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**DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meanings set forth below:

- (a) The term "Government Contract" means the United States Government Contract, if any, under which the purchase order incorporating this Agreement is used.
- (b) The term "Contracting Officer" means the person executing the Government Contracts on behalf of the United States Government, and any other officer or civilian employee who is a properly designated Contracting Officer acting within the limits of his authority.
- (c) The term "Buyer" means Aerojet and includes its officers, employees and agents acting within the limits of their authority.
- (d) The term "this Contract" means this Agreement and the Purchase Order incorporating this Agreement.
- (e) The term "Head of the Agency" or "Secretary" means the Secretary, the Under Secretary, and any Assistant Secretary, or any other Head or Assistant Head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any persons or board (other than the Contracting Officer) authorized to act for the Head of the Agency or the Secretary.

**1. ENTIRE AGREEMENT**

The provisions of this contract are the result of negotiations between the parties. Such provisions, therefore, supersede any prior dealings between Buyer and Seller, and the rights and remedies contained here shall be governed without regard to any such course of prior dealings. Seller has satisfied himself as to the nature of the work, the character, quality and quantity of materials and equipment which will be required, and all matters which can in any way affect performance hereunder.

**2. CHANGES**

The Buyer may at any time, by a written order and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Buyer or Government-furnished property. If any such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this contract, or in the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in the (i) ceiling price, (ii) hourly rates, (iii) delivery schedule, and (iv) in such other provisions of the contract as may be so affected and the contract shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Seller of the notification of change, provided, however, that the Buyer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Seller from proceeding with the contract as changed.

**3. PAYMENTS**

The Seller shall be paid as follows, upon the submission of invoices approved by the Buyer

**(a) Hourly Rate:**

(1) The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in the purchase order, by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expenses and profit. Fractional parts of an hour shall be payable on a prorated basis. Invoices may be submitted once each month (or at more frequent intervals if approved by the Buyer), to the Buyer or his designee. The Seller will substantiate invoices by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by the Buyer. Promptly after receipt of each substantiated invoice, the Buyer shall, except as otherwise provided in this contract, and subject to the provisions of (e) below, make payment thereon as approved by the Buyer.

(2) Unless otherwise specified, the hourly rate or rates set forth in the purchase order shall not be varied by virtue of the Seller having performed work on an overtime basis. If no overtime rates are provided in the purchase order and overtime work is approved in advance by the Buyer, overtime rates will be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the "Disputes" clause of this contract. If the Purchase Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Buyer.

**(b) Materials and Subcontracts:**

(1) Allowable costs of direct materials shall be determined by the Buyer in accordance with Part 31 of the Federal Acquisition Regulations in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. (Material handling costs are comprised of indirect costs, including, when appropriate, General and Administrative expense, allocated to direct materials in accordance with the Seller's usual accounting practices consistent with Part 31 of the Federal Acquisition Regulations). The Seller shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to the Buyer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(2) The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Seller to the subcontractor and shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under (a) (1) above.

(3) The Seller shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify the Buyer to that effect, and give the reason therefore. Credit shall be given to the Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Seller, or would have so accrued except for the fault or neglect of the Seller. Such benefits lost through no fault or neglect on the part of the Seller, or lost through fault of the Buyer, shall not be deducted from gross costs.

(c) It is estimated that the total cost to the Buyer for the performance of this contract will not exceed the ceiling price set forth on the face of the purchase order, and the Seller agrees to use his best efforts to perform the work specified in the purchase order and all obligations under this contract within such ceiling price. If at any time the Seller has reason to believe that the hourly rate payments and material costs which will accrue in the performance of this contract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the ceiling price then set forth in the purchase order, the Seller shall notify the Buyer to that effect giving his revised estimate of the total price to the Buyer for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Seller has reason to believe that the total price to the Buyer for the performance of this contract will be substantially greater or less than the then stated ceiling price, the Seller shall so notify the Buyer, giving his revised estimate of the total price for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Buyer has reason to believe that the work to be required in the performance of this contract will be substantially greater or less than the stated ceiling price, the Buyer will so advise the Seller, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) The Buyer shall not be obligated to pay the Seller any amount in excess of the ceiling price set forth in the purchase order, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the purchase order, unless and until the Buyer shall have notified the Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the purchase order has been increased, any hours expended and material costs incurred by the Seller in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.

(e) At any time or times prior to final payment under this contract, the Buyer may cause to be made such audit of the invoices and substantiating material as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by the Buyer not to have been properly payable, and shall also be subject to reduction for over-payments, or to increase for underpayments, on preceding invoices. Upon receipt and approval of the invoice designated by the Seller as the "completion invoice", and substantiating material, and upon compliance by the Seller with all provisions of this contract, (including, without limitation, provisions relating to patents and the provisions of (f) and (g) below. The Buyer shall as promptly as may be practicable pay any balance due and owing the Seller. The completion invoice and substantiating material shall be submitted by the Seller as promptly as may be practicable following completion of the work under this contract, but in no event later than six (6) months (or such longer period as the Buyer may, in his discretion, approve in writing) from the date of such completion.

(f) The Seller and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Buyer, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Seller.

(ii) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Seller to third parties arising out of the performance of this contract, which are not known to the Seller on the date of the execution of the release, and of which the Seller gives notice in writing to the Buyer not more than six (6) years after the date of the release or the date of any notice to the Seller that the Buyer is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Seller by reason of its indemnification of the Buyer against patent liability), including reasonable expenses incidental thereto incurred by the Seller under the provisions of this contract relating to patents.

(g) The Seller agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Seller or any assignee, which arise under the materials portion of this contract and for which the Seller has received reimbursement, shall be paid by the Seller to the Buyer. The Seller and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract an assignment to the Buyer of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to the Buyer.

## 5. EXCUSABLE DELAYS

Except with respect to defaults of subcontractors, the Seller shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Seller to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Seller. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes, freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Seller. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the seller and subcontractor, and without the fault or negligence of either of them, the Seller shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Buyer shall have ordered the Seller in writing to procure such supplies or services from such other sources, and (iii) the Seller shall have failed to comply reasonably with such order. Upon request of the Seller, the Buyer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Buyer under the clause hereof entitled "Termination".

**6. TERMINATION**

(a) The performance of work under this contract may be terminated by the Buyer in accordance with this clause in whole, or from time to time, in part:

(i) Whenever the Seller shall default in performance of this contract in accordance with its terms (including in the term "default" any such failures by the Seller to make progress in the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten (10) days (or such longer periods as the Buyer may allow) after receipt from the Buyer of a notice specifying the default; or

(ii) Whenever for any reason the Buyer shall determine that such termination is in the best interest of the Buyer. Any such termination shall be effected by delivery to the Seller of a Notice of Termination specifying whether termination is for the default of the Seller or for the convenience of the Buyer, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Seller was not in default pursuant to (i) above, or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Buyer, the Seller shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated.

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

(iv) Assign to the Buyer, in the manner and to the extent directed by the Buyer, all rights, title, and interest of the Seller under the orders or subcontracts so terminated, in which case the Buyer shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(v) With the approval or ratification of the Buyer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be payable by the Buyer in whole or in part, in accordance with the provisions of this contract.

(vi) Transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Buyer, deliver to the Buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed would be required to be furnished to the Buyer, and (C) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Seller has been or will be reimbursed under this contract;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Buyer, any property of the types referred to in (vi) above, provided, however that the Seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Buyer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Buyer to the Seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Buyer may direct..

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Buyer may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Seller and which the Buyer or the Government has or may acquire an interest.

The Seller shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting any amount due or owing under this clause.

(c) After receipt of a Notice of Termination, the Seller shall submit to the Buyer his termination claim in the form and with the certification prescribed by the Buyer. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the Buyer, upon request of the Seller made in writing within such six month period or authorized extension thereof. However, if the Buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six month period or any extension thereof. Upon failure of the Seller to submit his termination claim within the time allowed, the Buyer may determine, on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination and shall thereupon pay to the Seller the amount so determined.

(d) Subject to the provisions of paragraph (c), the Seller and the Buyer may agree upon the whole or any part of the amount or amounts to be paid to the Seller by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Seller shall be paid the agreed amount.

(e) In the event of the failure of the Seller and the Buyer to agree in whole or in part, as provided in paragraph (d) above, as to the amounts to be paid to the Seller in connection with the termination of work pursuant to this clause, the Buyer shall, determine on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination, and shall pay to the Seller the amount determined as follows::

(l) If the termination of the contract is determined to be for the convenience of the Buyer, there shall be included:

(A) An amount for direct labor hours (as defined on the face of the purchase order) which shall be determined by multiplying the number of direct labor hours expended prior to the effective date of the Notice of Termination, by the hourly rate or rates set forth in the purchase order, less any hourly rate payments theretofore made to the Seller.

(B) An amount (computed pursuant to the provisions of the contract providing for payment for materials) for material expenses incurred prior to the effective date of the Notice of Termination, not previously paid to the Seller for the performance of this contract;

(C) An amount for labor and material expenses computed as if the expenses were incurred prior to the effective date of the termination, reasonably incurred after the effective date of the Notice of Termination with the approval of or as directed by the Buyer, provided that the Seller shall discontinue such expenses as rapidly as practicable;

(D) To the extent not included in (A), (B), and (C) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of this contract; and

(E) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; or

(ii) If the termination of the contract is for the default of the Seller, there shall be included in the amounts computed in accordance with (I) above, except there shall not be included:

(A) Any amount for the preparation of the Seller's settlement proposal; or

(B) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Buyer.

(f) The Seller shall have the right of appeal, under the "Disputes" clause of this contract, from any determination made by the Buyer under paragraphs (C) or (E) above, except that if the Seller has failed within the time provided in paragraph (C) above, to request extension of such time, he shall have no such right of appeal. In any case, where the Buyer has made a determination of the amount due under paragraph (C) or (E) above, the Buyer shall pay to the Seller the following: (i) if there is no right of appeal hereunder, or if no timely appeal has been taken, the amount so determined by the Buyer; or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Seller under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Seller, applicable to the terminated portion of this contract; (ii) any claim which the Buyer may have against the Seller in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Seller or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Buyer.

(h) In the event of a partial termination, the hourly rates for direct labor hours with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Seller and the Buyer, and such be evidenced by an amendment to this contract.

(i) The Buyer under such terms and conditions as it prescribes may make partial payments and payments on account against costs incurred by the Seller in connection with the terminated portion of the contract, whenever in the opinion of the Buyer the aggregate of such payments shall be within the amount to which the Seller will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Seller to the Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contracts Disputes Act of 1978 for the period from the date such excess payment is received by the Seller to the date on which such excess is repaid to the Buyer; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Seller's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Buyer by reason of the circumstances.

## **7. DISPUTES**

(a) Any dispute arising under this order that is not settled by agreement of the parties, or pursuant to the administrative relief provided for in the following paragraphs, may be settled by recourse to appropriate legal remedies, in accordance with the laws of the State of California. Notwithstanding other provisions in this order, any decision of the Contracting Officer under the prime contract which binds Buyer shall bind both Buyer and Seller to the extent that it relates to this order, provided (1) Buyer promptly notifies Seller of the decision, and (2) if requested by Seller, Buyer appeals the decision in accordance with the disputes clause of the prime contract.

(b) Any decision on the appeal, or any other decision of the Government under the prime contract that is binding on Buyer and cannot be appealed under the dispute clause of the prime contract, shall also bind Buyer and Seller to the extent that it relates to this order, provided Buyer promptly notifies Seller of the decision and, if Seller requests, brings suit or files a claim, as appropriate, against the Government. A final judgement in the suit shall be conclusive upon Buyer and Seller.

(c) If any appeal, suit, or claim is prosecuted by Buyer under this clause, Seller shall be permitted to participate fully in the prosecution for the purpose of prosecuting for Buyer any appeal, suit, or claim initiated by Buyer at Seller's request. Each party shall cooperate fully in assisting the other party in the proceedings. Buyer agrees that unless seller consents, it will not enter into a settlement agreement with the Government, or take any other action that would prejudice Seller's right under this clause.

(d) Pending any decision, appeal, suit, or claim pursuant to this clause, Seller shall proceed diligently with performance of this order. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal, suit, or claim initiated by Buyer at Seller's request shall be paid by Seller. The rights and obligations of Buyer and Seller under this order shall survive completion of, and final payment under this order.

(e) No determination by Buyer of a question affecting Seller's rights shall be considered final or conclusive, or prejudice any legal rights of Seller, without Seller's consent. Any provisions in this order requiring determinations or approvals of the Contracting Officer are intended to implement the requirements of the prime contract, and Buyer agrees that any questions requiring this determination of approval will be referred to the Contracting Officer as a matter arising under the prime contract.

**8. STOP WORK ORDER**

The clause set forth in Federal Acquisition Regulation 52.212-13, in effect as of the date of this contract is incorporated herein by reference and made a part hereof. The term "Contractor" appearing in this clause shall mean "Seller", and the terms "Contracting Officer" and "Government" shall mean "Buyer".

**9. BUYER OR GOVERNMENT PROPERTY**

(a) The Government or Buyer shall deliver to the Seller, for use in connection with and under the terms of this contract, the property described in the purchase order, together with such related data and information as the Seller may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Buyer or Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Seller under this contract are based upon the expectation that Buyer or Government-furnished Property suitable for use will be delivered to the Seller at the times stated in this contract or, if not so stated, in sufficient time to enable the Seller to meet such delivery or performance dates. In the event that Buyer or Government-furnished Property is not delivered to the Seller by such time or times, the Buyer shall, upon timely written request made by the Seller, make a determination of the delay occasioned the Seller and shall equitably adjust the ceiling price, hourly rate delivery, or performance date, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes".

In the event that Buyer or Government-furnished Property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt thereof, notify the Buyer of such fact and, as directed by the Buyer, either (i) return such property at the Buyer's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Buyer upon written request of the Seller shall equitably adjust the ceiling price, rate, delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes". The foregoing provisions for adjustment are exclusive and the Buyer or the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Buyer or Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Buyer or the Government shall remain in the Buyer or the Government. Title to all property purchased by the Seller, for the cost of which the Seller is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Buyer or the Government upon delivery of such property to the Seller. Title to other property, the cost of which is reimbursable to the Seller under the contract, shall pass to and vest in the Buyer or the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Buyer in whole or in part, whichever first occurs. All Buyer or Government-furnished Property, together with all property acquired by the Seller, title to which vests in the Buyer or Government under this paragraph, are subject to the provisions of this clause.

(c) Title to Buyer or Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Buyer or Government, nor shall such Buyer or Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Seller shall comply with the provisions of the Federal Acquisition Regulations 52.245-5 as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Buyer or Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Seller shall maintain and administer in accordance with sound industrial practice, a program, for the utilization, maintenance, repair, protection, and preservation of Buyer or Government Property so as to assure its full availability and usefulness for the performance of this contract. The Seller shall take all reasonable steps to comply with all appropriate directions or instructions which the Buyer may prescribe as reasonably necessary for the protection of Buyer or Government Property.

(f) Unless otherwise provided in this contract, Seller shall bear the risk of, and is responsible for, any loss or destruction of or damage to Buyer or Government Property while in the Seller's possession or control. Upon completion of this contract, or at such earlier dates as may be fixed by the Buyer, the Seller shall return all Buyer or Government Property in as good condition as when received except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract.

(1) The Seller shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to Buyer or Government Property, except to the extent that the Buyer or Government may have required the Seller to carry such insurance under any other provisions of this contract.

(2) Upon the happening of loss or destruction of or damage to Buyer or Government Property, the Seller shall notify the Buyer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Buyer, and with the assistance of the Loss and Salvage Organization so designated (unless the Buyer has designated that no such organization be employed), shall take all reasonable steps to protect the Buyer or Government Property from further damage, separate the damaged and undamaged Buyer or Government Property, put all the Buyer or Government Property in the best possible order, and furnish to the Buyer a statement of:

- (i) the lost, destroyed, and damaged Buyer or Government Property,
- (ii) the time and origin of the loss, destruction or damage,
- (iii) all known interests in commingled property, and
- (iv) the insurance, if any, covering any part of or interest in such commingled property.

The Seller shall make repairs and renovations of the damaged Buyer or Government Property or take such other action, as the Buyer directs.

(g) The Buyer or Government shall at all reasonable times have access to the premises where any of the Buyer or Government Property is located.

(h) Upon completion of this contract, or at such earlier dates as may be fixed by the Buyer, the Seller shall submit in a form acceptable to the Buyer, inventory schedules covering all items of Buyer or Government Property not consumed in the performance of this contract (including any resulting scrap) or not therefore delivered to the Buyer, and shall deliver or make such other disposal of such Buyer or Government Property as may be directed or authorized by the Buyer. The net proceeds of any such disposal shall be credited to the contract rice or shall be paid in such other manner as the Buyer may direct.

(i) Unless otherwise provided herein, the Buyer or the Government:

(1) May abandon any Buyer or Government Property in place, and thereupon all obligations of the Buyer or the Government regarding such abandoned property shall cease, and

(2) has no obligations to the Seller with regard to restoration or rehabilitation of the Seller's premises, neither in case of abandonment, disposition on completion of need or of the contract, nor otherwise.

## 10. ASSIGNMENTS

(a) Neither this contract nor any interest therein shall be transferred or assigned by Seller without the prior written consent of Buyer, and any such transfer or assignment, without Buyer's written consent shall be void. However, upon the written request of Seller, and the furnishing by Seller to Buyer of a duly executed written agreement to save and hold harmless Buyer of and from any claim, damage, loss or cost resulting from the erroneous payments of money to an assignee who might ultimately prove not to have been entitled thereto, Buyer agrees to consent to the assignment of sums due or to come due under this contract.

(b) In addition, under such circumstances where Buyer has consented in writing to such assignment, Seller hereby agrees that Buyer has hereby reserved to itself the first right to all monies assigned hereunder in every instance wherein the assignor is indebted to Buyer under or by virtue of any contract or subcontract for performance of services or furnishing of material to the Government of the United States of America or any division, branch or agency of such government. The agreement to save and hold Buyer harmless as required by subparagraph (a) of this Article (11) shall also contain this subparagraph (b).

(c) Pursuant hereto, any notice of compliance with the foregoing and notice of intention to assign shall be sent via registered mail to Buyer, at the address stated in the contract., Attention: Chief Accountant, and shall contain evidence of compliance with the conditions contained herein and precedent to such assignment.

## 11. SUBCONTRACTS

(a) No contract shall be made by the Seller for the furnishing of any of the work herein contracted for without the written approval of the Buyer. For the purpose of this clause, purchase of raw material or commercial stock items shall not be considered work.

(b) The Seller agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-percentage-of-cost-basis.

## 12. LABOR DISPUTES

(a) Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer.

(b) The Seller agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the Seller, as the case may be, of all relevant information with respect to such dispute.

## 13. INSPECTION AND CORRECTION OF DEFECTS

(a) All materials furnished and services performed by the Seller under this contract shall be subject to inspection and test by the Government or Buyer to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance. The Government or Buyer through any authorized representative, may inspect the plant or plants of the Seller or of any of the Subcontractor's engaged in the performance of this contract. If any inspection or test is made by the Government or Buyer on the premises of the Seller or a subcontractor, the Seller shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government or Buyer's inspectors in the performance of their duties. All inspections and tests by the Government or Buyer shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of services performed and materials furnished under this contract shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract but not later than six (6) months (or such other period as may be provided in the schedule) after acceptance of the services or materials last delivered in accordance with the requirements of this contract, the Government or Buyer may require the Seller to remedy by correction or replacement as directed by the Buyer, any services or materials which at the time of delivery thereof failed to comply with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, below, the allowability of the cost of any such replacement or correction shall be determined as provided in the "Payments" clause of this contract, but the "hourly rate" for labor hours incurred in such replacement or correction shall be reduced so as to exclude the portion of such rate attributable to profit. Corrected or replacement materials and services shall not be tendered again for acceptance unless the former tender and the requirement of correction or replacement is disclosed. If the Seller fails to proceed with reasonable promptness to perform such replacement or correction, and if such replacement or correction may be performed within the ceiling price, or the ceiling price as increased by the Buyer, the Buyer (i) may by contract or otherwise perform such replacement or correction and charge to the Seller any increased cost occasioned the Buyer thereby, and may deduct such increased cost from any amounts due the Seller under this contract (or require repayment of any payments theretofore made), or (ii) may terminate this contract for default as provided in the "Termination" clause of this contract. Failure to agree to the amount of any such increased cost to be charged to the Seller, or to such reduction in, or

repayment of, any amount due under this contract, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) Notwithstanding the provisions of paragraph (b) above, the Buyer may at any time require the Seller to remedy by correction or replacement, without cost to the Buyer, any failure by the Seller to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Seller's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Seller's business; (ii) all or substantially all of the Seller's operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (iv) all or substantially all of the Seller's operations under this contract. The Buyer may at any time also require the Seller to remedy by correction or replacement, without cost to the Buyer, any such failure caused by one or more individual employees selected or retained by the Seller after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of this clause shall apply to any corrected or replacement services or materials.

(e) The Seller shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, and the work and services hereunder. Records of all inspection work by the seller shall be completed and available to the Government or Buyer at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in this purchase order, the Seller shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

#### **14. INSURANCE**

(a) Seller shall procure and thereafter maintain workman's compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance with respect to performance under this contract, and such other insurance as Buyer may from time to time require with respect to performance under this contract, provided that Seller in fulfillment of its obligation to procure workmen's compensation insurance may, with the approval of Buyer and pursuant to statutory authority, maintain a self-insurance program. All insurance required pursuant to the provisions of this paragraph (a) shall be in such form, in such amounts, and for such periods of time, as Buyer may from time to time require or approve, with insurers approved by Buyer.

(b) Seller agrees to the extent and in the manner required by Buyer, to submit for the approval of the Buyer any other insurance maintained by Seller in connection with the performance of this contract and for which Seller seeks reimbursement hereunder.

(c) Seller shall be reimbursed for the portion allocable to this contract of reasonable cost of insurance as required or approved pursuant to the provisions of this article.

#### **15. INDEMNIFICATION**

In the event Seller, its employees, agents, subcontractors or lower-tier subcontractors enter premises occupied by or under the control of Buyer in the performance of this contract, Seller agrees that it will indemnify and hold harmless Buyer, its officers and employees from any loss, cost, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by actions or omissions of Seller, its employees, agents, subcontractors or lower-tier subcontractors; and Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and will maintain proper workmen's compensation insurance covering all employees rendering performance under this contract.

#### **16. REPRODUCTION RIGHTS AND NON-DISCLOSURE OF INFORMATION**

(a) Seller shall not, without first obtaining the written approval of Buyer, reveal the fact that Seller has furnished or will furnish to Buyer the articles mentioned herein. Seller agrees that it will use any designs, tools, patterns, drawings, information or equipment furnished by Buyer only in the production of the articles called for herein and will not use such material for the production or manufacture of larger quantities than those specified herein or reveal information proprietary to the Buyer except with Buyer's written approval. Buyer does not warrant the accuracy of tools and fixtures which it furnishes and all work must be in strict accordance with drawings and specifications. Upon completion or termination of this contract, all items furnished shall be returned to Buyer.

(b) Seller hereby agrees that all technical information contained in documents, drawings, publications, specifications, schedules and the like received from Buyer for the performance of this contract is received in confidence and is the proprietary property of Buyer, and that such information will not be transmitted, reproduced, used, or disclosed to any person or organization by Seller (except as may be necessary for the performance of work required to be done under this contract with Buyer) without the express prior written approval of Buyer. If this order is issued pursuant to a United States Government Contract, then this agreement will be extended to read Buyer and the Government.

#### **17. APPLICABLE LAWS AND REGULATIONS**

Seller shall comply with all Federal, State, or local laws, rulings, regulations, and orders pertaining to this order in effect on its date.

#### **18. REMEDIES**

The rights and remedies set forth above shall be cumulative and in addition to any other remedies provided by law. Waiver by Buyer of a breach of any provision of this order by Seller shall not be deemed a waiver of future compliance therewith and such provision, as well as all other provisions herein, shall remain in full force and effect.

#### **19. AUDIT BY BUYER**

This clause is applicable only if this order is not placed pursuant to a Department of Defense Prime or Subcontract.

(a) **General.** The Buyer shall have the audit and inspection rights described in the applicable paragraphs (b) and (c) below.

(b) **Examination of Costs.** The Seller shall maintain, and the Buyer shall have the right to examine books, records, documents, and other evidence and accounting, procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this order. Such right of examination shall include inspection at all reasonable times of the Seller's plants, or such parts thereof, as may be engaged in the performance of this order.

(c) **Cost of Pricing Data.** If the Seller submitted cost or pricing data in connection with the pricing of this order or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Buyer shall have the right to examine all books, records, documents and other data of the Seller related to the negotiation, pricing or performance of such order, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.