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1. THIS ORDER AND MODIFICATIONS TO IT

- A. This Order includes all documents that are expressly attached to or incorporated by reference in it. Those documents shall have the same effect as if fully set forth in this Order.
- B. The provisions of this Order are the complete and exclusive statement of the agreement between the parties and supersede all prior dealings of any kind between them and about any matter covered by this Order. Buyer shall not be bound by any modification or alteration of this Order, or any notice, directive approval or determination unless it is in the form of a written instrument signed on behalf of Buyer by a person assigned to Buyer's procurement department and responsible for administration of this Order.

2. SELLER'S ACCEPTANCE OF THIS ORDER

The earliest of (i) written acceptance by Seller (ii) initiation by Seller of performance, or (iii) Seller's submission of any invoice hereunder shall constitute full and unqualified acceptance by Seller of all terms of this Order.

3. SELLER'S RESPONSIBILITY

Seller warrants that it has fully examined all requirements of this Order and all conditions related to Seller's performance, including but not limited to labor, material, and skills. Seller warrants that it has, or can readily obtain during this performance, all resources needed to perform this Order. Seller warrants that it is familiar with all federal, state, and local laws, regulations, and other governmental directives that may relate to this Order and performance under it, and that Seller has complied, and will comply, with such laws, regulations and directives in every respect that may be relevant to this Order. For any breach of this warranty, Buyer shall have, in addition to any other right under this Order, the right to recover from Seller any damages resulting from the breach.

4. PROHIBITION OF GRATUITIES

- A. Seller warrants that it and its agents and representatives have not offered or given, and will not offer or give, any gratuities in the form of entertainment, gifts, or otherwise to any officer or employee or Buyer's customer with a view toward securing this or any other Order, any favorable treatment with respect to the award or amending of this or any other Order or the making of any determination with respect to Seller's rights or duties.
- B. For any breach of Seller's warranty under this Clause, Buyer shall have, in addition to any other rights provided by this Order, the right to terminate all Orders with Seller for default, 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 Order is issued under a prime contract or subcontract of the U. S. Government, any gratuity covered by this Clause may also entail liabilities of Seller under applicable statutes or other provisions.)

5. ALLOWABLE COST, FEE AND PAYMENT

- A. For all work performed under this Order, Buyer shall pay Seller (i) Seller's allowable costs incurred in performing such work, to the extent such costs are accepted by Buyer and, if this Order is issued under a prime contract or subcontract of the United States Government, by an authorized official of that Government; and (ii) the fee, if any, provided for this Order.
- B. The costs of Seller shall, for all purposes of this Order, be determined pursuant to the terms of this Order and Part 31 of the Federal Acquisition Regulations ("FAR", Title 48 Code of Federal Regulations) as in effect on the date this Order was issued by Buyer. The costs determined in accordance with the preceding sentence are referred to below as "allowable costs."
- C. (1) Except as provided in subparagraph C(2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions, the term "costs" that may be reimbursed to Seller includes only:
- a) Those recorded costs that, at the time of the request for reimbursement. Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for this Order.
 - b) When Seller is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid for—
 - (i) Materials issued from Seller's inventory and placed in the production process for use on this Order;
 - (ii) Direct Labor;
 - (iii) Direct Travel;
 - (iv) Other direct in-house costs; and
 - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the Seller in accordance with this Order.
 - c) The amount of progress payments that Seller has paid its subcontracts under standards conforming to this Order.
- (2) Seller's contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in direct costs for payment purposes; provided that Seller pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until Seller actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until Seller actually makes the payment.
- (3) Final annual indirect cost rates and the appropriate bases shall be determined in accordance with Subpart 42.7 of the Federal Acquisition Regulation in effect at the start of the period covered by the indirect cost rate proposal of Seller. The final annual indirect cost rate approved for Seller. The final annual indirect cost rate approved for Seller by the cognizant official of the United States Government for billings to that Government shall be used for this Order, except as follows. Until final annual indirect cost rates are established for any period, Buyer shall reimburse Seller at billing rates determined by Buyer; to assist Buyer in setting such rates, Seller shall furnish Buyer with full details about provisional and final billing rates that the cognizant official United States Government has authorized be paid by the Government to Seller. The billing rates shall be no higher than the anticipated final rates payable under this Order, and may be prospectively or retroactively revised by mutual agreement, at either party's request, or unilaterally by Buyer, to prevent substantial underpayment or overpayment.
- D. Once each month (or more frequently, if approved in writing by Buyer), Seller may submit to Buyer an invoice covering (i) costs incurred by Seller in the performance of this Order and claimed to constitute allowable cost and (ii) any fee Seller is authorized by this Order to include in such invoice. Each invoice shall contain such information and be supported by such details and documents as Buyer may reasonably prescribe and shall be subject to the requirements of the Clause below entitled Seller's Invoices and Claims.

- E. Within a reasonable time, Buyer shall pay Seller on each invoice the allowable costs determined in accordance with this order. Payment of the fee, if any, shall be made to the Seller in the manner stated on the face of this Order; if there is no such statement. Seller may include in each invoice a percentage of the total fee payable under this Order equaling the percentage of work Seller has completed bears to the total work contemplated by this Order, adjusted to reflect prior fee payment. Notwithstanding the preceding sentence, after payment of eighty-five percent (85%) of the fee set forth in this order, Buyer may withhold further payment of fee until a reserve shall have been created in an amount that Buyer considers necessary to protect Buyer's interests, but such reserve may not exceed fifteen percent (15%) of the total fee (or, if the fee is not fixed, of Buyer's reasonable estimate thereof), or \$100,000, whichever is less. If this Order does not provide for the payment of fee, the Buyer may, after payment of eighty percent (80%) of the Estimated Cost of this Order, withhold payments to Seller until Buyer has created a reserve of the lesser of two percent (2%) of such Estimated Cost or \$100,000.
- F. Seller shall maintain an accounting system adequate to provide full and detailed books and records sufficient to support all amounts claimed as allowable costs under this Order and to prove compliance with all cost accounting requirements of this Order. Seller shall maintain those records for the longer of (a) five years after final payment by Buyer under this Order or (b) the retention period established by any applicable statute or regulation. At any time, including after final payment, Buyer (or an authorized representative of the United States Government if this Order is issued under a prime contract or subcontract of that Government) may audit any invoice submitted by Seller and may review all books and records that this Clause requires or that bear on the costs covered by such invoice.
- G. Buyer may withhold from any payment to Seller any amounts that are determined by Buyer (or by the United States Government, if this Order is issued under any prime contract of that Government) to be for costs or fee not allowable under this Order. Upon request by Buyer, Seller shall repay to Buyer any amounts so determined not to be allowable. However, to the extent to which the amount so disallowed is the result of work authorized by Buyer, but not by the Government, Seller shall not be required to repay to Buyer the costs that are otherwise reimbursable under this Order, but were disallowed by the Government.
- H. After receiving and approving the invoice designated by Seller as the "completion invoice" and after full performance of this Contract (including, without limitation, the provisions related to patents), Buyer shall pay Seller any balance of allowable cost, and any part of the fee not earlier paid. Seller shall submit such "completion invoice" promptly following completion of the work under this order and in any event not later than six months after such completion. Prior to or with submission of such "completion invoice", Seller shall furnish Buyer in writing:
- (1) An assignment to Buyer or Buyer's customer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) that are allocable to costs for which Seller has been reimbursed by Buyer under this Order.
 - (2) A release discharging Buyer, its officers, agents and employees from all liabilities, obligations, and claims arising out of or under this Order, subject only to the following exceptions.
 - a) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by Seller.
 - b) Claims, together with reasonable expenses incidental thereto, based upon liabilities of Seller to third parties arising out of the performance of this Order, which claims are not known to Seller by the date of the execution of the release. Seller must give notice of such claims in writing to Buyer not more than four years after the release date or notice of final payment date, whichever is earlier.
 - c) Claims for reimbursement of costs (other than expenses of Seller by reason of any indemnification of Buyer or Buyer's customer against liability for patent, trademark, or copyright infringement), including reasonable expenses incidental thereto, incurred by Seller under the provisions of this Order.
- I. Seller shall promptly pay to Buyer the amount of any refunds, rebates, credits or other amounts (including any interest received by Buyer thereon), accruing to or received by Seller to the extent they are properly allocable to costs for which Seller has been reimbursed by Buyer under this Order. Reasonable expenses incurred by Seller for the purpose of securing such refunds, rebates, credits or other amounts shall be deemed to be allowable costs under this Order when approved by the Buyer.

- J. Any statement in specifications or other document, other than these Standard Terms and Conditions and the Schedule of this Order, about the performance or furnishing of materials at the Seller's expense or at no cost to Buyer shall not be read as meaning that the Seller is not entitled to reimbursement under this Clause, unless this Order, in a provision expressly referring to this clause, states that Seller will not be reimbursed.

6. LIMITATION OF COST OR FUNDS

- A. If this Order is fully funded, paragraphs A(1) through A(7) apply:

- (1) The parties estimate that performance of this Order, exclusive of any fee will not cost Buyer more than the Estimated Cost set out in this Order, Seller shall use its best efforts to perform all of its obligations under this Order within the Estimated Cost.
- (2) Seller shall promptly notify Buyer in writing if at any time Seller has reason to believe (a) that the costs of performing this Order may exceed 75% of the Estimated Cost within the next sixty days, or (b) that the total cost, exclusive of any fee, for performing this Order will be either greater or substantially less than the Estimated Cost. As part of such notification, Seller shall provide a revised estimate of the total costs of performing this Order.
- (3) Except as required by some other provision of this Order, specifically citing and stated to be an exception to this Clause, (i) Buyer shall not be obligated to reimburse Seller for costs exceeding the Estimated Cost of this Order, and (ii) Seller shall have no obligation to continue performance or incur costs under this Order (including actions under the Clause entitled "Termination") in excess of the Estimated Cost unless Buyer notifies Seller in writing that the Estimated Cost has been increased and provides a revised Estimated Cost.
- (4) No notice, communication or representation in any form other than that specified in paragraph A(3) above, or signed by anyone other than the representative of Buyer's procurement department responsible for administration of this Order, shall alter this Order's Estimated Cost. Absent such notice, Buyer is not obligated to reimburse Seller for any costs in excess of the Estimated Cost.
- (5) If the Estimated Cost is increased, any costs Seller incurs before the increase that exceed the previously Estimated Cost shall be allowable to the same extent as if incurred afterward, unless Buyer issues a notice directing that the increase is solely to cover termination or other specified expenses
- (6) A Change Order (or any other action treated as a Change Order) shall not be considered an authorization to exceed the Estimated Cost except to the extent that it explicitly states that the Estimated Cost increased.
- (7) Nothing in this Clause shall affect the right of Buyer to terminate this Order. If this Order is terminated or the Estimated Cost is not increased, Seller and Buyer shall negotiate an equitable distribution of all properly produced or purchased under the Order, based upon the share of costs incurred by each. Absent agreement, Buyer may unilaterally determine such an equitable distribution. Seller shall have, as to such a determination, the rights set out in the Clause entitled Disputes.

- B. If this order is incrementally funded, paragraphs B(1) through B(12) apply:

- (1) The parties estimate that performance of this Order will not cost Buyer more than the Estimated Cost set out in this Order. Seller shall use its best efforts to perform all its obligations under this order within the Estimated Cost.
- (2) This Order specifies the amount presently available for payment by Buyer and funded for this Order, the items covered, and the period of performance. The parties contemplate that Buyer will fund additional sums incrementally for this order up to the Estimated Cost set out in this Order, exclusive of any fee. Seller agrees to perform work on this Order up to the point at which the total amount paid and payable by Buyer under this Order approximates but does not exceed the total amount paid and payable by Buyer under this Order approximates but does not exceed the total amount actually funded by Buyer for this Order.
- (3) Seller shall notify Buyer in writing whenever Seller has reason to believe that the cost that Seller expect to incur under this Order in the next 90 days, when added to all cost previously incurred, will exceed 75% of the total amount funded for this Order by Buyer. The notice shall state the estimated amount of additional funds required to continue performance for the period specified on the face of this Order.

- (4) At least 90 days before the end of the period specified on the face of this Order, Seller shall notify Buyer in writing of the estimated amount of additional funds, if any, required to continue timely performance, or for any further period specified in this Order or otherwise agreed upon, and when the funds will be required.
- (5) If after notification by Seller, Buyer does not fund additional sums by the end of the period specified on the face of this Order, or another agreed-upon date, Buyer will upon Seller's written request, terminate this Order as of that date in accordance with the provision of the Clause entitled Termination. If Seller estimates that the funds available will allow it to continue to discharge its obligations beyond that date, Seller may specify a later date in its request, and Buyer may terminate this contract as of that later date.
- (6) Except as required by some other provision of this Order, specifically citing and stated to be an exception to this Clause, (i) Buyer shall not be obligated to reimburse Seller for costs exceeding the total amount funded by Buyer for this Order, and (ii) Seller shall have no obligation to continue performance or to incur costs under this Order (including actions under the Clause entitled "Termination") in excess of the amount funded for this Order by Buyer unless Buyer has been increased and specifies an increased amount, which shall then constitute the total amount funded by Buyer for this Order.
- (7) If Buyer funds an amount exceeding the Estimated Cost, the latter shall be increased to the total of the amount funded by Buyer.
- (8) No notice, communication or representation in any form other than that specified in paragraph B(6) above, or signed by anyone other than the representative of Buyer's purchasing organization responsible for administration of this Order, shall alter the amount funded to this Order or this Order's Estimated Cost, Absent such notice Buyer is not obligated to reimburse Seller for any costs in excess of the amount funded to this Order or the Estimated Cost, whether such costs are incurred for performance of this Order or as a result of termination.
- (9) When and to the extent that the amount allotted by Buyer to this Order is increased, any costs Seller incurs before the increase that exceed the amount previously funded by Buyer, shall be allowable to the same extent as if incurred afterward, unless Buyer issues a notice directing that the increase is solely to cover termination or other specified expenses.
- (10) A Change Order (or any other action treated as a Change Order) shall not be considered an authorization to exceed the amount funded or the Estimated Cost except to the extent that it explicitly states that either or both such figures are increased.
- (11) Nothing in this Clause shall affect the right of Buyer to terminate this Order. If this Order is terminated or the Estimated Cost is not increased, Seller and Buyer shall negotiate an equitable distribution of all property produced or purchased under the Order, based upon the share of costs incurred by each. Absent agreement, Buyer may unilaterally determine such an equitable distribution. Seller shall have, as to such a determination, the rights set out in the Clause entitled Disputes.
- (12) If Buyer does not fund this Order in an amount sufficient to allow completion of the work, Seller is entitled to percentage of the fee specified in this Order equaling the percentage that the work Seller has completed bears to the total work contemplated by this Order.

7. BUYER'S SECURITY INTEREST

Subject to any paramount interest that Buyer's customer may have, Seller grants to Buyer a security interest in all material, tooling, equipment, supplies, parts, fittings, accessories, renewals, and replacements the cost of which is in whole or part included on invoices submitted to Buyer under this Order. Seller may not permit any other security interest inconsistent with the foregoing. Buyer may file such documents as Buyer deems necessary to protect its security interest.

Seller hereby grants Buyer an irrevocable power of attorney to execute any such documents on behalf of Seller.

8. OVERTIME PREMIUMS

- A. Allowable cost under the Clause entitled Allowable Cost, Fee, and Payment, shall not include any amount for overtime premiums except as specified on the face of this Order or for work—
- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or unavoidable production bottlenecks of a sporadic nature;
 - (2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities or accounting;
 - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) That will result in lower overall cost to Buyer.
- B. Before performing any work involving overtime premiums, except as specified in paragraph A., Seller shall request Buyer's written permission. Seller's request shall be in writing and shall—
- (1) Identify the work unit, e. g., department or section, in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit Buyer to evaluate the necessity for the overtime;
 - (2) Demonstrate the effect that denial of the request will have on the delivery or performance schedule of this Order;
 - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other orders of Buyer or Buyer's customer, together with identification of each affected order; and
 - (4) Provide reasons why the required work cannot be performed by multishift operations or by additional personnel.

9. CHANGES

- A. Buyer may at any time, by written directive, and without notice to any sureties, make changes within the general scope of this Order, in (i) drawings, designs, or specifications, (ii) quantities of supplies or services, (iii) method of shipment or packaging; and (iv) time or place or delivery, inspection, or acceptance. Seller shall promptly comply with such directive.
- B. If any such change causes an increase or decrease in the Estimated Cost of, or time required for, performance of any part of the work under this Order, whether or not changed by the Change Order, or otherwise affects any other terms and conditions of this Order, Buyer shall make an equitable adjustment in the Estimated Cost, delivery or completion schedule, or both, in the amount of any fee, and in other affected terms, if any, and shall modify this Order accordingly. Buyer may prescribe the disposition of any property made obsolete or excess because of any change, if Seller claims any amount for such property. Upon determining that the facts warrant, Buyer may initiate an equitable adjustment in its own favor.
- C. Seller must submit any claim for equitable adjustment under this Clause within 20 days from the date of receipt of the Change Order, but Buyer may, if it decides that the facts justify, receive and act upon such a proposal submitted before final payment under this Order.
- D. Each claim by Seller shall be asserted in writing in sufficient detail to allow Buyer to assess the claim and probable impact of the change on Seller's work, and shall be subject to the Clause below entitled Seller's Invoices and Claims.
- E. Failure to agree to any adjustment shall be subject to the Disputes Clause. Seller shall proceed with this Order as changed, notwithstanding any failure to agree on an adjustment or any other dispute with Buyer.
- F. Notwithstanding any other provision of this Clause, the Estimated Cost of this Order is incrementally funded, the amount funded for this Order and, if this Order, shall not be increased or considered to be increased except by specific written modification of the Order indicating the new Estimated Cost of this Order and, if this Order is incrementally funded, the new amount funded for this Order. Until such modification is issued, Seller need not continue performance beyond the point established in the Limitation of Cost or Funds Clause.

- G. Seller shall use its best efforts to submit written suggestions for changes that might significantly decrease the cost or performance time of this Order without impairing the suitability of the supplies or services for their intended purpose. Any such suggestion that Buyer, in its sole discretion, determines has merit may be made the subject of a change under this Clause.

10. ASSIGNMENT

- A. Except with Buyer's written consent, Seller may not assign or transfer any right of Seller under this Order. Buyer shall not be bound by any action in violation of this Clause. Except as Buyer may expressly authorize in writing, Buyer's rights shall not be diminished, nor shall its obligations (including, but not limited to, those related to the amounts Buyer must pay) be increased by any assignment or transfer, whether in compliance with or in violation of this Clause. Seller holds Buyer harmless against any such increase in Buyer's rights or decrease in seller's obligations. Buyer's consent to any assignment or transfer may not be unreasonably withheld but may be conditioned on such terms as Buyer deems appropriate.
- B. No copy of this Order or of any plans, specifications, or other documents relating to this Order, if marked "Top Secret," "Secret," or "Confidential," may be revealed to any assignee, delegate, or subcontractor, except as duly authorized.

11. SUBCONTRACTS

- A. Seller shall notify Buyer reasonably in advance of entering into any subcontract (which term includes but is not limited to purchase orders and changes and modifications to such order) if:
- (1) The proposed subcontract is of the cost-reimbursement, time-and material, or labor hour type;
 - (2) The proposed subcontract is fixed-price and exceeds either \$25,000 or 5% of the total estimated cost of this Order.
 - (3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or
 - (4) This Order is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000.00 or of any item of industrial facilities.
- B. (1) In the case of a proposed subcontract that (a) is of the cost-reimbursement, time and materials, or labor hour type and is estimated to exceed \$10,000.00, including any fee; (b) is expected to exceed \$100,000.00; or (c) is one of a number of subcontracts with a single subcontractor, under this Order, for the same or related supplies or services that, in the aggregate, are expected to exceed \$100,000.00, then the advance notification required by paragraph A above shall include the following:
- a) A description of the supplies or services to be subcontracted;
 - b) Identification of the type of subcontract to be used;
 - c) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
 - d) The proposed subcontract price and the Seller's cost or price analysis thereof;
 - e) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if such data are required by other provisions of this Order or the subcontract;
 - f) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards, if such certificate is required by other provisions of this order or the subcontract;
 - g) A negotiation memorandum reflecting:
 - (i) The principle elements of the subcontract price negotiations;
 - (ii) The most significant considerations controlling establishment of initial or revised prices;
 - (iii) The reason cost or pricing data were or were not required;
 - (iv) The extent, if any, to which the Seller did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

- (v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Seller and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (vi) The reasons for any significant difference between the Seller's price objective and the price negotiated; and
 - (vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to qualify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- C. Seller shall obtain Buyer's written consent before placing any subcontract for which advance notification is required under paragraph A above. However, Buyer may in writing ratify any such subcontract.
- D. If Seller has a purchasing system approved by the United States Government and the subcontract is within the scope of such approval, Seller may enter into any subcontract described in subparagraphs A.(1) and A.(2) above without the consent of Buyer unless this Order is for the acquisition of major systems, subsystems, or their components.
- E. Even if Seller's purchasing system has been approved by the United States Government, Seller shall obtain Buyer's written consent before placing subcontracts that have been selected for special surveillance and specifically so identified in this Order.
- F. Unless Buyer's consent specifically provides otherwise, Buyer's consent to any subcontract shall not (1) constitute a determination of the acceptability of any subcontract terms or conditions, or of the allowability of any cost under this Order, or (2) relieve Seller of any responsibility for performing this Order.
- G. No subcontract placed under this Order shall provide for payment on a cost-plus-a-percentage-of-cost basis.
- H. Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against Seller by anyone that, in the opinion of Seller, may result in litigation related in any way to this Order, with respect to which Seller may be entitled to reimbursement from Buyer.
- I. If this Order is issued under a prime or subcontract of the United States Government:
- (1) Seller shall insert in each price redetermination or incentive price revision subcontract under this Order the substance of the paragraph "Quarterly Limitation on Payments Statement" of the clause at Federal Acquisition Regulation ("FAR," Title 48 Code of Federal Regulations) Sections 52.216-5, Price Redetermination--Prospective; 52.216-6, Price Redetermination--Retroactive; 52.216-16, Incentive Price Revision--Firm Target; or 52.216-17, Incentive Price Revision-Successive Targets, as appropriate, modified in accordance with the provisions of such clause concerning flow-down to subcontracts.
 - (2) Seller shall include in each cost-reimbursement subcontract under this Order a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph I.(1) above in each lower-tier price redetermination or incentive price revision subcontract under that subcontract.
 - (3) To facilitate small business participation in subcontracting, Seller agrees to provide progress payments on fixed-price subcontracts under this Order with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f) as in effect on the date of this Order. Seller further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.
 - (4) The Government may review Seller's purchasing system as set forth in FAR Subpart 44.3.
 - (5) No cost-reimbursement type subcontract at any tier under this Order may provide a fee exceeding the fee limitations in FAR Section 15.903(d).

12. INSPECTION

- A. When used in this Clause:
- (1) "Seller's managerial personnel" are those of Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of (a) all or substantially all of the Seller's business; (b) all or substantially all of the Seller's operation at a plant or separate location at which this Order is being performed in whole or in part; or (c) a separate and complete major industrial operation connected with performance of this Order.
 - (2) "Supplies" include, but are not limited to, raw materials, components, intermediate assemblies, end products, lots of supplies, and data (when this Order contains no warranty of data clause).
- B. Seller shall provide and maintain an inspection system acceptable to Buyer covering the supplies, fabricating methods, and any special tooling under this Order. Complete recorders of all inspection work performed by Seller shall be maintained and made available to Buyer and buyer's customer at any time before expiration of five years after final payment under this Order, or such longer period as imposed by applicable clause, statute, or regulation.
- C. Buyer and Buyer's customer shall have the right to inspect and test (1) the supplies under this Order, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance, and (2) the plant or plants of Seller or a subcontractor of any tier engaged in the performance of this Order. The inspections and tests shall to the extent practicable be performed in a manner that will not unduly delay the work.
- D. If Buyer or Buyer's customer performs inspection or test on the premises of Seller or a subcontractor, Seller shall furnish, and require its subcontractors at all tiers to furnish all reasonable facilities and assistance for the safe and convenient performance of this inspection or test.
- E. Unless otherwise specified in this Order, Buyer shall accept supplies as promptly as practicable after delivery. Supplies shall be deemed accepted 150 days after delivery, unless expressly accepted earlier.
- F. At any time during performance of this Order, but no later than 6 months (or such other time as may be specified in the Order) after acceptance of the supplies under this Order, Buyer may require Seller to replace or correct any supplies that are non-conforming at time of delivery. Supplies are non-conforming when they are defective in material or workmanship or are otherwise not in conformity this order. Except as otherwise provided in paragraph H., below, the cost of replacement or correction shall be an allowable cost to the extent otherwise consistent with the Clause entitled Allowable Cost, Fee, and Payment, but no additional fee shall be paid. Seller shall not tender for acceptance any supplies that Buyer had required to be replaced or corrected without disclosing the requirement for replacement or correction and the corrective action taken.
- G. If Seller fails to proceed with reasonable promptness to perform required replacement or correction, Buyer may:
- (1) By contract or otherwise, perform the placement or correction and charge to Seller any increased cost or make an equitable reduction in any fee paid or payable under this Order;
 - (2) Require delivery of undelivered supplies at an equitable reduction in any fee paid or payable under this Order; or
 - (3) Terminate this Order for default.
- H. Notwithstanding any acceptance, or actions pursuant to paragraphs F. and G. above, Buyer may at any time require Seller to correct or replace nonconforming supplies, if the nonconformance is due to (1) fraud, lack of good faith, or willful misconduct on the part of Seller's managerial personnel or (2) the conduct of one or more of Seller's employees selected or retained by Seller after any of Seller's managerial personnel has reasonable ground to believe that the employee is habitually careless or unqualified. Seller's costs of correction or replacement under this paragraph H. shall not be an allowable cost under the Allowable Cost, Fee and Payment Clause above or under any other Order from Buyer or Buyer's customer.
- I. This Clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.
- J. Seller shall have no obligation or liability under this Order to replace supplies that were nonconforming at the time of delivery, except as provided in this Order.

13. TERMINATION

- A. Buyer may terminate Seller's performance under this Order in whole or, from time to time, in part, if:
- (1) Buyer determines that the Order should be terminated for the convenience of Buyer; or
 - (2) Seller defaults in performing this Order and fails to cure the default within 10 days (unless Buyer extends that period in writing) after Seller receives from Buyer a notice that Buyer deems Seller in default. "Default" includes (a) failure to comply with any of the terms and conditions of this Order, or (b) the giving of reasonable cause for Buyer to believe that timely performance of this Order is endangered as a result of Seller's financial condition, lack of progress, or other acts or omissions.
- B. Buyer shall terminate by delivering to Seller a notice of termination specifying whether termination is for default of Seller or for convenience of Buyer, the extent of termination, and the effective date. If after Buyer terminates for default or takes any action that has the effect of ending all or any portion of this Order (other than a notice specifying a termination for Buyer's convenience), a determination is made that Buyer did not have the right so to act, the action shall be deemed to have been a notice to terminate for convenience.
- C. After receipt of a notice of termination, and except as Buyer directs, Seller shall immediately do the following, regardless of any disputes or any delay in determining or adjusting any amount due Seller:
- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this Clause), except as necessary to complete any portion of this Order not terminated.
 - (3) Terminate all subcontracts to the extent they related to the work terminated.
 - (4) To the extent directed by Buyer, assign to Buyer all right title, and interest of Seller under the subcontracts terminated, in which case the Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With Buyer's approval (or ratification) to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part under this Order. Such approval or ratification shall be final for purposes of this Clause.
 - (6) Transfer title (if not already transferred) and, as directed by Buyer, deliver to Buyer (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (b) the completed or partially completed plans, drawings, information, and other property that, if this Order had been completed, would be required to be furnished to Buyer, and (c) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Order, the cost of which Seller has been or may be reimbursed under this Order.
 - (7) Complete performance of all work not terminated.
 - (8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Order that is in, the possession of Seller and in which the Buyer or Buyer's customer has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph B.(6) above; but Seller (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.
- D. After expiration of such period as prescribed by Buyer, Seller may submit to Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Buyer. Upon written request by Seller, Buyer shall promptly accept the items and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the items, or if the items are stored, within ninety days from submission of the list. Buyer may correct the list, as necessary, before final settlement.

- E. Seller may submit to Buyer a final termination settlement claim in such form as Buyer may prescribe. Such claim shall be subject to the Clause below entitled Seller's Invoices and Claims. Seller shall submit the claim promptly, but not later than 180 days after the effective date of termination, unless extended in writing by Buyer upon written request of Seller before the 180-day period ends. However, if Buyer determines that facts justify, a termination settlement proposal may be received and acted on at any time. If Seller fails to submit a proposal within the time allowed, Buyer, in its sole discretion, may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay any such amount.
- F. Subject to paragraph E., Seller and Buyer may agree on the whole or any part of the amount to be paid, including an allowance for fee, because of the termination. This Order shall be amended and Seller paid the agreed amount.
- G. If Seller and Buyer fail to agree in whole or in part on the amount of costs or the fee to be paid because of the termination of work, Buyer may determine, on the basis of information available, the amount, if any, due Seller, and shall pay that amount, which shall include the following:
- (1) All costs reimbursable under this Order, not previously paid, for the performance of this Order before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by Buyer, but Seller shall discontinue those costs as rapidly as practicable.
 - (2) The costs of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Order if not included in subparagraph G. (1) above.
 - (3) The reasonable costs of settlement of the work terminated, including:
 - a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, but no amount for preparation of Seller's termination settlement proposal may be included if the termination is for default;
 - b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
 - (4) A portion of the fee payable under this Order, determined as follows:
 - a) If this Order is terminated for the convenience of Buyer, the settlement shall include a percentage of the fee equal to the percentage of completion of the work contemplated under this Order, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - b) If this Order is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by Buyer is to the total number of articles (or amount of services) of a like kind required by this order.
 - (5) If the settlement includes only fee, it will be determined under subparagraph G(4) above.
- H. The cost principles and procedures specified in the Clause entitled Allowable Cost, Fee, and Payment shall govern all costs claimed, agreed to, or determined under this Termination Clause.
- I. Seller shall have the rights stated under the Clause entitled Disputes, from any determination made by Buyer under paragraphs E. or G. above, or paragraph K. below, except that if the Seller failed to submit the termination settlement proposal within the time provided in paragraph E. and failed to request a time extension, or there was no valid basis for such an extension, Buyer's determination shall be final.
- J. In arriving at the amount due Seller under this Clause, there shall be deducted:
- (1) All unliquidated advance or other payments to Seller, under the termination portion of this Order;
 - (2) Any claim that Buyer has against Seller;
 - (3) The agreed price for or the proceeds of sale of materials, supplies, or other things acquired by Seller or sold under this Clause and not recovered by or credited to Buyer.

- K. When there is a partial termination, Buyer and Seller may agree on an equitable adjustment in the fee. Absent such agreement, Buyer may unilaterally determine an equitable adjustment; Seller shall have as to such determination, the rights stated in paragraph I. of this Clause.
- L. Buyer in its sole discretion may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Seller for the terminated portion of this Order, if Buyer believes the total of these payments and others made, will not exceed the amount to which Seller will be entitled.
- M. If total payments by Buyer exceed the amount finally determined to be due, Seller shall repay the excess to Buyer immediately upon demand, together with interest determined according to the Clause entitled Interest. Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or such later date reasonably determined by Buyer.
- N. The provision of this Clause related to fee do not apply if this Order does not provide for payment of a fee.

14. EXCUSABLE DELAYS

- A. Except for defaults of subcontractors at any tier below Seller (for which provision is made in paragraph B.) the Seller shall not be in default because of any failure to perform this Order if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Buyer, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller.
- B. If the failure to perform is caused by the failure of a subcontractor at any tier below seller to perform or make progress, and if the cause of the failure was beyond the control of both Seller and subcontractor, and without the fault or negligence of each, and if Seller has promptly notified Buyer of those facts, Seller shall not be deemed to be in default, unless:
 - (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) Buyer ordered Seller in writing to purchase these supplies or services from the other source; and
 - (3) Seller failed to comply reasonably with this Order.
- C. Upon request of Seller, Buyer shall ascertain the facts and extent of the failure. If Buyer determines that any failure to perform results from on or more of the causes above, the delivery schedule shall be revised unless Buyer chooses to terminate part or all of the Order under the Clause entitled Termination.

15. OFFSETS

Buyer may offset, against sums otherwise due Seller, any amounts Buyer in good faith claims to be due from Seller, whether such claims arise under or outside this Order.

16. PUBLICITY

Without obtaining Buyer's prior written permission, Seller may not publicly disclose that Seller has furnished or may furnish for Buyer or Buyer's customer the supplies or services covered by this Order, or provide any other information concerning this Order.

17. BUYER'S INFORMATION

Seller agrees that all technical information in designs, drawings, publications, specifications, tools, equipment, material, or the like received from Buyer in connection with this Order is received in confidence and is the proprietary property of Buyer. Seller shall not reproduce, use, or disclose such information except as necessary for the performance of this Order, or as Buyer may otherwise allow in writing. No restriction imposed by this Clause shall apply to Seller's reproduction, use or disclosure of information that Seller can prove was obtained without restriction and from a source other than Buyer. Within 60 days after completion of work under this Order, Seller shall return to Buyer all technical information covered by this Clause, or destroy such information and certify to Buyer in writing that such destruction has been completed.

18. INVENTION AND DATA RIGHTS

Except to the extent that it is inconsistent with any clause of the United States Government that is made a part of this Order. Seller agrees for itself and its employees that all rights to patents, inventions, discoveries, and improvements resulting from performance of this Order shall become the property of Buyer. Seller will execute all necessary documents and obtain suitable agreements from its employees to effectuate this Clause. All technical data, computer software, documents, drawings, publications, specifications, schedules, or the like generated by Seller in connection with this Order, or deliverable under this Order, shall become the sole and exclusive property of Buyer. Seller shall not release any information or data relating to this order or developed hereunder without prior written approval of Buyer.

19. PATENT, COPYRIGHT AND TRADEMARK INDEMNIFICATION AND ASSISTANCE

- A. Seller shall report to Buyer, promptly and in reasonable written detail, each notice or claim of patent, trademark, or copyright infringement that is based on the performance of this Order and of which Seller has knowledge.
- B. Except for items that Buyer requires to be produced according to Buyer's design drawing, Seller holds and saves harmless Buyer and Buyer's successors, assigns, customers, and users of its products and services, from any liability, loss, damage, judgments, or awards, including costs and expenses and attorney fees, arising out of any actions, claims, or proceedings for infringement of (a) any United States Letters Patent purporting to cover the materials or services to be delivered to Buyer under this Order, or their normal intended use, and (b) any trademarks or copyrights applicable to material delivered to Buyer. Seller agrees to defend Buyer (and Buyer's successors, assigns, customers, and users of its products and services) at Seller's expense in all such actions, claims, or proceedings, provided Buyer shall give Seller prompt notice in writing at the address stated in this Order, of all such actions, claims, and proceedings, as well as noticed of infringement or possible infringement, and of threats of any suit for infringement. Costs incurred by Seller in complying with this paragraph B. shall not be allowable costs under the Clause entitled Allowable Cost, Fee, and Payment.

20. FURNISHED PROPERTY

- A. "Furnished property," as that term is used in this Clause, means (i) all property, including materials, production equipment, and the like expressly stated by this Order to be deliverable to Seller by Buyer or Buyer's customer, and (ii) such data and information related to the property described in (i) as Seller may request in writing and as may reasonable be required for the use of that property in performance of this Order. It also includes any property that is stated below in this Clause to be "furnished property".
- B. Buyer or Buyer's customer shall deliver to Seller for use in connection with and under the terms of this Order the furnished property as defined in the first sentence of paragraph A. of this Clause.
- C. The delivery or performance dates for this Order are based upon the expectation that furnished property suitable for use will be delivered to the Seller at the times stated in this Order or, if not so stated, in sufficient time to enable the Seller to meet the Order's delivery or performance dates. If furnished property is not delivered to Seller by the required time or times, Buyer shall, upon timely written request by Seller, make a determination of the delay, if any, caused the Seller, and Seller shall have such rights to an equitable adjustment as provided in paragraph K. of this Clause.
- D. If furnished property is received by Seller in a condition not suitable for its intended use, Seller shall immediately upon receipt notify Buyer in writing and, as directed by Buyer, repair, modify, return or otherwise dispose of the property. The reasonable costs incurred for such repair, modification, return, or other disposition shall be an allowable cost under this Order. After the action so directed has been completed, Seller shall have such rights to an equitable adjustment as provided in paragraph K. of this Clause.
- E. Buyer may, by written notice, (i) decrease the property furnished or to be furnished under this Order, or (ii) substitute other furnished property for either furnished property or property that was otherwise to be acquired by Seller under this Order. Seller shall promptly take such action as Buyer may direct regarding the removal, shipment, or disposal of the property covered by such notice. Seller shall have such rights to an equitable adjustment as provided in paragraph K. of this Clause if the Buyer has agreed in this Order to make the property available for performing this Order and there is any decrease or substitution in this property pursuant to this paragraph E. or withdrawal of authority to use property provided under any other Order from Buyer.

- F. (1) Title to all furnished property covered by the first sentence of paragraph A. shall remain in the entity that owned it when it was furnished to Seller.
- (2) Title to all property purchased by Seller for which Seller is entitled to be reimbursed as a direct item of cost under this Order shall pass to and vest in Buyer upon the vendor's delivery of such property to Seller.
- (3) Title to all other property, the cost of which is reimbursable to Seller, shall pass to and vest in Buyer upon the earliest of (a) issuance of the property for use in performance of this Order, (b) commencement of processing of the property or use in performance of this Order or (c) reimbursement of the cost of the property by Buyer.
- (4) All furnished property and all property acquired by Seller, title to which vests in Buyer under this Clause (which shall be deemed to be furnished property), are subject to all provisions of this Clause. Title to furnished property shall not be affected by its incorporation into or attachment to any property, nor shall furnished property become a fixture or lose its status as personal property by being attached to any real property.
- G. Unless Buyer (and the owner of the property, if other than the Buyer) otherwise expressly permits in writing, Seller shall use furnished property only in the performance of this Order.
- H. Seller shall be responsible and accountable for all furnished property. Seller shall maintain and follow a program, satisfactory to Buyer, for the use, maintenance, repair, protection, and preservation of furnished property in accordance with sound industrial practice. As to any furnished property owned by the United States Government, Seller shall also comply with Federal Acquisition Regulation Subpart 45.5 (Title 48 Code of Federal Regulations) as in effect on the date of this Order. If damage occurs to finished property, the risk of which has been assumed by Buyer under this Order, Buyer shall replace the items or the Seller shall make such repairs as Buyer directs. However, if Seller cannot effect such repairs within the time required, Seller shall dispose of the property as Buyer may direct. When any property for which Buyer is responsible is replaced or repaired, Seller shall have such rights to an equitable adjustment as provided in paragraph K. of this cause.
- I. Buyer and, if other than Buyer, the owner of furnished property, shall have access at all reasonable times to the premises in which furnished property is located for the purpose of inspecting the property and Seller's compliance with this Clause.
- J. (1) As used in this paragraph J., the term "Seller's managerial personnel" means any of Seller's directors, officers, managers, superintendents, or equivalent representatives who have direction of (a) all or substantially all of Seller's business; (b) all or substantially all of Seller's operation at any one plant, or separate location at which this order is being performed; or (c) a separate and complete major industrial operation connected with performance of this Order.
- (2) Seller shall not be responsible for loss or destruction of, or damage to, the furnished property provided under this Order or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (3) and (4) below.
- (3) Seller shall be responsible for loss or destruction of or damage to, the furnished property provided under this Order (including expenses incidental to such loss, destruction, or damage):
- (a) That results from a risk expressly required to be insured under this Order, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater.
- (b) That results from a risk that is in fact covered by insurance or for which Seller is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (c) For which Seller is otherwise responsible under the express terms of this Order;
- (d) That results from willful misconduct or lack of good faith on the part of Seller's managerial personnel;
or
- (e) That results from a failure on the part of Seller, due to willful misconduct or lack of good faith on the part of Seller's managerial personnel, to maintain and follow a program or system for the control, use,

- protection, preservation, maintenance, and repair of furnished property as required by paragraph H of this Clause.
- (4) (a) If Seller fails to act as provided by subparagraph J.(3) (e) above, after being notified of Buyer's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of Seller's managerial personnel.
- (b) In such event, any loss or destruction of, or damage to, the furnished property shall be presumed to have resulted from such failure unless Seller can establish by clear and convincing evidence that such loss, destruction or damage:
- (i) Did not result from Seller's failure to maintain an approved program or system; or
- (ii) Occurred while an approved program or system was maintained by Seller
- (5) If Seller transfers furnished property to the possession and control of a third party, the transfer shall not affect the liability of Seller for loss or destruction of, or damage to the property as set forth above. However, Seller shall require the third party to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the third party's possession or control, except to the extent that the arrangement between Seller and the third party, with the advance written approval of Buyer, relieves the third party from such liability. In the absence of such approval, the arrangement between Seller and the third party shall contain appropriate provisions requiring the return of all furnished property in as good condition as when received, except for reasonable wear and tear for its use in accordance with the provisions of this Order.
- (6) Upon loss or destruction of, or damage to, furnished property, Seller shall so notify the Buyer and shall communicate with the loss and salvage organization, if any, designated by Buyer. With the assistance of any such organization, Seller shall take all reasonable action to protect the furnished property from further damage separate the damaged and undamaged furnished property, put all the affected furnished property in the best possible order, and furnish to the Buyer a statement of:
- (a) The lost, destroyed, or damaged furnished property;
- (b) The time and origin of the loss, destruction, or damage;
- (c) All known interests in commingled property of which the furnished property is a part; and
- (d) The insurance, if any, covering any part of or interest in such commingled property.
- (7) Seller shall repair, renovate, and take such other action with respect to damaged furnished property as Buyer directs. If the furnished property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including Seller's) that separation is impractical, Seller may, with the approval of and subject to any conditions imposed by Buyer, sell such property for the account of Buyer. Such sales may be made in order to minimize the loss to Buyer, to permit the resumption of business, or to accomplish a similar purpose. Seller shall have such rights to an equitable adjustment as provided in paragraph K. of this Clause for performing the obligations under this subparagraph J.(7). Buyer may directly reimburse the loss and salvage organization for any of its charges. Buyer shall give due regard to Seller's liability under this paragraph J. when making any such equitable adjustment.
- (8) Seller shall not be reimbursed for, and shall not include in any overhead or other indirect cost pool, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, furnished property, except to the extent that Buyer has expressly required Seller to carry such insurance under another provision of this Order.
- (9) If Seller is reimbursed or otherwise compensated for any loss or destruction of, or damage to, furnished property, Seller shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged furnished property or shall, as directed by Buyer, otherwise credit the proceeds to, or equitable reimburse, Buyer.

- (10) Seller shall do nothing to prejudice the rights of Buyer (or, if other than Buyer, the owner of the furnished property) to recover against third parties for any loss or destruction of or damage to, furnished property. Upon the request of Buyer (or if other than Buyer, the owner of the furnished property), Seller shall, at Buyer's expense, furnish to the Buyer all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments in favor of Buyer. In addition, where a subcontractor under Seller has not been relieved from liability for any loss or destruction of, or damage to, furnished property, Seller shall enforce for the benefit of Buyer (or, if other than Buyer, the owner of furnished property) the liability of the subcontractor for such loss, destruction, or damage.
- K. Any act or omission for which this Clause states that Seller may be entitled to an equitable adjustment shall be subject to paragraphs B. through F. of the Clause above entitled Changes as if the act or omission were a change under the Changes Clause.
- L. Upon completing this Order, at such earlier time as may be fixed by Buyer, Seller shall submit, in a form acceptable to Buyer, inventory schedules covering all items of furnished property not consumed in performing this Order or delivered to Buyer. Seller shall prepare for shipment, deliver f. o. b. origin, or dispose of the furnished property as may be directed or authorized by Buyer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this Order or paid to Buyer, as directed by Buyer. The foregoing provisions shall apply to scrap from furnished property, but Buyer may authorize or direct Seller to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings and remnants, and to dispose of such scrap in accordance with Seller's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with accounting procedures of Seller that conform to the requirements of this Order.
- M. Unless otherwise provided herein, Buyer (or if other than Buyer, the owner of furnished property) (1) may abandon any furnished property in place, at which time all obligations of Buyer regarding such abandoned property shall cease; and (2) has no obligation to restore or rehabilitate Seller's premises under any circumstances, but if furnished property listed in this Order is withdrawn or is unsuitable for the intended use, or if other furnished property is substituted, any equitable adjustment to which Seller is entitled under paragraph K. of this Clause may include restoration or rehabilitation costs.
- N. All communications required of Seller by this Clause shall be in writing and conform to such reasonable requirements about form and content as Buyer (or if other than Buyer, the owner of furnished property) may prescribe.
- O. THERE ARE NO WARRANTIES OF FITNESS OF FURNISHED PROPERTY OTHER THAN THOSE, IF ANY, STATED ON THE FACE OF THIS ORDER AND ALL OTHER SUCH WARRANTIES ARE DISCLAIMED.

21. INDEMNIFICATION AND INSURANCE

- A. Except insofar as Buyer approves in writing of self-insurance program of Seller, the Seller shall maintain insurance for worker's compensation, employer's liability, comprehensive general liability (bodily injury, including death), comprehensive automobile liability (property damage and bodily injury, including death), as well as any other insurance that Buyer may require under this Order.
- B. Seller shall submit for Buyer's approval any insurance, other than provided for in paragraph A., if Seller seeks to charge any cost of such insurance directly or indirectly to this Order.
- C. (1) All insurance required by this Clause shall be in a form and amount and for those periods as Buyer may require or approve and with insurers approved by Buyer may require or approve and with insurers approved by Buyer. If requested by Buyer, Seller shall cause Buyer and Buyer's customer to be added to Seller's insurance as additional insureds. Seller's insurance shall be primary to any insurance coverage procured by Buyer. On Buyer's request, Seller shall furnish Buyer with evidence of Seller's compliance with any aspect of this Clause.
- (2) To the extent Seller is required by this Order to insure against loss or damage to property of Buyer or Buyer's customer, (i) the policies shall disclose the interest of the Buyer and Buyer's customer, as applicable; (ii) the policies shall contain an endorsement that any cancellation or material change in the coverage adversely affecting the owner of furnished property shall not be effective unless Seller has

notified Buyer (and, if other than Buyer, the owner of furnished property) and Seller has followed such reasonable directions as the latter may give.

- D. Costs shall be allowable under the Clause entitled Allowable Costs, Fee, and Payment:
- (1) To the extent incurred for insurance that is allocable to this Order and is required and approved under this Clause.
 - (2) To the extent to which the costs arise out of the performance of this Order, for liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise for death (including bodily injury) or loss of or damage to property (other than property owned, occupied, or used by Seller, rented to Seller, or in the care, custody, or control of Seller). All such liabilities must be represented by final judgments or settlements approved in writing by Buyer. To qualify for reimbursement of such liabilities, Seller must promptly (i) notify Buyer when Seller has any reason to believe that a claim may be or has been made, or when litigation has been instituted, and (ii) furnish Buyer with all copies of papers related to any such litigation and authorize Buyer to settle or defend the claim and to represent Seller, including taking charge of any litigation, if Buyer so determines. Seller may request to be associated, at Seller's own expense (which shall not be an allowable cost under the Clause entitled Allowable Cost, Fee and Payment) with Buyer in the defense against any such claim or litigation.
 - (3) Reimbursement to which Seller is entitled under paragraph D(2) shall be without regard to the Limitation of Cost or Funds Clause of this Order.
- E. Seller shall not be reimbursed by Buyer under this or any other Order for liabilities, and expenses incidental to such liabilities:
- (1) For which Seller is responsible under the express terms of any portion of this Order;
 - (2) For which Seller has failed to provide insurance as provided by this Order;
 - (3) That result from willful misconduct or lack of good faith on the part of any of Seller's "managerial personnel," as that term is defined in paragraph A.(1) of the Clause entitled Inspection.
- F. (1) Except when Seller is entitled to reimbursement pursuant to paragraph D of this Clause:
- a) Seller shall defend and indemnify Buyer and Buyer's customer from any losses, claims, demands, or suits (including those from Seller's employees) for bodily injury (including death) or property damage howsoever arising out of Seller's performance of this Order and irrespective of Buyer's negligence in any degree.
 - b) All work to be performed on this Order by Seller is at Seller's risk as to the methods, processes, procedures, and safe conduct of the work. If Seller is to perform work on the premises or within facilities owned or controlled by Buyer, Buyer's customer, or any third party, Seller shall be solely responsible for the safe conduct of such work and the protection of the premises or facilities, and of any persons on the premises or facilities. Seller shall defend and indemnify Buyer, its employees, agents, other subcontractors, and invitees from and against all losses, claims, damages or suits, including those suffered or brought by Seller's employees for bodily injury (including death) or property damage and arising from performance of the work by Seller, its employee, agents, invitees or subcontractors, irrespective of Buyer's negligence in any degree.
- (2) Nothing in paragraph F.(1) imposes on Seller any responsibility to pay, or indemnify Seller for, any liabilities resulting solely from Buyer's active negligence or gross misconduct.
- G. If this Order is issued under a prime contract or subcontract of the United States Government, Seller, to the extent not covered by the foregoing paragraphs of this Clause, indemnifies, and saves Buyer harmless, against and from any demands, decisions, judgment, orders awards, costs and expenses, including attorney fees, arising from or incurred in resisting any claim, demand, or asserted right of Buyer's customer based on any act or omission by Seller under or in any way related to this Order or to any step leading to the award of this Order, except those for which Seller is entitled to insure or be reimbursed pursuant to paragraphs A., B., and D. of this Clause.

- H. Seller's costs under paragraphs F and G of this Clause shall not be allowable under the Clause entitled Allowable Cost, Fee, and Payment.

22. LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay any performance under this Order, Seller shall immediately give Buyer notice and, if the original notice is not in writing or does not contain full details, Seller shall promptly furnish such notice and such details in writing. Seller shall ensure that the obligations of this Clause are flowed down to all tiers of its subcontractors.

23. STOP WORK NOTICES

- A. By written notice to Seller, Buyer may require Seller to stop all or any part of the work under this Order for up to one hundred twenty (120) working days after the notice is received by Seller, and for such further periods as the parties may agree. Any such notice shall be specifically identified as one to stop work.
- B. Upon receipt of such notice, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the notice. Within the period covered by the notice, Buyer shall by further written communication to Seller cancel the notice or terminate the work covered by the notice under the Clauses entitled Termination.
- C. If a Stop Work notice is canceled or expires, Seller shall immediately resume work. Such a Stop Work notice shall be treated, for all purposes under this Order, as if it were a Change Order issued pursuant to the Clause entitled Changes.
- D. If the work covered by a Stop Work notice is terminated for convenience under the Clause entitled Termination, the reasonable costs resulting from the notice will be included in any settlement under that Clause. If the work covered by a Stop Work notice is terminated for default under the Clause above entitled Termination, Seller shall be entitled to the reasonable costs resulting from the Stop Work notice.

24. SELLER'S INVOICES AND CLAIMS

By virtue of its submission to Buyer, each invoice or claim from Seller shall be deemed to include a warranty by Seller that all amounts claimed by Seller are due and proper, and Buyer shall have, in addition to any other rights under this Order, a right of action against Seller for any breach of that warranty. Upon request by Buyer, Seller shall certify any of Seller's invoices or claims in writing, in such terms, and with such signatures, as Buyer may prescribe, and Buyer may ignore any such invoice or claim not so certified.

25. DISPUTES

- A. Any dispute between Buyer and Seller arising under, for alleged breach of, or in any other way related to, this Order shall, if not resolved by mutual agreement, be subject to resolution only as provided below.
- B. Buyer may pursue Buyer's rights against Seller in any tribunal with jurisdiction.
- C. Seller may pursue its rights against Buyer only in a court of competent jurisdiction in the State of California and any such court action shall be subject to the following limitations. If Buyer deems that any dispute arising under, for breach of, or in any other way related to, this Order may affect, or be connected with, any dispute between Buyer and Buyer's customer (including within that term, solely for purposes of this Clause, anyone with whom Buyer has a dispute related in any way to this Order or the products or services procured under it), Buyer may by written notice to Seller at any time before a final judgment invoke this paragraph C. and thereupon Seller's sole remedy shall be as stated in (1) through (4) below:
- (1) Seller shall fully cooperate at its own expense with Buyer in any proceeding involving Buyer's customer. When Buyer so requests and authorizes Seller to proceed in Buyer's name, Seller shall conduct the litigation at Seller's expense. In any other instance, with Buyer's permission (which shall not be unreasonably denied but may be conditioned upon such terms as Buyer deems appropriate), Seller may have its interest represented in any such proceeding, to the extent that the forum's procedures allow. Seller shall, however, hold Buyer harmless against any adverse effects on Buyer's interests that may be caused by having Seller's interests represented in such a proceeding. Subject to the foregoing, Buyer shall cooperate with Seller in any such proceeding. Pending the conclusion of such proceeding, Seller may not pursue against Buyer or Buyer's customer any litigation that Buyer states, in a written notice to

Seller, involves one or more issues of law or fact in common with any dispute between Buyer and Buyer's customer. In consideration of Buyer's promises under this Order, Seller hereby grants to Buyer an irrevocable power of attorney to file papers on behalf of Seller for a stay or dismissal of any litigation designated by Buyer in a notice under this paragraph (1). Seller and Buyer shall treat as conclusive between them all portions of any decision in any such proceeding that Buyer designates in a written determination communicated to Seller.

- (2) Upon final disposition of any dispute between Buyer and Buyer's customer covered by a notice issued by Buyer under paragraph C. of this Clause, Seller may proceed to seek resolution consistent with this Clause, or any issue as to which the disposition between Buyer and Buyer's customer is not conclusive upon Seller under this Clause.
- (3) Without Seller's consent, Buyer shall not settle with Buyer's customer in any manner that would be substantially adverse to Seller. Seller shall cooperate fully in assisting Buyer to reach a settlement and shall not unreasonably withhold or condition consent to any proposed settlement. Seller's sole remedy in the event Buyer settles in violation of this paragraph (3) shall be to have its original dispute with Buyer determinable in a court of competent jurisdiction in the State of California.
- (4) To the extent to which Seller may have the right to litigate against Buyer under paragraphs C.(2) or (3) above, Buyer will, to the extent appropriate, cooperate in seeking the lifting of any stay of litigation obtained under paragraph C.(1) above; and Seller may refile against Buyer any court action that had been earlier dismissed in implementation of Buyer's rights under paragraph C.(1) above. Provided that Seller refiles such litigation against Buyer within forty-five (45) days after Seller knows or has reason to know that it may refile, Buyer shall not assert against Seller in the refiled action any statute of limitation that expired after such an action was dismissed in implementation of Buyer's rights under paragraph C.(1) above.

- D. Except insofar as this Order expressly gives Seller greater rights against Buyer than Buyer has against its customer, the parties intend that parallel results be reached on any issue common to the disputes between (i) Seller and Buyer and (ii) Buyer and its customer; the law applicable to this Order shall be that applicable between Buyer and Buyer's customer to the extent that will effectuate such intent. On any issue for which the choice of law is not determined by the immediately preceding sentence, the law applicable to the interpretation of this Order and the resolution of disputes between Buyer and Seller in connection with this Order shall be the law of the State of California.
- E. Pending resolution of any dispute with Buyer, Seller shall proceed diligently to perform all of the duties that it would have, in the absence of the dispute, toward Buyer.
- F. Whenever a provision of this Order grants Seller a form of remedy, whether an "equitable adjustment" or otherwise, that shall be the exclusive form of remedy available to Seller, and Seller shall not have any other or broader right, including, but not limited to, one for "breach of contract".

26. COMPUTING TIME

Except as otherwise expressly stated, all "days" referred to in this Order shall be calendar days. If the last day of any period falls on a weekend day or federal holiday the period shall expire the next working day after the weekend or holiday.

27. INTEREST

- A. Buyer shall be liable to Seller for interest only to the extent that the debt due Seller was part of a claim that Buyer had against Buyer's customer and for which the latter has paid Buyer interest on Seller's portion of the claim. The interest payable to Seller shall be the portion of the interest so paid Buyer that is allocable to Seller's portion of the claim.
- B. All amounts due Buyer from Seller shall bear interest, compounded monthly, from the date of the debt arises until Buyer receives payment. Such interest due Buyer shall be at the rate publicly announced by the Bank of America as the rate it charges for loans to its best corporate customers, except that if Buyer is liable to its customer or some other third party for interest and Seller's acts or omissions were responsible in whole or part for such liability of Buyer, the interest due from Seller shall be at the same rate as that owned by Buyer as stated in this sentence. If the rate used to determine the rate payable by Seller under this Clause varies during the period when Seller owes Buyer, the interest due Buyer shall vary correspondingly.

28. BUYER'S REMEDIES

All rights and remedies of Buyer set out in this Order are cumulative and in addition to any remedies provided by law or equity. Waiver by Buyer of any failure by Seller shall not be a waiver of any other failure, and all provisions of this Order shall remain in full effect, unless terminated by Buyer.

29. SURVIVAL OF PROVISIONS

The provisions of this Order shall survive any termination of this Order as well as any acceptance and final payment under this Order.

30. BUYER'S CUSTOMER

The term "Buyer's customer" shall mean (i) any entity to whom Buyer provides products or services for which the items or work called for by this Order are being obtained by Buyer, and (ii) any other entity in the contractual chain to and including the final end user of the products or services in connection with which Buyer has entered into this Order.