

CONSTRUCTION

General Provisions

- **General Conditions - Construction**
- **Security, Safety and Environmental Control Regulations
GP001TC March 1985**
- **ES-S08-0213-S, Minimum Supplier Insurance Coverage Requirements,
06/30/00**

GENERAL CONDITIONS - CONSTRUCTION

1. ENTIRE AGREEMENT

The provisions of this order 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. DEFINITIONS

- a. "Buyer" means Aerojet.
- b. "Seller" means the entity to whom this order is issued.
- c. "Order" means this purchase order and all references, documents and attachments incorporated therein.
- d. The terms "or equal," "Similar and equal," and "Equivalent to" shall mean that a material or method equal or better in quality and/or performance may be used, subject to the approval of Buyer.
- e. The terms "shown" and "as shown" shall mean as shown on the drawings and the terms "indicated" shall mean as indicated on the drawings.
- f. "Verify dimensions" shall mean: (i) check carefully the dimensions shown to see that they tally; (ii) check existing and/or adjoining work, if any, to see if existing dimensions are correct; (iii) report any and all discrepancies in the drawings or existing work to Buyer's Field Engineer.
- g. The term "work" includes both labor and material.
- h. The term "provide" means furnish and install.
- i. The term "includes" or "including" means includes but not limited to or including but not limited to.
- j. Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," or words of like import are used, it shall be understood that the direction, requirement, permission, order, or designation of Buyer is intended. Similarly, the words, "approved," "acceptable," "satisfactory," or words of like import shall mean approved by, or acceptable to, or satisfactory to Buyer, unless otherwise expressly stated. UNDER NO CONDITIONS SHALL SUCH TERMS BE CONSTRUED AS A WAIVER OR RELINQUISHMENT OF ANY KIND OF THE RIGHT OF BUYER TO ASSERT OR RELY UPON ANY SUCH TERMS TO MEAN BUYER ACCEPTANCE OR APPROVAL

OF ANY WORK NOT ACCEPTABLE UNDER THE CONDITIONS OF THIS ORDER,
OR APPLICABLE CODES, LAWS, AND ORDINANCES.

3. PERMITS, CERTIFICATIONS AND INSPECTION

- a. Buyer will furnish the building permit. Unless otherwise provided in the Special Conditions, all other permits required shall be obtained and paid for by the Seller. Seller shall procure all required certificates covering inspection and acceptance of the work and shall give all required notices to proper authorities relative to work covered by the specifications. Copies shall be furnished to Buyer.
- b. Cognizant inspectors for the Sacramento County Building Department will inspect the work for code compliance. Sacramento County may provide inspection on a continuing basis; however, work is not to be delayed pending arrival of building inspectors at the job site. Presence or absence of the Sacramento County Building Department Inspectors shall not relieve the Seller from responsibility for compliance with applicable codes. Seller shall comply with requests for corrections in the work as may be required by inspectors from the Sacramento County Building Department. Changes required by the Building Department Inspectors shall not reduce the quality of work below that shown or specified.

4. CONTRACTS AND BONDS

Seller shall enter into a written contract on Buyer's purchase order forms within ten (10) calendar days after receipt, and shall at this time furnish a performance bond and a payment bond as follows:

- a. Payment Bond - Seller shall furnish a payment bond with good and sufficient surety or sureties and in a form acceptable to Buyer for the protection of persons furnishing material or labor in connection with the performance of the work under this order. The penal sum of such payment bond shall be 100 percent of the contract price.
- b. Performance Bond - Seller shall furnish a performance bond with good and sufficient surety or sureties and in a form acceptable to Seller in connection with the performance of the work under the order. The penal sum of the performance bond shall be 100 percent of the contract price.
- c. Additional Bond Security - If any surety upon any bond furnished in connection with this order, becomes unacceptable to Buyer, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Buyer, Seller shall promptly furnish such additional surety as may be required from time to time to protect the interests of Buyer and of persons supplying labor or materials in the prosecution of work required by this order.
- d. Date and Delivery of Bonds - Bonds shall be dated the same date as the order, and shall be delivered to Buyer within ten (10) calendar days from the effective date of the order, or prior to commencement of work, whichever shall occur first. In the event that bond execution and delivery prior to this time is not practical, Seller shall furnish evidence, satisfactory to Buyer, from the surety that the bonds are in process and the date by which the bonds will be delivered to Buyer.

- e. Acceptable Bonds - The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on federal bonds will be accepted. Individual sureties will not be accepted unless such surety deposits with Buyer cash, bonds, or notes of the United States, or certified check drawn to the order of Buyer for the required amount of the guaranty, under an agreement that the collateral so deposited shall remain in the possession and control of Buyer for at least one year after the completion of the order.

5. SITE INVESTIGATION

The Seller acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Seller further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Buyer, as well as from information presented by the drawings, and specifications made a part of this order. Any failure by the Seller to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Buyer assumes no responsibility for any conclusions or interpretations made by the Seller on the basis of the information made available by the Buyer.

6. MINIMUM SUPPLIER INSURANCE COVERAGE REQUIREMENTS

ES-S08-0213-S, Minimum Supplier Insurance Coverage Requirements, 06/30/00, are incorporated herein by reference and attachment.

7. INTERRUPTION OF EXISTING SERVICES

Where connections or modifications to existing utilities are required, work shall be performed at such times and for such durations as are approved by Buyer and may be required to be made outside of normal working hours, at Seller's expense.

8. LIABILITY FOR DAMAGES

In case of damage by the Seller to the work of others engaged on the project, the parties involved, to avoid any delay in completion of the project, shall agree promptly regarding the making of necessary repairs and assumption of repair cost. Such repairs shall be made in a manner satisfactory to Buyer. Buyer may require, in order to assure proper workmanship, or to prevent delays or in cases where responsibility is in dispute or cannot be determined, that repairs be made by the party whose work has been damaged. Such party shall comply at his own expense, and shall obtain compensation, by such proper means as may be available, from only the party or parties at fault. Seller shall take all precautions necessary, special or otherwise, and shall be responsible for the safety of the work hereunder and shall maintain all protection necessary for its work and its equipment.

9. CHANGES - CHANGED CONDITIONS

- a. Procedure - Buyer may at any time, by written order and without notice to the sureties, make changes in the drawings or specifications or both, of this order if within its general scope. If any such change causes an increase or decrease in the Seller's cost of, or the time required for, the performance of this order, an equitable adjustment will be made and the order modified in writing accordingly. Except as otherwise provided in this order, no charges for extra work will be allowed. Any claim for adjustment under this article must be asserted within 10 calendar days from the date the change is ordered, provided however, that Buyer, if it determines that the facts justify such action, may receive, consider, and adjust any such claim asserted at any time prior to the date of final settlement of the order. The provisions of this article shall not excuse the Seller from proceeding with the prosecution of the work so changed.
- b. Written Orders Mandatory - No notice, order, direction, determination, requirement, consent, approval, or ratification under the order shall be of any effect unless authorized in writing by the Purchasing Department. No oral statement of any person whomever shall in any manner or degree modify or otherwise affect the terms of the order. No charge may be made for extra work unless ordered in writing by Buyer.
- c. The Seller shall promptly, and before such conditions are disturbed, notify the Buyer in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in this order, or (b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this order. The Buyer shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the Seller's cost of, or the time required for, performance of this order, an equitable adjustment shall be made and the order modified in writing accordingly. Any claim of the Seller for adjustment hereunder shall not be allowed unless he has given notice as above required; or unless the Buyer grants a further period of time before the date of final payment under the order. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the "Arbitration" clause of this order.
- d. Disallowance for Additional Overhead - When a change under this order involves performance substantially or entirely by a lower-tier subcontractor, no allowance will be made for additional Seller's overhead unless it is to the satisfaction of Buyer that such expense will actually be incurred by Seller in connection with this work.
- e. Detailed Estimates - When a change is ordered, the Seller shall prepare, and cause each of his subcontractors to prepare, completely detailed estimates of the additions or reductions in cost of the change, broken down by materials, labor, and equipment to be used. Changes shall list items of work with each item broken down by material quantities, and cost, labor cost or manhours, and description of equipment to be used and cost per unit. Estimates of added and deducted work shall be computed separately and be based on costs current at the time changed work is requested. On demand of Buyer, the cost of added or deleted items of work from the original scope of work furnished by a supplier, vendor, or subcontractor shall be supported by a copy of their quotation of the Seller's purchase order to the supplier, vendor, or subcontractor.

- f. Overhead and Profit - To the direct cost of added work under \$100,000.00, the Seller has the option of itemizing his overhead expenses or utilizing the following standard overhead allowances: (i) ten percent (10%) of the base wages, of allowable direct labor cost, which are the crafts base pay, vacation, and if applicable the crafts health and welfare and pension fund, excluding personnel expense, payroll taxes, insurance, travel pay, premium wages, other fringe benefits, and similar items of overhead, as well as engineering and drafting expense; (ii) five percent (5%) of allowable cost of materials and supplies; (iii) four percent (4%) of allowable cost of subcontracted work, subject to the limitation set forth in Paragraph d, above and (iv) five percent (5%) of the allowable expense of renting and operating equipment. To the direct cost of added work of \$100,000 or more, the Seller must itemize his overhead expenses. To the allowable costs may be added six percent (6%) for profit, bond costs on the basis of premium charges; and State and local taxes where applicable. Profit and overhead on bond and tax costs will not be allowed. To the cost of labor, equipment and material for deducted work, the Seller shall add a ten percent (10%) reduction for overhead, profit and bond.

Deducted work of subcontractors will be computed in this same manner and the Seller shall add an additional percentage reduction equal to that added to Seller's price for subcontract work.

- g. Allowable Costs - In determining the costs to the Seller for labor, materials, and equipment for added or deleted work, the following limitations shall apply.
- (1) Labor. The cost of labor will be the actual wages and other payments to the employees by the Seller. No actual cost of labor will be recognized at a rate in excess of the wage rates prevailing in the locality at the time the work is performed unless the Seller establishes a necessity for payment at a higher rate to the complete satisfaction of Buyer. As a part of the actual costs of labor, Buyer will reimburse the Seller for compensation and insurance payments; contributions made to the State pursuant to the Unemployment Reserve Act, Chapter 352, Statutes of 1935, as amended; and for taxes paid to the Federal Government pursuant to the Social Security Act of August 14, 1935, as amended.
 - (2) Materials. The cost of materials shall be the actual trade discount cost to the Seller subject to the following limitations; if a cash or volume discount is offered, or is available to the Seller, whether or not the Seller takes such discount it shall be credited to Buyer. If the materials are obtained from a supply or source owned wholly or in part by the Seller, payment therefore will not exceed the current wholesale price for such materials delivered to the job site. If the cost of materials is excessive in the opinion of Buyer, or, if the Seller fails to furnish satisfactory evidence of the cost to him from the actual supplier thereof, then in either such case the cost of materials shall be determined to be the lowest current wholesale price at which such materials are available in the quantities required, delivered to the job site. Buyer reserves the right to furnish such materials as it deems advisable and the Seller shall have no claim for costs and profits on such materials.

- 3) Equipment and Small Tools. The cost for any use of equipment shall be the actual costs to the Seller therefore, subject to the following limitations: In no case shall rental rates be authorized in excess of those established by distributors for equipment rental agencies in the locality where the work is performed, nor shall the cost for the use of equipment owned by Seller be authorized in excess of such rental rates, wherever reference is made in this paragraph to Rental of Equipment, it shall be deemed to refer also to equipment owned or furnished by the Seller as well as to equipment which is in fact, rented by him. In computing the hourly rental of equipment, less than 30 minutes shall be considered 1/2 hour. The minimum rental time to be paid per day shall be one hour. Rental time will not be allowed while equipment is inoperative due to breakdowns or nonworking days. The rental time of equipment to be paid for shall be the time the equipment is in operation on changed work. In addition, the rental time shall include the time required to move the equipment to the work from the nearest available source for rental of such equipment and to return it to such location. In addition, loading and transportation costs will be allowed if the equipment is not moved by its own power, however, moving time, loading costs and transportation costs will not be allowed if the equipment is used on the project in any other way than upon the changed work. For payment purposes, individual prices of equipment having a replacement value of \$300 or less shall be considered to be tools or small equipment and no payment will be made for their use on the work. Allowance for small tools of 3% of craft direct labor for pipefitters, electricians and ironworkers, not included are supervision, laborers, carpenters, operating engineers and all other craft not listed above. See Schedule Y for rental rates applicable to use of equipment. These rates include full compensation to Seller for costs of fuel, oil, depreciation, repairs and maintenance. For any equipment not shown in Schedule Y, the rental rates shall be determined on verified cost, divided by 24, for monthly rate. Weekly rate is 1/3 of monthly rate, daily rate is 1/4 of weekly rate. Operators of such equipment will be paid for as provided in subparagraph f(1) of this article. Equipment rates shall be computed on the basis of lowest applicable rate, i.e., daily rate, weekly rate, or monthly rate.
- h. Time Adjustment - For any change in the work or for any Buyer caused delays, Seller shall be entitled to such adjustment in time by which the entire work may be delayed, provided, (i) each estimate for a change in the work submitted by Seller shall state the time adjustment he considers should be allowed for making the change, and (ii) time adjustment for Buyer caused delays shall be requested in writing for Buyer approval. Failure to request extra time shall constitute a waiver of the right to subsequently claim any adjustment in the time for final completion. If the work change is separable from the work of the basic order the extension of time shall apply only to the changed portion of work. If an agreement is reached as to the adjustment in compensation for the performance of changed work, but agreement is not reached as to time adjustment for such work, then the Seller shall proceed with the work at the agreed price, reserving to the Seller the right to further pursue his claim for time adjustment.

10. SELLER'S RESPONSIBILITY

- a. In addition to its obligations under this order, Seller is responsible for: (i) acts or omissions of persons directly employed by him; (ii) maintaining cooperation between his subcontractors as affects the contract work; (iii) maintaining strict control over his subcontractors to assure completion of the work or any special part thereof at times and in a manner which avoids delays; (iv) maintaining at all times, at the site of the work, a representative satisfactory to Buyer, authorized to act in all matters pertaining to the work. No responsibility is assumed by Buyer for any statement or representation concerning general or specific work site condition unless expressly stated in the order.
- b. Seller shall familiarize himself with all work being performed by other parties for the project, and shall (i) not permit or commit any act which will interfere with the performance of work by Buyer personnel or other parties, whether at the work site or otherwise, (ii) exchange information and data with other parties who may be working in the vicinity of the work site, and (ii) cooperate in all respects with Buyer and other parties wherever and whenever necessary for the timely and efficient prosecution of the work. The exchange of data, information, and the agreements thereto as set forth in b(ii) above, shall be documented and copies submitted to Buyer's cognizant procurement representative.
- c. Temporary Access Structures - In the event that work under this order involves opening of trenches and pits or otherwise isolating buildings and areas to which access is necessary for prosecution of work by others, Seller shall arrange his work in such a manner as to minimize the period of time that access to such buildings and areas is obstructed. In those cases where normal and practical construction operations necessitate isolation for prolonged periods of time, Buyer reserves the right to provide temporary bridges and other crossing facilities at such locations as considered necessary. All costs incident to the furnishing, installation, maintenance, and removal of such bridges or access facilities will be borne by Buyer. Seller, however, will be required to prosecute his work under and around such temporary crossing facilities as long as they are in use, without any increase in compensation.

11. RECORDS

If this order is placed pursuant to a Government prime or subcontract as indicated on the face of the order, the following provision applies:

- a. The Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of three years after final payment under this order or of the time periods specified in Appendix M of the Armed Services Procurement Regulation or NASA PR, whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Seller that directly pertain to, and involve transactions relating to this order.
- b. Seller agrees to include this clause, including this Paragraph (b), in all its subcontracts exceeding \$2,500.00.

12. ASSIGNMENT

Monies due to Seller under this order may not be assigned in whole or in part by Seller without the prior written consent of Buyer. To the extent that any law, statute, regulation, or the decision of any court, commission or regulatory body may or shall contain a contrary provision. Seller hereby waives the right to assert such contrary provision in support of any assignment.

13. SUBCONTRACTORS

Within 7 days after the award of any subcontract either by himself or a subcontractor, the Seller shall deliver to the Buyer a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. Nothing contained in this order shall create any contractual relation between the subcontractor and the Buyer.

Upon request, the Seller shall submit to the Buyer a list of names and addresses of major material and equipment suppliers and a summary description of the purchased items.

14. POSSESSION PRIOR TO COMPLETION

Buyer shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in strict accordance with the order. If such prior possession or use, unless such prior possession or use is provided for elsewhere in the order, delays the progress of the work or causes additional expense to the Seller, an equitable adjustment in price or time for completion will be made and the order shall be modified in writing accordingly; provided however, that if the Seller fails to complete the work within the time specified in this order, or as such time for completion may be extended pursuant to this order, Buyer shall have the right to take possession of, or use all or any part of the work without payment of additional compensation to the Seller, and without extending time for completion.

15. RIGHTS AND LIMITS

- a. Seller will be allowed reasonable space at the work site including the area to be used for work preparation and staging and access thereto. Seller shall confine his operations, employees and those of its subcontractor to these specific work areas, and roads assigned by Buyer for ingress and egress to the work site. Only Buyer designated safety and smoking areas shall be utilized.
- b. Insofar as practicable, all parties on the work which may be in progress have equal rights to use of roads and ground at the site, but in no case will the Seller be permitted to use any of the facilities, such as roads, utilities, and buildings erected or constructed by another party at the site without prior consent of the party involved and the approval of Buyer.
- c. Crossing facilities provided by Buyer, insofar as practical, may be used by any and all parties working the building or area involved. However, in no case will such crossing be installed and maintained for the exclusive use of the party responsible for the isolation or obstruction.

- d. Temporary bridges and crossings provided by the Seller for his own use shall be constructed and maintained in complete conformity with the applicable requirements of the "Security and Safety" section of the specification and state laws and local codes governing such structures.

16. LABOR RELATIONS AND STANDARD PROVISIONS

- a. Responsibility - It shall be Seller's responsibility to maintain satisfactory labor relations with his employees, and this obligation shall be transmitted to Seller's subcontractors. Buyer reserves the right to request Seller to remove such employees as may be deemed objectionable from all connection with the work.
- b. Assignment of Work - Seller shall assume full responsibility for procurement, fabrication, and installation of the work involved so that there will be no jurisdictional labor disputes and resultant delay in completion of the work. Prior to assignment of work by Seller or his principle subcontractors, a prejob conference shall be held with the crafts affected so that appropriate assignments of work will be assured.
- c. Disputed Work Assignment - In the event an assignment of work is disputed by other craft(s), Seller shall make the site available for inspection by the business representatives concerned so that the affected business representatives may agree upon appropriate assignment. In the event the trade assigned agrees to a reassignment of work to another union, Seller shall immediately provide for such reassignment.
- d. Referral of Disputes - In the event that the resolution of the dispute is not achieved by above, Seller shall advise the NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES, BUILDING AND CONSTRUCTION INDUSTRY, 815 16th Street, N.W., Washington, D.C. and request that prompt action be taken to clarify the assignment.
- e. Disallowance of Claims - No claims will be entertained by Buyer for any costs occasioned by disputes or reassignment of work, and no extensions of time will be granted for delays thus occasioned.

17. LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay the performance of this order, Seller shall immediately give notice thereof. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this paragraph in all subcontracts issued under this order.

18. CONSTRUCTION SCHEDULE, PROGRESS CHARTS, AND COST BREAKDOWN

- a. Within 5 days after award of this order, or within such further time as Buyer may allow, Seller shall prepare and submit to Buyer for approval, a practicable construction schedule showing the dates on which Seller proposes to start and complete the various portion of the work. Such schedule shall be in a form acceptable to Buyer and shall be capable of use at any time as a progress chart to indicate appropriately the percentage of work scheduled for completion. At the end of each week, or as requested by Buyer, the Seller shall enter the

actual progress of the work on a master of the approved construction schedule and immediately deliver 3 copies thereof to Buyer.

- b. Upon Buyer request, Seller shall furnish evidence satisfactory to Buyer that all necessary equipment and other materials have been ordered and scheduled for delivery so as to ensure their arrival at the site in time for construction schedule requirements. In the event scheduled delivery is not compatible with the approved construction schedule, Seller shall take such steps as may be required to expedite delivery of any equipment or material required in performance of this order, whether ordered by Seller or his subcontractor(s). Expediting shall include premium transportation to reduce time in transit, purchase or warehouse materials rather than mill or factory shipments, overtime by manufacturers or fabricators at the factory or at the site, or other appropriate efforts as may be required to expedite delivery and installation of the equipment or material.
- c. Seller shall submit to Buyer, a cost breakdown of the major features of the work in accordance with the headings indicated on the construction schedule. The cost breakdown shall be completed and submitted as part of the construction schedule as specified in paragraph a. above.

19. PROSECUTION OF THE WORK

- a. Equipment, Forces, Hours of Work - Seller shall furnish sufficient forces, construction plant, and shall work such hours, including night shifts and overtime operations, as may be necessary to ensure the prosecution of the work in accordance with the approved construction schedule. If, in Buyer opinion Seller falls behind in the construction schedule, such steps shall be taken by Seller as may be necessary to improve progress including an increase in the number of shifts, overtime operations, days of work or the amount of construction plant, all without additional cost to Buyer.

The Seller and his subcontractors scheduling work for other than regular or normal work hours, which are from 7:00 a.m. to 5:30 p.m. daily, Monday through Friday, shall proceed as follows:

- (1) Advise the Buyer in writing, not later than 12:00 o'clock midday, for overtime to be worked on that day or overtime to be worked before 7:00 a.m. of the following day. For weekend work, the notification shall be delivered before 12:00 noon on Fridays, for holiday work, the notification shall be delivered before 12:00 noon on the preceding day, and shall include the following:

Seller (or subcontractor) name

Purchase Order Number

Day and hours that overtime work is schedule

Exact area where work is to be perform

Names and badge numbers of employees authorized to work.

- (2) Failure to comply with the requirement will result in barring employees from entering the work areas for overtime work. This will not be considered an excusable reason for delay or added costs.
- b. Supervision - Seller shall give constant and efficient supervision to the work, using his best skill, attention, and personnel. Seller shall keep on the job during all working hours, and until final acceptance, a competent superintendent and necessary assistant supervisory personnel, all satisfactory to Buyer. The superintendent shall not be changed during the course of this order except by prior approval of, or by written notice from Buyer requesting his removal, unless the superintendent proves unsatisfactory to the Seller and ceases to be in his employ. The superintendent shall represent the Seller in his absence and all direction given to him shall be as binding as if given to the Seller. No oral order or request by either the superintendent or Buyer's representative at job site shall be effective unless immediately confirmed in writing. Prior to starting work, Seller shall furnish Buyer with the names and telephone number of his authorized supervisors who will be available to furnish supervision or personnel, at any time of the day or night, on any occasion where an emergency or special condition requires Seller's presence or services.
 - c. Transportation of Equipment and Materials - It shall be the responsibility of the Seller to transport all equipment and materials to be furnished by him to the site at his own expense. Also, he shall furnish transportation from designated warehouses or storage points at the site of the work of all Buyer-furnished materials and equipment, including loading and unloading.
 - d. Seller's Failure to Perform - If Seller should, except as a result of unavoidable causes, (as set forth in 20 e), neglect to supply workmen or materials for proper execution of the work, or if he should substantially violate any provision of the order, or if a bankruptcy petition be filed by him, or against him or if he is insolvent, or if there be an attachment of his assets by court order; Buyer, upon 7 days written notice, during which period Seller shall have the privilege of adjusting the difficulty to the satisfaction of Buyer, may terminate the work of the Seller, take over the work, including all materials, tools and equipment at the site, and complete the work.
 - (1) During the pending of such notice, and until termination of the work, Seller shall not be entitled to further payments. Upon final completion of the work, if costs to buyer for finishing the work, plus any payments that may have been made to Seller, plus liquidated or actual damages, are less than the order price, the balance remaining shall be paid to the Seller. If the sum of these amounts is greater than the order price, the excess shall be paid by Seller to Buyer.
 - (2) Equipment and tools belonging to the Seller and taken possession of may be retained until settlement is made by the Seller for any balance that may be due Buyer, or, upon failure of the Seller to make prompt settlement, such items may be sold at private or public sale and the proceeds therefrom applied against any balance due.
 - (3) Upon final settlement of the order to Buyer's satisfaction, any of such tools and equipment remaining shall be removed promptly by Seller.

- (4) Seller shall be entitled to prompt accounting of expenditures incurred by Buyer in completing the work and shall also be entitled to the realizable value of any surplus materials purchased by Buyer for the completion of the work.

20. DEFAULT - DELAYS - DAMAGES

- a. Reporting Delays - All delays for a duration of 8 hours or more shall be reported in writing to Buyer. The report shall state the cause of the delay and the extent and corrective action being taken.
- b. Inclement Weather - No delays will be allowed for inclement weather unless such conditions exceed the average inclement weather conditions recorded by local Government Weather Bureau's for the last 10 years. The weather records that will be used to determine such average will cover the identical calendar time as the construction schedule being worked.
- c. Termination for Default - If, in the opinion of Buyer, the Seller refuses or fails to prosecute the work, or any separable part thereof, without due diligence to ensure its completion in the time specified in the order, or any extensions thereof; or fails to complete the work within such time, Buyer may, by written notice of default to Seller, terminate his right to proceed with the work or such part of the work as has been delayed. In such event, Buyer may take over and prosecute the work to completion by contract or otherwise, and the Seller and his sureties shall be liable for any costs to Buyer occasioned thereby, as well as for liquidated damages for delay, as may be fixed in the order, for such reasonable time as may be required to complete the work. If liquidated damages are not so fixed, the Seller and his sureties shall be liable to Buyer for any actual damages occasioned by such delays. If the Seller's right to proceed is so terminated, Buyer may take possession of, and utilize for completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.
- d. Damage for Delay - If Buyer does not terminate the right of the Seller to proceed in Paragraph a. above, Seller shall continue the work, in which event he and his sureties shall be liable to Buyer, in the amounts set forth elsewhere in this order, for liquidated damages for each calendar day of delay until the work is complete, or if liquidated damages are not so fixed, any actual damages occasioned by the delay.
- e. Excusable Delays - The right of the Seller to proceed will not be terminated as provided in Paragraph b. above, nor will Seller be charged with liquidated or actual damages, as provided in Paragraph b. above because of any delay in the completion of the work due to causes which he could not have reasonably anticipated, and which were due to causes beyond his control and without his fault or negligence, including but not restricted to acts of God, or the public enemy, acts of another contractor in performance of a contract with Buyer, fires, floods, epidemics, quarantine restrictions, strikes, freight embargo, and unusually severe weather, or delays of subcontractors or suppliers due to such causes; provided, however, that Seller shall promptly notify Buyer in writing of the causes of such delay. Buyer, on receipt of such notification, shall ascertain the facts and extent of the work affected and will allow a time extension commensurate with the period of excusable delay. Buyer's determination shall be final and conclusive.

21. TERMINATION

The clause set forth in Armed Services Procurement Regulations 8-706, in effect as of the date of this order, is incorporated herein by reference and made a part hereof. If this order is not issued under a Government Prime Contract or Subcontract thereunder, the last sentence of paragraph (i) of said clause shall be deemed deleted.

22. STANDBY TIME

- a. General - Periodically during construction operations, test firings and other potentially harmful operations may be conducted in the vicinity of the job site. For maximum security and for the safety of all concerned, all construction operations may be suspended during these tests when so directed. At such times, construction personnel shall report to a Standby Station, which will be as designated, generally 500 yards of the construction area. Prior to a test firing or other hazardous conditions, a warning announcement will be made. Immediately, all equipment in the construction areas shall be shut down, except as otherwise directed, and all construction personnel shall report to the Standby Station. At the conclusion of the tests or hazard condition period, an all-clear announcement will be made, after which construction personnel shall return to their work and equipment may again be placed in operation.
- b. Basis for Time Determination - Seller will be paid for standby time, provided that within four (4) working hours after conclusion of each standby period, the Seller shall submit to the Buyer for approval, a report on the forms provided, listing the names of the men and the items of equipment affected and the length of the standby period. This list shall be final and complete, and will be the basis for payment for time lost on labor and equipment. Standby time will be calculated on the basis of 1/2 hour of standby time for each standby period of 20 minutes or less; for each standby period exceeding 20 minutes, standby time will be calculated on the basis of the actual standby period plus an allowance of 10 minutes for returning to work station.
- c. Basis for Rate Determination - Seller will be compensated for manhours actually lost due to work interruptions described above. The standby time rate shall be as shown in Schedule Z of this order, attached hereto.
- d. Equipment Standby Time - Seller will be compensated for equipment standby time on the following basis:
 - (1) Only major items of equipment which require a full time operator will be compensated for. Applicable equipment and allowable rates are as shown in Schedule "Y" of this order, attached hereto. A list and proposed rates for any operated equipment required for the performance of this order not listed on Schedule "Y", shall be submitted to the Buyer for approval prior to initiation of any work.
 - (2) Equipment not provided for, such as welding machines, pipe benders, pickup trucks, drill presses, and small tools will not be compensated for.

- e. Basis for Completion - Time Extension - Seller may apply for and will be granted an extension to the order completion time, provided that on the first work day of each week, and prior to completion of the work, the Seller shall submit to the Buyer for approval, a request for order completion time extension, based on the total approved standby time incurred during the previous week. Extension to the order completion time will be determined on the basis of one hour extension for each hour of approved standby time.
- f. Claims Not Allowed - Claims for supervision, salaried employees, loss of efficiency, move-on and move-off charges, or any other charge except as provided for above, will not be allowed under this clause.

23. CONSTRUCTION FACILITIES

Seller shall furnish necessary construction facilities including toilets, telephone, and protection for materials and equipment. Unless otherwise specified, Buyer will furnish electrical power and water at no cost to Seller, at the nearest available point; however, Seller shall be required to make all temporary connections to existing utilities and to remove such temporary connections at completion of the work. All temporary structures and installations shall be satisfactory to and subject to approval by Buyer. All temporary work shall comply with applicable codes, ordinances, and safety requirements.

24. LAYOUT

Buyer will establish the initial lines and grades to provide vertical and horizontal control in reasonable proximity to the site. Seller shall perform necessary surveying and layout including placement of all additional stakes, templates, and bench marks necessary for making and maintaining points, lines, and elevations required for the work. Seller shall be responsible for the agreement of the finished work with the lines and grades established by Buyer. Buyer reserves the right to check the accuracy of Seller's layout from time to time. In the event of mislocation of any part of the work, Seller shall, at the request of Buyer, relocate work-in-place to the correct location at no additional expense to Buyer.

25. BUILDING LAWS AND CODE REQUIREMENTS

Work and materials shall comply with applicable building laws and codes, ordinances and statutes, and rules and regulations of all legally constituted authorities having jurisdiction according to the most recent editions or rulings of these authorities. All work shall be fabricated, installed, constructed, and tested in accordance with all applicable codes and safety requirements.

26. WORKMANSHIP

All workmen shall be especially skilled in their respective trades, thorough and first-class in all respects, and shall perform their work under the direction of an experienced superintendent and competent foreman. The workmanship of apprentices and helpers will not be acceptable where, in the opinion of Buyer, the workmanship of journeymen and master mechanics is necessary.

27. DRAWINGS AND SPECIFICATIONS

- a. Checking of Drawings and Dimensions - The Seller shall carefully check all drawings furnished to him upon receipt and shall promptly notify Buyer of all discrepancies. Figures marked on drawings shall be followed. Drawings shall not be scaled. Seller shall compare all drawings and verify the figures before laying out the work and shall be responsible for any error which might have been avoided thereby. When measurements are governed by conditions already established, Seller shall take measurements notwithstanding the giving of scales or figure dimensions on the drawings.
- b. Conflicts, Omissions, Misdescriptions, and Misinformation - Seller shall keep on the site of the work a copy of the drawings and specifications. Buyer shall have access thereto at all times. Anything shown in the drawings and not mentioned in the specifications, or mentioned in the specifications but not shown on the drawings shall be of like effect as if shown and mentioned in both. Inconsistencies between the drawings and specifications, or misdescription of details of work that are customarily performed, shall not relieve Seller of the duty of performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.
- c. Conformity - Where conformity of a material or method to American Society of Testing and Materials (ASTM) specification, Federal Specification, or other recognized standard is specified, such conformity shall be to the latest issue of such standard specification including addenda or amendments thereto, unless otherwise stipulated. Where specifications indicate that a material, process or test shall conform to a Government specification or standard (e.g., STM, ASA, MBFU, AASHO), the Seller when requested by the Buyer, shall obtain and deliver to the Buyer, a certification signed by the manufacturer, supplier, service or testing organization, which certifies that the material, process or test conforms to the specification or standard involved.
- d. Deviations - Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from Buyer.
- e. Interpretations - All questions regarding the figures, drawings, plans and specifications and the interpretation thereof and the resolving of conflicts or inconsistencies therein shall be resolved by Buyer.

28. MATERIALS, EQUIPMENT, METHODS AND PROCESSES

- a. Materials - Materials and equipment shall be new, except where stated otherwise, and of the best of the several classes and kinds specified. All materials shall be delivered in such timely manner as will ensure uninterrupted progress of the work, and shall be so stored as to afford ample protection and ensure that no portion of any structure is overloaded. Seller shall be responsible for all damage or loss, by weather, or any other cause, to the materials stored or in place at the work site, including Buyer-furnished materials which have been brought on the site.
- b. Substitutions - Substitutions of material, equipment, methods or processes other than those specifically named in the order will be approved by Buyer for the following reasons only:

- (1) The proposed substitution is equal to or superior to materials, equipment, methods or processes so named, in construction, efficiency and utility, as determined by Buyer, or the material, equipment, methods or processes named in the specifications cannot be delivered to the job in time to complete the work in proper sequence to work of other parties, due to conditions beyond control of Seller.
- (2) To receive consideration, requests for substitution shall be accompanied by documentary proof of equality or difference in price and delivery, if any, and complete descriptive data. Price data shall be in form of certified quotations of both the specified and the proposed conditions. Approval of substitutions will not relieve Seller of responsibility for adequate fulfillment of the various parts of the work, required due to any substitution shall be provided as a part of the approved substitution.

- c. Standard Products - Equipment to be furnished under this order shall be essentially the standard product of the manufacturer. Where two or more units of the same class of equipment are required, these products shall be products of a single manufacturer; however, the component parts of the system need not be the products of the same manufacturer unless otherwise specified.
- d. Standards - When required by this order, or upon Buyer request, Seller shall furnish for Buyer approval full information concerning the material or articles which he contemplates incorporating in this work. When so directed, samples shall be submitted for approval at Seller's expense with all shipping charges prepaid. Machinery, equipment, material, and other articles installed or used without prior approval shall be at the risk of subsequent rejection. Seller, when requested, shall furnish Buyer an affidavit or certificate signed by the manufacturer or supplier certifying that the material or equipment conforms to the specifications or standards mentioned herein.
- e. Removal of Unfit Materials - The Seller shall remove from the premises, without delay, all materials, worked or unworked, which are condemned by Buyer or public official for failure to conform to drawings, specifications, or governing codes and shall dismantle all completed or partially completed work similarly condemned.
 - (1) Materials and work so condemned shall be replaced without delay in accordance with plans and specifications and the cost, together with cost of making good other work damaged by removal of condemned portions, shall be borne by Seller. No extension of time will be allowed for such correcting of faulty materials or work.

29. CLEANING UP AND DISPOSAL OF MATERIALS

- a. Seller shall at all times keep the construction area, including storage areas used by him, free from accumulation of waste material or rubbish. Wasting and burning of trash or debris on Buyer owned or controlled property is prohibited. Upon completion of the work, Seller shall remove from the premises any remaining rubbish, all tools, scaffolding, equipment, temporary construction and surplus materials which are the property of the Seller. Should Seller fail to take prompt action to this end, Buyer (at its option and without waiver of such other rights as it may have) may on 30 days notice treat them as abandoned property. Costs for disposal of such abandoned property shall be borne by Seller. Seller shall also sweep all

floors broom clean, clean all exterior brickwork and window lights, and wash all plumbing and lighting fixtures. The entire work and premises shall be left in a neat and clean condition satisfactory to Buyer's representative at the job site.

- b. Broken concrete and other material suitable for fill shall be stockpiled at the job site. Any question as to the suitability of trash and debris for in-plant fill will be resolved by Buyer's representative at the job site.
- c. Salvable and salable materials and scrap consisting of overages from materials owned by or furnished by Seller will be delivered by Seller to a salvage area as directed by Buyer's representative at the job site.
- d. Equipment, trash, or debris being removed from Buyer premises must be accompanied by an approved property pass. Property passes may be obtained from the Buyer representative at the work area.

30. PATENT INDEMNITY

If the amount of this contract is in excess of \$10,000.00 the Seller shall indemnify Buyer and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "the work") under this order, or out of the use or disposal by or for the account of Buyer of such supplies or construction work. The foregoing indemnity shall not apply unless the Seller shall have been notified of such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof, and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of Buyer directing a change in the supplies to be delivered or the materials or equipment to be used, or directing a manner of performance of the order not normally used by the Seller, or (ii) the infringement results from the addition to, or change in the supplies furnished or construction work performed, which addition or change was made subsequent to delivery or performance of the Seller, unless required by final decree of a court of competent jurisdiction.

31. INSPECTION AND TESTS

- a. General - The work will be conducted under the general direction of Buyer's representative, and all work shall be subject to inspection and testing by Buyer's inspectors to ensure strict compliance with the terms of the order. No change to any of the provisions of the specifications shall be made without written authorization from Buyer nor shall the presence or absence of Buyer's representative relieve the Seller from any requirements of the order. Seller shall promptly correct or replace without charge all defective or nonconforming material. The rejected material shall be removed promptly from site of the work by and at the expense of Seller. If Seller fails to proceed promptly with the correction or replacement of the defective or nonconforming material or workmanship, Buyer may, by contract or otherwise, correct or replace such defective or nonconforming material or workmanship, and charge the cost thereof to Seller, or terminate the right of the Seller to proceed with the work as provided herein.

- b. Facilities for Inspection - Seller shall provide all reasonable facilities, labor, materials, equipment, and assistance for the safe and convenient conduct of all inspections and tests that may be required by the Buyer representative. Seller shall be charged with any additional cost of inspection when material or workmanship is not ready at the time inspection is scheduled.
- c. Tests - Unless otherwise specified, tests of materials, equipment or installations required by these specifications, or by any building and safety ordinance, shall be arranged and paid for by Seller. Buyer shall be given reasonable advance notice of any test. Tests customarily made by a laboratory shall be performed by an independent testing laboratory approved by Buyer. Certified copies of all test reports shall be delivered in triplicate to Buyer.
- d. Final Inspection - Unless otherwise stated in the order, final inspection and acceptance shall not be conclusive with respect to latent defects, departure from requirements of the order, damage or loss in transit, or restrict in any manner the right of Buyer under any warranty.

32. WARRANTY AND GUARANTY

- a. Warranty - Seller warrants that all articles furnished are free from all defects in material and workmanship and conform to drawings and specifications. Where design is Seller's, Seller warrants that all articles furnished will be fit and sufficient for the purposes intended. The warranties of the Seller, together with service warranties and guaranties, shall run to Buyer and its Customers. Said warranties shall remain in effect as to each item of material and as to each item assembled, furnished, serviced, or repaired hereunder for one year after acceptance unless otherwise stipulated herein. Payment by Buyer or acceptance by an inspector shall not affect Seller's obligation under this warranty.
- b. Written Guaranty - As a condition to acceptance of work, Seller shall furnish to Buyer a written guaranty, in approved form, covering the prompt and proper repair or replacement of all workmanship and materials (furnished by the Seller) which may prove defective within a period of one year from the date of acceptance of the work under this order. The form of guaranty shall be on the Seller's letterhead or Guaranty Form, and shall include the following:

Name or Title for the Work

Aerojet Purchase Order No.

GUARANTY

We hereby guaranty that the (Item(s) or Work), which we have installed in (Area, Zone, Building, etc.), has been completed in strict accordance with the drawings and specifications and that the work, as installed, will fulfill the requirements of the Guaranty included in the specifications. We agree to remove, repair or replace any or all of our work that may prove to be defective, either in workmanship or material or both, or deficient in specified performance, together with any adjacent work which may be necessary to be displaced. This guaranty will remain in full force for a period of one (1) year from date of final acceptance of the above work by Buyer, at no additional cost to Buyer.

Within 48 hours after being notified in writing by the Buyer of any defects in the work, we agree to commence and diligently prosecute all work necessary to fulfill the terms of the guaranty, and in the event of our failure to comply, we collectively and separately, do hereby authorize Buyer to proceed and correct the defective work at our expense. We further agree to honor and pay for the cost and charges Buyer may incur therefore upon demand.

Dated: _____

Signed: (Name of Company) _____

(Signature of authorized person and title) _____

Countersigned: (Name of Subcontractor) _____

(Signature of authorized person and title) _____

Contract bonds are to remain in full force and effect during the guaranty period. Any extended warranty and/or guaranty, in addition to the one (1) year period specified herein, normally offered by the Seller or his subcontractors and suppliers, shall be passed on to the Buyer.

33. AS-BUILT DRAWINGS

- a. Seller shall keep an up-to-date set of as-built drawings on blue-line prints showing all changes in red and, at his convenience, shall incorporate these changes on a second set. When all work has been completed and prior to acceptance of the work by Buyer and final payment, one set shall be delivered to the Buyer. Two sets of blueprints to be used for as-built drawings will be furnished by Buyer.
- b. Seller shall mark on applicable construction plans the location and elevation of all underground utility lines installed under this order or encountered by Seller in performing work under this order, to an accuracy of 0.1 foot horizontal and vertical.
- c. Upon completion of the physical work, the Seller's representative shall review the "as-built" drawing with Buyer's representative to assure that all changes, deletions or additions have been included.

34. NOTICE OF COMPLETION

For construction jobs of more than \$2,000.00, following completion and acceptance of all work, Buyer will have a "Notice of Completion" duly recorded in the public records.

35. PAYMENT OF INCURRED COSTS

- a. Unless otherwise provided, Construction progress payments shall be made to Seller as work progresses in amounts approved by Buyer in accordance with the following:
- (1) Progress payments will be made at the end of each calendar month, or as soon thereafter as practicable, or at more frequent intervals as determined by Buyer based on estimates submitted by Seller. In preparing estimates, the material delivered to the site, and preparatory work done, may be taken into consideration.
 - (2) In making such progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of all work covered by the order; provided, however, that Buyer, at any time after 50 percent of the work has been completed, upon finding that satisfactory progress is being made, may make any of the remaining progress payments in full; and, provided further, that on completion and acceptance of each separate building, site development, or other division of the order, on which the price is stated separately in the order, payment may be made in full, including retained percentage thereon, less authorized deductions.
 - (3) All material and work covered by progress payments made shall thereupon become the property of Buyer, but this provision shall not be construed as relieving the Seller from responsibility for all materials and work upon which payments have been made, or from the restoration of any damaged work, or as a waiver of the right of Buyer to require the fulfillment of all of the terms of the order.
 - (4) It is mutually agreed that progress payments made by Buyer shall be passed on to subcontractors and material men, and such payments shall be not less than the proportions established in monthly estimate of value of work in place. Such payments shall be prompt. The second and subsequent billings for progress payments shall verify that the subcontractors and material men have been paid as noted below.
 - (5) In the event that there is a dispute between the Seller and his subcontractor(s), and the Seller wishes to withhold payment, Buyer shall be so notified in writing and any amounts to be withheld shall not be included in the request for progress payment from the Seller.
 - (6) In addition to the 10 percent retention in the progress payment, Buyer may withhold a sufficient amount of payment otherwise due to the Seller to cover payments that may be earned or due for just claims for labor or materials furnished in or about the performance of the work under this order; for defective work not remedied or for failure of Seller to make proper payments to his subcontractors. Buyer shall disburse and shall have the right to act as agent for the Seller in distributing such

funds as have been withheld pursuant to this paragraph, to the party or parties who are entitled to payment therefrom, and will render to the Seller a proper accounting of all such funds disbursed on behalf of Seller.

(7) Where the work falls behind the approved work schedule, Buyer may withhold progress payments until such time as the progress of the work conforms to the schedule.

b. Acceptance and Final Payment - Final payment shall be made on or before thirty-five (35) calendar days after completion and acceptance of all work under the order. This final payment shall constitute payment in full for the complete work, including payment for the furnishing of labor, materials, tools, equipment, supervision, work and services incidental to the performance of the order. Prior to issuance of final payment, Seller shall submit evidence satisfactory to Buyer that all payrolls, material bills and other indebtedness connected with the work has been paid and the Seller shall execute and deliver to Buyer a "Full Receipt and Release" in such form as may be approved by Buyer.

36. PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

If this is a DO or DX rated order, Seller shall be required to follow the provisions of DMS Reg. 1 and of all other applicable regulations and order of BDSA in obtaining controlled materials and other products and materials needed to fill this order.

37. 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 judgment 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 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.

38. REMEDIES

The 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.

39. PRICE ADJUSTMENT FOR SUSPENSION, DELAYS, OR INTERRUPTION OF WORK

- a. The Buyer may order the Seller in writing to suspend all or any part of the work for such period of time as it may be determined to be appropriate for the convenience of the Buyer or the Government.
- b. If, without the fault or negligence of the Seller, the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Buyer in the administration of the order, or by his failure to act within the time specified in the order (or if no time is specified within a reasonable time), an adjustment shall be made by the Buyer for any increase in the cost or performance of the order (excluding profit) necessarily caused by the unreasonable period of such suspension, delay, or interruption, and the order shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the Seller would have been prevented by other causes even if the work had not been so suspended, delayed, or interrupted. No claim under this clause shall be allowed (i) for any costs incurred more than twenty days before the Seller shall have notified the Buyer in writing of the act or failure to act involved (but this requirement shall not apply where a suspension order has been issued), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption but not later than the date of final payment under the order. Any dispute concerning a question of fact arising under this clause shall be subject to the arbitration clause.

proceedings, including court costs and reasonable attorneys fees, to the extent arising from the performance of Seller's work, or that of its subcontractors or suppliers, and resulting or alleged to have resulted from any defect in design, workmanship or materials, or from any negligence or malfeasance, or from any breach of applicable laws, regulations, safety standards or directives, but excluding Aerojet's sole negligence or willful misconduct. Seller will promptly advise Aerojet of any such suit, action or proceeding which may be brought or threatened against Aerojet or Seller

and, at Aerojet's election and request, assume full responsibility for its defense. The provisions of this paragraph shall survive the termination, cancellation or completion of this Order

40. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

Seller agrees to include Articles 1 through 39 preceding, and all other terms, conditions and provisions set forth herein in all subcontracts issued hereunder.