023 Transportation of Supplies by Sea (May 2002)

V. CLAUSES APPLICABLE TO PURCHASE ORDERS OVER \$500,000

- FAR 52.219-9 Small Business Subcontracting Plan (November 2007)
- FAR 52.230-2 Cost Accounting Standards (April 1998)
- FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices (April 1998)
- FAR 52.230-6 Administration of Cost Accounting Standards (April 2005)
- DFARS 252.219-7003 Small, small disadvantaged and women-owned small business subcontracting plan (April 1996)

VI. CLAUSES APPLICABLE IN OTHER SPECIFIED CIRCUMSTANCES

- FAR 52.204-2 Security Requirements, "Government" shall retain its meaning. References to the "Changes" clause shall mean the "Changes" clause of this AGREEMENT. (August 1996)
- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data. The obligations that FAR 52.215-12 in Buyer's Contract requires of the subcontractors are hereby required of the Seller. "Government" shall mean "Government or Buyer". Buyer's rights under this clause shall not limit Buyer's rights under any other provision of this AGREEMENT. The obligations which FAR clause 52.215-12 requires of subcontractors are required of Seller; Seller shall indemnify and hold Buyer harmless from any loss, damage, and/or expense, including burden and profit, incurred by Buyer as a result of Seller or its subcontractor's failure to comply with the requirements of FAR 52.215-12 and this clause; including failure of Seller or a subcontractor to furnish cost or pricing data which was required to complete, accurate and current and to be submitted to support a cost estimate furnished by the Buyer, but which was not complete, accurate and current as of the date certified in the Certificate of Current Cost or Pricing Data furnished by the Buyer to its customer. The price or cost and fee of this order shall be reduced by the loss, damage, and/or expense incurred by Buyer and the order shall be modified in writing as may be necessary to reflect such reduction. Seller shall immediately repay to Buyer any sums previously paid by Buyer which are in excess of the unit or total order price as reduced hereunder. (October 1997)
- FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications "Government" shall mean "Government or Buyer". In subparagraph (a), the

threshold for the submission of cost or pricing data shall be the threshold applicable to Buyer's contract. Buyer's rights under this clause shall not limit Buyer's rights under any other provision of this AGREEMENT. The obligations which FAR clause 52.215-12 requires of subcontractors are required of Seller; Seller shall indemnify and hold Buyer harmless from any loss, damage, and/or expense, including burden and profit, incurred by Buyer as a result of Seller or its subcontractor's failure to comply with the requirements of FAR 52.215-12 and this clause; including failure of Seller or a subcontractor to furnish cost or pricing data which was required to complete, accurate and current and to be submitted to support a cost estimate furnished by the Buyer, but which was not complete, accurate and current as of the date certified in the Certificate of Current Cost or Pricing Data furnished by the Buyer to its customer. The price or cost and fee of this order shall be reduced by the loss, damage, and/or expense incurred by Buyer and the order shall be modified in writing as may be necessary to reflect such reduction. Seller shall immediately repay to Buyer any sums previously paid by Buyer which are in excess of the unit or total order price as reduced hereunder. (October 1997)

- FAR 52.215-12 Subcontractor Cost or Pricing Data In subparagraph (a) and (c), the threshold for the submission of cost or pricing data shall be the threshold applicable to Buyer's contract The obligations which FAR clause 52.215-12 requires of subcontractors are required of Seller; Seller shall indemnify and hold Buyer harmless from any loss, damage, and/or expense, including burden and profit, incurred by Buyer as a result of Seller or its subcontractor's failure to comply with the requirements of FAR 52.215-12 and this clause; including failure of Seller or a subcontractor to furnish cost or pricing data which was required to complete, accurate and current and to be submitted to support a cost estimate furnished by the Buyer, but which was not complete, accurate and current as of the date certified in the Certificate of Current Cost or Pricing Data furnished by the Buyer to its customer. The price or cost and fee of this order shall be reduced by the loss, damage, and/or expense incurred by Buyer and the order shall be modified in writing as may be necessary to reflect such reduction. Seller shall immediately repay to Buyer any sums previously paid by Buyer which are in excess of the unit or total order price as reduced hereunder. (October 1997)
- FAR 52.215-13 Subcontractor Cost or Pricing Data – Modifications Data In subparagraph (b) and (d), the threshold for the submission of cost or pricing data shall be the threshold applicable to Buyer's contract The obligations which FAR clause 52.215-12 requires of subcontractors are required of Seller; Seller shall indemnify and hold Buyer harmless from any loss, damage, and/or expense, including burden and profit, incurred by Buyer as a result of Seller or its subcontractor's failure to comply with the requirements of FAR 52.215-12 and this clause; including failure of Seller or a subcontractor to furnish cost or pricing data which was required to complete, accurate and current and to be submitted to support a cost estimate furnished by the Buyer, but which was not complete, accurate and current as of the date certified in the Certificate of Current Cost or Pricing Data furnished by the Buyer to its customer. The price or cost and fee of this order shall be reduced by the loss, damage, and/or expense incurred by Buyer and the order shall be modified in writing as may be necessary to reflect such reduction. Seller shall immediately repay to Buyer any sums previously paid by Buyer which are in excess of the unit or total order price as reduced hereunder. (October 1997)
- FAR 52.215-15 Pension Adjustments and Asset Reversions "Government" retains its meaning. "Contracting Officer" shall mean "Government Contracting Officer through Buyer's Representative". (October 2004)
- FAR 52.215-19 Notification of Ownership Changes. (October 1997)
- FAR 52.223-7 Notice of Radioactive Materials Insert "30" in the blank in subparagraph (a). "Contracting Officer" shall mean "Government Contracting Officer and Buyer's Representative". (January 1997)
- FAR 52.227-9 Refund of Royalties (April 1984)
- FAR 52.227-10 Filing of Patent Applications-Classified Subject Matter (December 2007)
- FAR 52.227-11 Patent Rights-Retention by the Contractor (Short Form) (December 2007)
- FAR 52.233-3 Protest After Award Applicable if Buyer's customer has directed Buyer to stop performance of the work pursuant to this clause in Buyer's contract, whereupon Buyer may direct Seller by written order to stop performance. Subsection (b) (2) is modified to provide that Seller shall assert any right to an adjustment under this clause within fifteen (15) days after the work stoppage is lifted. (August 1996)
- DFARS 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (April 1993)
- DFARS 252.222-7999 Additional Requirements and Responsibilities Restricting the Use of Mandatory Arbitration Agreements (applies only to orders in excess of \$1 million utilizing funds appropriated by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) except in contracts for commercial items)

46. **REPRESENTATIONS AND CERTIFICATIONS.** The following representations and certifications are material representations relied upon by Buyer in making award to Seller. Seller shall notify Buyer of any change of circumstances affecting representations and certifications made by Seller. *The representations and certifications as set forth below omit several choices that appear in the FAR version. By executing this Purchase Order, Seller represents that it has considered the full FAR version of the representations and certifications before executing this Purchase Order and affirms that the representations and certifications below are accurate.*

FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (September 2007). Applicable only if this Purchase Order exceeds \$100,000.

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12 (September 2007), Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) Seller, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 –

- (1) 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, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal funds (including profit or fee received under a covered Federal transaction) 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, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Seller shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Government Contracting Officer; and
 - (3) Seller will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- c. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under the provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty or not less than \$10,000, and not more than \$100,000, for each such failure.

FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec. 2001).

- a. (1) Seller certifies, to the best of its knowledge and belief, that-
- (i) The Seller and/or any of its Principals-
 - (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against the for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - (C) Are not recently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B).
 - (ii) The Seller has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager' head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

FAR 52.222-22 Previous Contracts and Compliance Reports (February 1999).

Seller represents that if Seller has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (i) Seller has filed all required compliance reports; and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

FAR 52.223-13 Certification of Toxic Chemical Release (August 2003).

Applicable to Purchase Orders in excess of \$100,000 if FAR 52.223-14 (August 2003) is included in Buyer's Contract.

- (a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 13148, April 21, 2000.
- (b) By signing this Purchase Order, Seller certifies that-

As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13106). Seller will file and continue to file for such facilities for the life of the Purchase Order the Toxic Chemical Release Inventory Form (Form R) as described in sections 313 (a) and (g) for EPCRA and section 6607 of PPA.

Seller acknowledges it has had the opportunity to inquire as to the clauses present in Buyer's contract and agrees to be bound to such clauses in the manner listed below.

Any reference to a "Default" clause shall mean Paragraph 19b, "Termination for Cause" of the Purchase Order