



## **TERMS & CONDITIONS OF PURCHASE**

1. Definitions
2. Purchase Orders; Price; Acceptance; Modification of Terms
3. General Relationship
4. Applicable Law
5. Compliance with Laws; Permits, Licenses Assignment
6. Third Party Beneficiary
7. No Assignment
8. Payment Terms; Invoices; Setoff; Taxes
9. Warranty of Services and Construction
10. Warranty of Supplies
11. Price and Rate Warranty
12. Certification of Independent Price and Rate Determination
13. Change Order; Modification
14. Delivery and Performance Schedules
15. Inspection of Services and Construction Additional
16. Requirements for Delivery of Supplies
17. Inspection of Supplies
18. Delivery and Performance Acceptance
19. Additional Requirement for Delivery of Supplies
20. Stop Work Order
21. Termination for Convenience
22. Termination for Default
23. Insurance
24. Responsibility for Property
25. Safety
26. Performance/Payment Bonds
27. Waiver, Release, And Removal of Liens
28. Priority Rating
29. Seller Contacts with Buyer's Customer
30. Advertising
31. Use and Disclosure Restriction of Buyer- Furnished Items/Information
32. Export Control
33. Patents and Data
34. Anti-Kickback Act of 1986
35. Non-Waiver of Rights
36. Limitation of Liability
37. Indemnification
38. Infringement Indemnities
39. Disputes
40. Standards of Business Ethics & Conduct
41. Order of Precedence
42. Configuration Change Management
43. Entire Agreement

*THESE TERMS AND CONDITIONS SHALL BE APPLICABLE TO ALL PURCHASE ORDERS:*

### **1. DEFINITIONS**

As used in these Terms and Conditions of Purchase, the following terms shall have the following meanings:

(a) "Supplies" means raw materials, components, intermediate assemblies, and end products; (b) "Services" means the direct engagement of time and effort with the primary purpose to perform identifiable tasks rather than to furnish end items of supply; (c) "Construction" means construction, alteration, or repair (including excavating and painting) of buildings, structures, or other real property; (d) "Buyer" means Brighton Cromwell ("BC") and any of its corporate affiliates or subsidiaries; (e) "Seller" means any person or legal entity that provides Supplies, Services, or Construction pursuant to a Purchase Order issued by Buyer; (f) "Purchase Order" means an offer by Buyer to Seller to buy Supplies, Services, or Construction that becomes a binding contract between Buyer and Seller upon written acceptance of Seller or upon Seller initiating performance; (g) "Government" means the United States Federal Government; (h) "Prime Contract" means a contract between a Customer and the Buyer; (i) "Customer" means a business entity or association, or any other entity or association, including, without limitation, the Government, with whom Buyer enters into a Prime Contract; and (j) "Work" means the provision of Services or Construction as set forth in the Purchase Order.

### **2. PURCHASE ORDERS; PRICE; ACCEPTANCE; MODIFICATION OF TERMS**

- a) Purchase Orders issued by Buyer to Seller – together with any referenced or attached drawings, specifications, statements of work, or special conditions – will specify the Supplies or Work required, including, but not limited to, the delivery schedule,

period of performance, total compensation, rate/price and payment schedules related thereto. Each Purchase Order issued by Buyer shall be governed by these Terms and Conditions of Purchase.

- b) The price payable to Seller shall be stated in the Purchase Order. The price shall not be increased to cover any future Seller price increases and shall be inclusive of all packing, packaging, cartage, premium transportation charges, reusable containers, service or carrying charges, permits, insurance, applicable taxes, fees and licenses, or any other charges of any nature unless specifically agreed to in writing by Buyer.
- c) Acceptance of a Purchase Order by Seller may be made by signing the acknowledgment copy thereof, digitally accepted or by partial performance there under, and any such acceptance shall constitute an unqualified agreement to all these Terms and Conditions of Purchase unless otherwise modified in writing by the parties.
- d) No additional or different terms or conditions proposed by the Seller in accepting the Purchase Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller.

### **3. GENERAL RELATIONSHIP**

The Seller is not an employee of BC for any purpose whatsoever. Seller agrees that in all matters relating to the Purchase Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of the Purchase Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's

Customer(s) and shall have no authority to represent Buyer as an agent. The employees used by Seller to perform the Purchase Order shall be Seller's employees exclusively without any relation whatsoever to Buyer.

#### **4. APPLICABLE LAW**

These terms and Conditions of Purchase shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to its rules and principles regarding conflicts of laws, except that any provision under these Terms and Conditions of Purchase that is: (a) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR), the Defense Federal Acquisition Regulations Supplement (DFARS), the Defense Logistics Acquisition Directive (DLAD), as the case may be; (b) incorporated in full text or by reference from any agency regulation that implements or supplements from the FAR, DFARS, or DLAD; (c) that is substantially based on any such agency regulation or FAR, DFARS, or DLAD provision, shall be construed and interpreted according to federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals and quasi-judicial agencies of the Government.

#### **5. COMPLIANCE WITH LAWS; PERMITS, LICENSES**

Seller shall comply with all applicable federal, state and local laws, rules, regulations and orders ("Laws"), including, but not limited to, the following, as may be amended from time to time: (a) the Service Contract Act of 1965; (b) the Davis-Bacon Act of 1931; (c) the Fair Labor Standards Act of 1938; (d) The Walsh-Healy Public Contracts Act; (e) the Federal Occupational Safety and Health Act of 1970, including the preparation of Material Safety Data Sheets; (f) the Toxic Substances Control Act of 1976; and (g) any other federal law concerning labor relations, non-discrimination in employment, minimum wages, overtime compensation and hours of

employment. Seller shall obtain all permits and licenses required for the performance of the Purchase Order at no additional charge to Buyer. If, as a result of any violation of Laws by Seller, its employees, agents or subcontractors at any tier,: (i) Buyer's contract price or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of the Purchase Order or any other contract with Seller, or demand payment (in whole or in part) of the corresponding amounts. Seller shall pay such amounts within ten (10) days of such demand.

#### **6. THIRD PARTY BENEFICIARY**

Seller acknowledges and agrees that Buyer's Customer is a third-party beneficiary of these Terms and Conditions of Purchase and has the power and authority to enforce these Terms and Conditions of Purchase against Seller.

#### **7. NO ASSIGNMENT**

Seller shall not assign the Purchase Order to any other party without the prior written consent of Buyer. Buyer may withhold such consent in its sole discretion. Any attempted or purported assignment of the Purchase Order without Buyer's prior written consent shall be null and void and not binding upon Buyer.

#### **8. PAYMENT TERMS; INVOICES; SETOFF; TAXES**

Unless otherwise specified in the Purchase Order, terms of payment shall be net thirty (30) days from the latest of the following: (a) Buyer's receipt of Seller's invoice; or (b) delivery of Supplies or performance of the Work to the satisfaction of Buyer and the Customer. An itemized invoice shall be submitted by Seller to the address shown on the face of the Purchase Order to the attention of: "Accounts Payable Department." The invoice shall contain the Purchase Order number, a description of

the Supplies furnished, or Work performed, and the unit prices, quantities, and total contract price relating thereto. Payment of invoices may be delayed pending the correction of omissions or errors in the Work performed or Supplies delivered. Buyer shall always have the right to set off any amount due or payable to Seller against any claim or charge Buyer or its Customer may have against Seller. Any amounts paid by Buyer that the Seller is obligated to pay pursuant to these Terms and Conditions of Purchase or the Purchase Order will be promptly reimbursed to Buyer by Seller together with (i) attorney's fees, if any, and (ii) annual interest at 15%, if allowed by law, otherwise at the highest rate allowed by law. If not reimbursed, Buyer may deduct such amount (with attorney's fees and interest as above provided) from any amounts then or thereafter due Seller. Unless otherwise specified in the Purchase Order, prices and rates shall include all applicable federal, state and local taxes, duties, tariffs and similar or dissimilar fees imposed by any governmental entity, all of which shall be listed separately on Seller's invoice.

#### **9. WARRANTY OF SERVICES AND CONSTRUCTION**

Seller warrants that all Work performed pursuant to a Purchase Order shall be: (i) in accordance with all requirements of the Purchase Order; (ii) free from defects in workmanship; (iii) free from errors and omissions in design or engineering; (iv) conducted in a manner consistent with the level of care and skill ordinarily exercised by professionals performing services of a nature similar to the Work, taking into account standards, state of the art, and Laws existing at the time the Work is performed; and (v) upon passage of title to Buyer, either by incorporation in the construction or upon Buyer's receipt of payment, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances. Seller shall be deemed to have examined the site of the Work application to the Purchase Order and to have secured full knowledge of all

conditions under which the Work is to be performed. The foregoing warranties shall survive inspection, acceptance and payment of and for the Work. Seller shall, without additional compensation, correct, or revise any errors or deficiencies in the Work that are discovered within twelve months of final completion of the Work. If such deficiencies are not corrected in a timely manner, Buyer may cause the same to be corrected and deducted such corrective action costs incurred from monies otherwise due to Seller. Seller shall be liable for any such excess costs and shall reimburse Buyer within 30 days of receipt of invoice. This warranty and corrective action shall be in addition to any warranty or guarantee specified elsewhere in these Terms and Conditions of Purchase or the Purchase Order and shall not limit the application of any other warranty or remedy available under law.

10. **WARRANTY OF SUPPLIES** Seller warrants that all Supplies delivered pursuant to the Purchase Order shall: (a) conform to Buyer's drawings, specifications or other description; (b) be of good material and workmanship and free of defects; (c) meet Seller's published specifications and standards; and (d) be new (not used, reconditioned, or remanufactured), merchantable and suitable for the purpose intended. These warranties shall begin upon final acceptance of the Supplies as provided herein and extend for a period of twelve (12) months (the "Warranty Period"). If any nonconformance is identified within the Warranty Period, Seller, at Buyer's option, shall promptly repair or replace the non-conforming item. Transportation of replacement items and return of non-conforming items shall be Seller's expense. If repair or replacement is not timely, Buyer may elect to return, repair, replace or procure the Supplies from a third-party, at Seller's expense; provided, that if Buyer procures the Supplies from a third party, Seller shall be liable only for the difference between the price paid by Buyer to such third-party and the price to be paid to Seller

under the Purchase Order. Buyer shall also be entitled to any and all sums paid to Seller prior to Buyer exercising its remedy to procure the Supplies from a third-party. In addition to the foregoing remedies for breach of warranty, Buyer may accept all or a portion of the non-conforming Supplies at an equitable price reduction. All the foregoing warranties and remedies shall run to Buyer and its Customers and are in addition to all other warranties and remedies set forth elsewhere in these Terms and Conditions of Purchase or expressed or implied by law.

#### **11. PRICE AND RATE WARRANTY**

Seller warrants that the prices and rates charged for the Supplies or Work specified in the Purchase Order do not exceed the price(s) or rate(s) Seller charges its most favored customer for the same or substantially similar Supplies or Work, whether sold to the Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller agrees that in the event of an announced price or rate reduction prior to the completion of the performance of the Work or Shipment of Supplies, said price or rate reduction shall be passed on to Buyer for Supplies remaining to be shipped or Work remaining to be performed under the Purchase Order.

#### **12. CERTIFICATION OF INDEPENDENT PRICE AND RATE DETERMINATION**

Seller certifies that the price(s) and rate(s) proposed have been arrived at independently, without consultation, communication or agreement with any others for the purpose of restricting competition and that Seller has not and will not knowingly disclose the price(s) and rate(s) directly or indirectly, to any other offeror.

#### **13. CHANGE ORDER; MODIFICATION**

Buyer may, at any time by written notice to Seller, make changes to the Purchase Order (a "Change Order"). If any such

change causes an increase or decrease in the cost or time required to perform the Work or deliver the Supplies, the price, performance/delivery schedules, or both may be equitably adjusted and the Purchase Order so modified. Seller shall submit any claim for adjustment to Buyer within ten (10) days following receipt of the written Change Order. Failure of the parties to agree to an adjustment shall be considered a dispute under **Section 38 (Disputes)** hereof and shall be addressed in accordance therewith; however, pending resolution of any such dispute, Seller shall immediately proceed with the performance of the Purchase Order as changed by the Change Order. Seller shall not be entitled to any compensation for extra Work or additional Supplies not stated in the Purchase Order or Change Order unless, prior to the performance of such extra Work or delivery of such additional Supplies, Seller shall have received from Buyer written authorization for the same. Buyer shall have no liability for any Work performed or Supplies delivered by Seller and not described in the Purchase Order or a Change Order. Seller shall make no changes affecting the Work or Supplies with Buyer's or the Customer's prior written approval. Any approvals by Buyer or the Customer shall not relieve Seller of responsibility for any errors or deficiencies that may exist, or for performing the Work or delivering the Supplies in strict accordance with the requirements of the Purchase Order.

#### **14. DELIVERY AND PERFORMANCE SCHEDULES**

Seller shall deliver the Supplies or perform the Work in strict adherence to the schedules set forth in the Purchase Order. Seller agrees that time is of the essence in the performance of the Purchase Order and there is potential for financial loss by Buyer if Seller fails to deliver the Supplies or complete the Work within the time specified in the Purchase Order. Therefore, Seller agrees to pay Buyer for all expenses arising from Seller's failure to deliver the Supplies or

complete the Work within the time allocated including, but not limited to, additional Buyer expenses for technical services, inspection, and administration costs; additional costs to other supplies, subcontractors or consultants caused by the delay and charges from the Customer, including any liquidated damages for which Buyer may be liable to Customer resulting from Seller's failure to deliver the Supplies or complete the Work as provided in the Purchase Order or breach of these Terms and Conditions of Purchase. Seller agrees to advise Buyer, as soon as possible, of any delays in complying with the performance schedule of any Purchase Order and the reasons thereof. If a delay is due to causes beyond the control of Seller and, where applicable, its suppliers or subcontractors, and without fault or negligence of any of them, and provided that Seller reports the delay to Buyer within a reasonable time of its' discovery, Buyer will either adjust the performance schedule or terminate the Purchase Order, or its effected portion, for convenience. Acceptance of late deliveries or performance not in strict conformation with the Purchase Order schedule shall not constitute a waiver of Buyer's rights under this Section 16 or elsewhere under these Terms and Conditions of Purchase.

#### **15. INSPECTION OF SERVICES AND CONSTRUCTION**

Buyer and the Customer shall have the right to inspect Work in progress at all reasonable times and places during performance including at the Seller's facilities. Rejected Work shall promptly be re-performed in an acceptable manner and within a reasonable period at Seller's sole cost and expense. If inspections are made on Seller's premises Seller shall, without additional charge, provide reasonable assistance for the safety and convenience of the inspectors performing these duties. Inspections shall be performed in such a manner as to not unduly delay Work in progress. Unless otherwise agreed in writing, all Work is subject to Buyer's and the Customer's inspection and acceptance

or rejection of the Work, notwithstanding any previous inspection by Buyer and the Customer. Inspections shall not relieve Seller of its responsibility to furnish the Work in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and the Customer. Seller shall furnish Buyer and the Customer with the records of inspection for the Work at any time during the performance of the Work upon request therefore by Buyer or the Customer.

#### **16. INSPECTION OF SUPPLIES**

Buyer and its Customer may inspect or test materials, work in progress and completed Supplies at all reasonable times and places prior to shipment. If inspections and test are performed on Seller's premises, Seller shall, without additional charge to Buyer, its Customer or any of their or its representatives, provide reasonable facilities and assistance for the safety and convenience of the parties performing such inspection or tests. Unless otherwise agreed to in writing, all Supplies furnished under the Purchase Order are subject to Buyer's inspection and acceptance or rejection at Buyer's specified destination, notwithstanding any previous inspection or test by Buyer or its Customer. An inspection or test at source or at destination shall not relieve Seller of its responsibility to furnish the Supplies in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and its Customer. Seller shall furnish Buyer the records of inspection or test for Supplies delivered under the Purchase Order at any time upon Buyer's request. No inspection or monitoring by Buyer or its Customer, or failure to do so, shall affect or diminish Seller's sole responsibility and liability for the quality of the Supplies purchased by Buyer.

#### **17. DELIVERY AND PERFORMANCE ACCEPTANCE**

Acceptance of any part of a Purchase Order

delivery or performance shall not bind Buyer to accept future shipments of Supplies or performance of Services nor deprive it of the right to return goods already accepted and shall not be deemed to be a waiver of Buyer's right to cancel or return all or any part of the goods because of failure to conform to the Purchase Order or by reason of defects, whether latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages.

### **18. ADDITIONAL REQUIREMENTS FOR DELIVERY OF SUPPLIES**

*The following additional conditions apply to Purchase Orders for Supplies:*

- a) **Packaging and Packing:** Seller shall be responsible for properly packing and packaging the Supplies in suitable containers for protection during shipment in accordance with applicable law and good commercial practice. No additional charge will be allowed for packing and packaging unless specifically agrees to in writing. Seller shall label each package with the number of the Purchase Order. Seller shall prepare an itemized packing list bearing the number of the Purchase Order, description of items, part number and quantity shipped for each package. One copy of the packing list shall be enclosed in the shipping container and one copy shall accompany Seller's invoice.
- b) **Unauthorized Changes to Supplies:** Upon Buyer's or its Customer's approval of Seller's drawings, designs, specifications, etc., Seller shall make no changes affecting form, fit or function of the Supplies without Buyer's prior written approval. Any approvals by Buyer or its Customer shall not relieve Seller of responsibility for any errors or deficiencies that may exist, or for furnishing the Supplies in strict

accordance with the Purchase Order requirements.

- c) **Variation in Quantity:** It is Seller's responsibility to deliver the quantity of Supplies called for in the Purchase Order. No variation in the quantity specified in the Purchase Order will be accepted as compliance with the Purchase Order. Buyer reserves the right to refuse or return, at Seller's expense, any excess shipments or deliveries made in advance of the delivery schedule.
- d) **Shipment, Title, and Risk of Loss:** Unless otherwise specified in the Purchase Order, Supplies shall be shipped FOB Destination, whereupon title and risk of loss will pass to Buyer when such Supplies have been delivered to and accepted at Buyer's specified destination. For Purchase Orders providing for shipment of Supplies FOB Origin, title and risk of loss shall pass to Buyer upon Seller's delivery to the common carrier specified or approved by Buyer except that Seller shall be responsible for any loss due to its failure to properly preserve, package, handle or pack the Supplies.

### **19. STOP WORK ORDER**

Buyer may, at any time, by written notice to Seller, stop all or any part of the Work or stop delivery of Supplies for up to ninety (90) days (a "Stop Work Order"). Upon receiving a Stop Work Order, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional cost allocable thereto. Within ninety (90) days after the effective date of the Stop Work Order, unless Seller and Buyer mutually agree to an extension, Buyer shall either cancel the Stop Work Order or terminate the portion of the Purchase Order covered by the Stop Work Order. Buyer shall make an equitable adjustment in the Purchase Order

performance schedule or contract price if the Stop Work Order results in an increase in time and cost for performance. Seller must assert a claim for equitable adjustment within ten (10) days after the end of the work stoppage. Failure of the parties to agree to an adjustment shall be considered a dispute under **Section 38 (Disputes)** hereof and shall be addressed in accordance therewith.

## **20. TERMINATION FOR CONVENIENCE**

Buyer may terminate any Purchase Order, in whole or in part, at any time for any reason whatsoever by giving not less than seven (7) days written notice to the Seller. If the Purchase Order is so terminated, Buyer shall pay Seller only for that portion of the Services performed, and/or for conforming Supplies delivered, and for documented expenses incurred by Seller and authorized by Buyer prior to the date of termination. Under no circumstance shall Buyer be liable for any other damages whatsoever, including loss of anticipated profit or account of such termination. Notwithstanding any partial termination of Services, Seller shall continue to perform and complete any remaining Services required. In the event of strike, slow down, "sick-out", or work stoppage for any reason Buyer shall have the right to immediately terminate the Purchase Order by written notice to Seller. No further action is required of Buyer.

## **21. TERMINATION FOR DEFAULT**

- a) Buyer may, by written notice of default to Seller, terminate the whole or any part of any Purchase Order in any one of the following circumstances:
  - I. Seller fails to make delivery of the Supplies or to perform the Services within the time specified herein or any extension thereof; or
  - II. Seller fails to perform any of the other provisions of the Purchase Order or so fails to make progress as to endanger performance of the Purchase Order in accordance with

- its terms, and in either of the circumstances specified in this subpart (a) (ii) does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure;
  - III. Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due; or
  - IV. Seller fails to provide Buyer, in writing, within the time specified by Buyer, adequate assurances of performance by Seller.
- b) If the Purchase Order is so terminated, Buyer may procure or otherwise obtain, upon such terms and such manner as Buyer may deem appropriate, Supplies or Services like those terminated. Seller, subject to the exceptions set forth below, shall be liable to Buyer for any excess costs of such similar Supplies or Services.
  - c) Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination, such complete or partially completed articles, property, materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of the Purchase Order and Buyer will pay Seller the contract price for completed articles delivered to and accepted by Buyer and the fair value of the other property of Seller so requested and delivered.
  - d) Seller shall continue performance of the Purchase Order to the extent not terminated. Buyer shall have no obligations to Seller in respect to the terminated part of the Purchase Order except as herein provided. Buyer's rights as set forth herein shall be in addition to any other rights in case of Seller's default.



- e) Seller shall not be liable for damages resulting from default due to causes beyond Seller's control and without Seller's fault or negligence, provided, however, that if Seller's default is caused by the default of a subcontractor or supplier at any tier, such
- f) default must arise out of causes beyond the control of both Seller and subcontractor or supplier, and without the fault or negligence of either of them and, provided further, the Supplies or Services to be furnished by the subcontractor or supplier were not obtainable from other sources.

## 22. **INSURANCE**

In accordance with subparts (a) and/or (b) below; upon Buyer's request Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverages are in force and providing not less than thirty days' notice prior to any cancellation or restrictive modification of the policies. Further, the required insurance coverages below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverage's and their limits is no way lessen nor affect Seller's other obligations or liabilities set forth in the Purchase Order.

- a) To the extent that Seller is performing Services or Construction under the Purchase Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:
  - i. Statutory Workers' Compensation and Employers' Liability in an amount no less than \$1 Million per occurrence covering its employees, including a waiver of subrogation obtained from the carrier in favor of Buyer;
  - ii. Commercial General Liability in an amount no less than \$1 Million per each occurrence and \$2 Million in the Aggregate covering bodily injury, broad form property damage,

- personal injury, products and completed operations, contractual liability, and independent contractors' liability. Buyer, its officers and employees shall be included as Additional Insured's and a waiver of subrogation shall be obtained from the carrier in favor of Buyer;
- iii. Automobile Liability in an amount no less than \$1 Million Combined Single Limit for Bodily Injury covering use of all owned, non-owned, and hired vehicles. Buyer, its officers and employees shall be included as Additional Insured's on the policy;
- iv. Professional Liability in an amount no less than \$1 Million per occurrence covering damages caused by any acts, errors, and omissions arising out of the professional services performed by Seller, or any person for whom the Seller is legally liable. To the extent that coverage for Seller's services are not excluded in (ii) above by virtue of being deemed not of a professional nature, this requirement does not apply.
- v. All-Risk Property Insurance as described above in Section 24 (a) (v) in an amount adequate to replace property, including Supplies covered by the Purchase Order, of Buyer and/or Buyer's customer which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.
- b) To the extent that Seller is providing Supplies under the Purchase Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:
  - i. Commercial General Liability as described above in Section 24 (a) (ii);

- ii. Products Liability in an amount no less than \$1 Million per occurrence covering bodily injuries or property damage arising out of defective products or work completed. To the extent that coverage for Seller's products are not excluded in (i), this requirement does not apply;
- iii. All-Risk Property Insurance in an amount adequate to replace property of Buyer and/or Buyer's customer, including Supplies covered by the Purchase Order, which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.
- iv. If aircraft products are being provided under the Purchase Order, Seller agrees to carry Aircraft Products Liability Insurance, covering liability arising out of the manufacture, sale, servicing, repair, distribution, instruction and operation of aircraft related products or services with a per occurrence limit of \$1,000,000.

### **23. PRESPONSIBILITY FOR PROPERTY**

In the case of any tools, dies, jigs, fixtures, patterns, equipment, facilities or other property (hereafter "property") of Buyer and/or Buyer's customer, which may be in the possession, or control of Seller in connection with the Purchase Order, Seller shall use such property only in performance of and as specifically authorized by the Purchase Order. Seller should take appropriate measures including clearly marking, maintaining an inventory and segregating Buyer's property to protect Buyer's rights and interests in any property provided by Buyer to Seller. Such property shall be returned to Buyer in the condition in which it was received by Seller, except for ordinary wear and tear and except to the extent that such property has been incorporated into goods delivered hereunder or has been consumed in the production of

such goods. Risk of loss with respect to all such property shall be the responsibility of Seller. Seller shall indemnify, defend and hold harmless Buyer from any loss or damage to such property, which is caused by, or results from any act or omission on the part of Seller or its agents, employees or subcontractors. If Seller acquires or manufactures any property in connection with the Purchase Order and charges Buyer therefore, Buyer may at its option upon completion or termination of the Purchase Order, elect to take title to such property and, upon receiving notice of such election; Seller shall deliver such property to Buyer.

### **27. SAFETY**

If and when applicable, Seller understands and accepts the potential risks that are presented to human beings, property and the environment with respect to the performance of the Purchase Order. In performing the Purchase Order, Seller shall comply with all applicable laws, ordinances, rules, regulations, and lawful authorities or any public authority having jurisdiction for the safety of persons or property and protect the same from damage, injury, or loss. Seller shall take all reasonable precautions to prevent damage, injury, or loss to all persons performing the Purchase Order, all materials and equipment utilized therein, and all other property at the site of where the Purchase Order is performed. Seller shall prepare and provide a safety plan pertaining to any potentially hazardous materials to be supplied in connection with the performance of the Purchase Order and governing its handling of all potential hazardous materials upon request and to the satisfaction of Buyer and the Customer, and shall conduct its operations, and inform its personnel and any other attendant personnel, in accordance with said safety plan and all relevant safety laws. Any lost-time injuries or accidents involving significant property damage will be reported to Buyer immediately.

### **25. PERFORMANCE/PAYMENT BONDS**

The proper and timely submission of any performance or payment bonds required pursuant to the Purchase Order is a material condition for award of the Purchase Order. Seller is not authorized to proceed with performance of the Purchase Order unless all required bonds have been obtained and are acceptable to Buyer. The surety securing any performance or payment bonds must be listed in the most recently issued publication of Department of the Treasury Circular 570, licensed to provide bonds in the state in which any Work is to be done, the underwriting limitation specified for the Surety in the circular must be greater than the full amount of the contract awarded. Unless otherwise specified in Buyers request for bid or proposal, Seller shall include the full cost of the performance and payment bonds in the Purchase Order price and include an adjustment of the bond cost in any proposal subsequently submitted for a change in the Purchase Order price. If the surety for any bond furnished by Seller files bankruptcy papers or is declared bankrupt, or its' right to do business is terminated, or it otherwise becomes unsatisfactory to Buyer, Seller shall within seven calendar days furnished at no additional cost a replacement bond with a surety acceptable to Buyer.

#### **26. WAIVER, RELEASE, AND REMOVAL OF LIENS**

Where applicable, and to the extent permitted by law, prior to commencement of the Work, Seller agrees to execute and tender to both Buyer and the Customer a waiver of liens form (each, a "Lien Waiver"), waiving on behalf of itself and all of its suppliers, materialmen and subcontractors, all mechanics' liens, materialmen's' liens, construction liens and other types of liens against Buyer, the Customer and any of the property thereof. In such event, Seller acknowledges and agrees that the project described in the Purchase Order will be a "no lien" project under applicable law, and that Buyer or the Customer will be filing the waiver of liens in the appropriate recording offices, if required. To the extent that

applicable law does not permit a lien waiver to the effective prior to commencement of the Work, Buyer and the Customer may require that each invoice for payment submitted by Seller be accompanied by a Lien Waiver properly completed by the appropriate parties to cover the amount and date of payment of Seller (or its materialmen, suppliers or subcontractors, as applicable) as reflected in the applicable invoice. Without limiting the generality of the foregoing, as a condition precedent to the final payment of the contract price (which may include retainage) pursuant to the Purchase Order, Seller shall provide to Buyer and Customer a full and unconditional waiver and release of liens properly executed by Seller and all parties engaged by Seller to furnish labor or materials in connection with the performance of the Work. Without limiting the foregoing, Seller shall keep all Work performed and the property at which such Work, was performed free and clear of all liens arising out of the performance of Work. Within ten (10) days after written demand by Buyer to remove any lien or notice of suit or other proceeding from any property, and such lien arises from or is connected with the Work of any other acts or omissions of Seller, including without limitation, Seller's failure to promptly pay its subcontractors, materialmen, and suppliers, Seller shall cause any such lien or notice to be removed as a matter of record against the title of the property. If Seller fails to cause any such lien or notice to be expunged within such time period, Buyer shall be entitled to use whatever means in its discretion it may deem appropriate to cause such lien, suit, or notice connection with such removal or dismissal, together with all reasonable attorney's fees shall be immediately due and payable to Company by Subcontractor and may be set off against any payments due to Subcontractor.

#### **27. PRIORITY RATING**

If so identified, the Purchase Order is a "rated order" certified for national defense use, and Seller shall follow all the

requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. art 700).

### **28. SELLER CONTACTS WITH BUYER'S CUSTOMER**

Buyer shall be responsible for all liaison and communications with Buyer's Customer, including the Government. Seller shall not communicate with Buyer's Customer regarding the Purchase Order unless Buyer provides Seller with prior written authorization to do so.

### **29. ADVERTISING**

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the Supplies or Services purchased under the Purchase Order or disclose any of the details connected with the Purchase Order to any third party, except as may be required to perform the Purchase Order.

### **30. USE AND DISCLOSURE RESTRICTIONS OF BUYER-FURNISHED ITEMS/INFORMATION**

- a) Seller agrees that it will keep confidential and not disclose, disseminate or publish the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data, computer programs and software or other technical or proprietary information furnished, loaned or bailed by Buyer hereunder (hereinafter, collectively referred to as "Items/Information", and use such Items/Information only in the performance of the Purchase Order or, if authorized, other orders from Buyer and not otherwise, without Buyer's prior written consent. Notwithstanding any other provision herein, Buyer and Seller shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property.

- b) All such Items furnished, loaned and bailed by Buyer hereunder, or fabricated, manufactured, purchased, or otherwise acquired by Seller for the performance of the Purchase Order and specifically charged to Buyer, are the property of Buyer.
- c) Upon completion, expiration or termination of the Purchase Order, Seller shall return all such Items in good condition, reasonable wear only excepted, together with all spoiled and surplus Items to Buyer, or make such other disposition thereof as may be directed or approved by Buyer. Seller agrees to replace, at its expense, all such items not so returned. Seller shall make no charge for any storage, maintenance or retention of such Items. Seller shall bear all risk of loss for all such Items in Seller's possession.
- d) Seller also agrees to use any designs or data contained or embodied in such Items in accordance with any restrictive legends placed on such Items by the Buyer or any third party. If Buyer furnishes any material for fabrication hereunder, Seller agrees: (i) not to substitute any other material for such fabrication without Buyer's prior written consent, and (ii) that title to such material shall not be affected by incorporation in or attachment to any other property.

### **31. EXPORT CONTROL**

The subject technology of the Purchase Order (together including data, services, and hardware provided there under) may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR

technology requires a prior license depending upon its categorization, destination, end-user and enduses. Exports or re-exports of any U.S. technology to any destination under U.S. sanction or embargo are forbidden. Access to certain technology ("Controlled Technology") by Foreign Persons (working legally in the U.S.), as defined below, may require an export license if the Controlled Technology would require a license prior to delivery to the Foreign Person's country of origin.

- a) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794,
- b) 22 U.S.C. 2778(j) (4) (A), including the International Traffic in Arms Regulation ("ITAR"), 22 C.F.R. part 120 et seq.; and the Export Administration Act, 50 U.S.C. 2401-2420, including the Export Administration Regulations, 15 C.F.R. part 730-774,
- c) 15 CFR 772.1 including, the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export-controlled item, data or service, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower tier subcontractors or suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- d) Seller agrees to notify Buyer if any deliverable under the Purchase Order is restricted by export control laws or regulations.
- e) Seller shall immediately notify Buyer if Seller is, or becomes, limited in any Denied Persons List issued by the United States Bureau of Security and Industry (or any successor agency) from time to time or if Seller's export privileges are otherwise denied, suspended or

- revoked in whole or in part by any Government entity or agency.
- f) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller
  - g) represents and warrants that: (i) it is registered with the Office of Defense Trade Controls, as required by the ITAR, and (ii) it maintains an effective export/import compliance program in accordance with the ITAR.
  - h) Where Seller is a signatory under a Buyer export license or export agreement, Seller shall provide prompt notification to Buyer in the event of changed circumstances, including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation of existence of a Government investigation, that could affect Seller's performance under the Purchase Order.
  - i) Access to certain technology ("Controlled Technology") by Foreign Persons (working legally in the U.S.), as defined below, may require an export license if the Controlled Technology would require a license prior to delivery to the Foreign Person's country of origin. Seller hereby certifies that all Seller employees who have access to the Controlled Technology are U.S. citizens, have permanent U.S. residency or have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria are "Foreign Persons" within the meaning of the clause but have been authorized under export licenses to perform their work hereunder.

### 32. **PATENTS AND DATA**

If any experimental, developmental or

research work is performed under the Purchase Order, Seller agrees to and hereby does grant to Buyer an irrevocable, nonexclusive, fully transferable, royalty-free license to make, have made, use or sell any invention, improvement or discovery (whether or not patent-able) that Seller conceives or first actually reduces to practice in the performance of the Purchase Order. Seller agrees to and hereby does grant to Buyer an irrevocable, nonexclusive, fully transferable, royalty-free license to reproduce, translate, publish, use and disclose, and to authorize others to do so, for any purpose, (i) any copyrighted or copyrightable material delivered or incorporated into any deliverable under the Purchase Order; and (ii) all or any part of any deliverable under the Purchase Order, including without limitation, any reports, drawings, blueprints, data, software and technical information.

### **33. ANTI-KICKBACK ACT OF 1986**

By accepting any Purchase Order, Seller certifies that it has not offered, provided, or solicited and will not offer, provide, or solicit any kickback in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC §§ 51 – 58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply unless this Order exceeds \$100,000. “Kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. Seller agrees to indemnify, defend, and hold Buyer harmless from and against any losses, liabilities, offsets and expenses (including reasonable attorney’s fees) arising out of or relating to Seller’s failure to comply with the provisions of the Anti-Kickback Act or FAR 52.203-7.

### **34. NON-WAIVER OF RIGHTS**

The failure of Buyer to insist upon strict performance of any term, condition, or

specification of any Purchase Order, any of these Terms and Conditions of Purchase or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of same or to rely on any such terms or conditions at any time thereafter. Any rights and remedies specified herein shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law and equity. The invalidity in whole or in part of any of the Terms and Conditions of Purchase shall not affect the validity of other parts thereof.

### **35. LIMITATION OF LIABILITY**

Buyer’s liability to Seller hereunder shall not, under any circumstances, be greater than the total dollar amount of the Purchase Order for which such liability relates to or arises out of. *UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE TO SELLER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, A BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY OF RECOVERY AND REGARDLESS OF WHETHER BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.*

### **36. INDEMNIFICATION**

(a) Seller shall indemnify, defend, and hold BC and BC’s Customer(s) harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorney’s fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller’s (or any of Seller’s subcontractors, suppliers, employees, agents or representatives): (i) intentional misconduct, negligence, or fraud, (ii) breach of any representation, warranty or covenant made under the Purchase Order, or (iii) products or services including, without limitation, any claims that such products or services infringe any United States patent,

copyright, trademark, trade secret or any other proprietary right of any third party. (b) Buyer shall promptly notify Seller of any claim against Buyer that is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent Buyer in, or to take charge of, any litigation in connection therewith.

### **37. INFRINGEMENT INDEMNITIES**

Seller shall indemnify, defend and hold Buyer and Buyer's customers (hereinafter collectively referred to as "Buyer") harmless from and against any claim, suit or proceeding ("claim") brought against Buyer asserting that the Supplies or Services, or any part thereof, furnished under any Purchase Order, or Buyer's use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Buyer in connection with such claim including reasonable attorneys' fees. In the event such Supplies or Services or Services or use thereof are enjoined in whole or in part, Seller shall at its expense and option undertake one of the following: (i) obtain for Buyer the right to continue the use of such Supplies or Services; (ii) in a manner acceptable to Buyer, substitute equivalent Supplies or Services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such Supplies or Services plus any excess costs or expenses incurred in obtaining substitute Supplies or Services from another source.

### **38. DISPUTES**

Buyer and Seller agree to first enter negotiations to resolve any controversy, claim or dispute ("dispute") arising under or relating to any Purchase Order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period. If good faith negotiations are unsuccessful, Buyer

and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the County of Morris, State of New Jersey. The arbitrator(s) shall be bound to follow the provisions of the Order in resolving the dispute and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

### **39. STANDARDS OF BUSINESS ETHICS AND CONDUCT**

BC believes in fair and open competition and is committed to conducting its business fairly, impartially and in an ethical and proper manner. BC is owned and controlled by its employee owners. These characteristics make it imperative that BC employees adhere to a particularly high ethical standard. Employee ownership both demands and fosters highly ethical conduct because BC can be successful only when employees look after long-term interests of the company and resist pressures to compromise BC standards. Buyer's expectation is that Seller also will conduct its business fairly, impartially and in an ethical and proper manner. If Seller has cause to believe that Buyer or any employee or agent of Buyer has acted improperly or unethically under this agreement/order, Seller shall report such behavior to the BC Ethics Hotline 973-252-4100. Copies of The Brighton Cromwell (BC) code of Ethics and contracts for such reports are available on [www.sednasearch.com](http://www.sednasearch.com) under Corporate Governance.

### **40. ORDER OF PRECEDENCE**

In the event of an inconsistency or conflict between provisions of a Purchase Order, the inconsistency or conflict shall be resolved by giving precedence in the following order:

- a) The Purchase Order and any purchase descriptions contained therein.
- b) These Terms and Conditions of Purchase
- c) Specifications and/or drawings.
- d) Other provisions when attached.

#### **41. CONFIGURATION CHANGE MANAGEMENT**

1. The Configuration Change Management section of SAE EIA-649-1 Configuration Management Requirement for Defense Contracts, Paragraph 3.3, shall be used for configuration control of material.

2. Furnished item(s) shall conform to the approved configuration requirements/revision, unless a Request for Variance (RFV) is processed and approved. The term "Request for Variance" includes Requests for Deviations and Waivers.

3. Value Engineering Change Proposals (VECPs) for cost saving improvements to the Technical Data Package (TDP) should not be processed per SAE EIA-649-1 and should be referred to FAR Part Value Engineering.

4. All Engineering Change Proposals (ECPs) submitted will be deemed routine. If an ECP is considered as an emergency or urgent; that justification for the rationale shall be included in the ECP submittal with all applicable supporting documentation.

5. For ECPs, RFVs, Notices of Revision (NORs) or Specification Change Notices (SCNs), the contractor must submit the applicable documentation listed in subparagraphs 5(a) through 5(d) to the Administrative Contracting Officer (ACO), with an information copy to the Procuring Contracting Officer (PCO). Failure to submit a complete legible package may result in return of the ECP/RFV/SCN/NOR without processing.

(a) Documentation listed in EIA-649-1 Paragraph 3.3.1 (for ECPs), 3.3.2 (RFV),

3.3.3 (for SCNs) or 3.3.4 (for Notices of Revision (NORs)).

(b) DD Form 1692 (current revision) for ECP.

(c) DD Form 1694 (current revision) for RFV.

(d) DD Form 1695 (current revision) for NOR.

6. Questions regarding the status of previously submitted ECP or RFV should be directed to the PCO.

Incorporation of an approved RFV and/or ECP will require a contract modification execution.

7. The submission of an ECP/RFV/SCN/NOR does not affect the required delivery date of the contract. If a delivery date change is needed, a contract modification is required.

#### **42. ENTIRE AGREEMENT**

The Purchase Order, including all documents incorporated therein in full text or by reference, shall constitute the entire agreement and understanding between the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.

***(SEE FOLLOWING PAGES FOR FAR/DFARS/DLAD FLOWDOWN CLAUSES)***



## **PRIME CONTRACT FLOWDOWN CAUSES FOR PURCHASE ORDERS ISSUED UNDER FEDERAL CONTRACTS**

If the Purchase Order is placed under a Government Prime Contract or a federally-funded subcontract, the following clauses set forth in the FAR, the DFARS, and the DLAD in effect on the date of the Prime Contract, where applicable, are incorporated herein by reference with the same force and effect as if given in full text. The exception is all CAS-related clauses which are effective the date of the Purchase Order. Where necessary to make the context of these clauses applicable to the Purchase Order, unless otherwise indicated, the term "Contractor" shall mean "Seller", the term "contract" shall mean "the Purchase Order", and the terms "Government", "Contracting Officer", and equivalent phrases shall mean "Buyer". Seller hereby agrees to flow down the following FAR/DFARS/DLAD clauses, where applicable, to its lower tier subcontractors.

### **IT IS THE SOLE RESPONSIBILITY OF SELLER TO COMPLY WITH THE FAR/DFARS/DLAD CLAUSES APPLICABLE TO SELLER, THE SUBJECT MATTER OF THE PURCHASE ORDER, AND THE BC TERMS AND CONDITIONS OF PURCHASE.**

The full text of these clauses can be obtained from the Internet at:

<https://www.acquisition.gov>

<http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

<http://www.dla.mil/hq/acquisition/offers/DLAD.aspx>

The DLA Master Solicitation, DLAD Procurement Notes, and the DLA Master List of Technical and Quality Requirements can be found at:  
<https://www.dla.mil/HQ/Acquisition/Offers/eProcurement/>

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### **The following are from the DLA Master Solicitation for Automated Simplified Acquisitions, Revision 55 (May 10, 2019)**

#### **A. Mandatory FAR:**

##### **52.203-19 (Jan 2017)**

Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements

##### **52.204-7 (Oct 2016)**

System for Award Management

##### **52.204-8 (Jan 2018)**

Annual Representations and Certifications

##### **52.204-13 (Oct 2016)**

System for Award Management Maintenance

##### **52.204-16 (Jul 2016)**

Commercial and Government Entity Code Reporting

##### **52.204-17 (Jul 2016)**

Ownership or Control of Offeror

##### **52.204-18 (Jul 2016)**

Commercial and Government Entity Code Maintenance

##### **52.204-20 (Jul 2016)**

Predecessor or Offeror

##### **52.204-21 (Jun 2016)**

Basic Safeguarding of Covered Contractor Information Systems

##### **52.211-2 (Apr 2014)**

Availability of Specifications, Standards, and Data Item Description Listed in the Acquisition Streamlining and Standardization Information System (ASSIST)

**52.211-5 (Aug 2000)**

Material Requirements

**52.211-14 (Apr 2008)**

Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use

**52.211-15 (Apr 2008)**

Defense Priority and Allocation Requirements

**52.213-4 (Aug 2018)**

Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items)

**52.219-28 (Jul 2013)**

Post-Award Small Business Program Representation

**52.222-36 (Jul 2014)**

Alternate I – Equal Opportunity for Workers with Disabilities

**52.223-3 (Jan 1997)**

Hazardous Material Identification and Material Safety Data

**52.223-7 (Jan 1997)**

Notice of Radioactive Materials

**52.223-18 (Aug 2011)**

Encouraging Contractor Policies to Ban Text Messaging While Driving

**52.232-39 (Jan 2013)**

Unenforceability of Unauthorized Obligations

**52.242-17 (Apr 1984)**

Government Delay of Work

**52.243-1 (Aug 1987)**

Changes – Fixed Price

**52.246-2 (Aug 1996)**

Inspection of Supplies – Fixed Price

**52.249-8 (Apr 1984)**

Default (Fixed Price Supply and Service)

**52.252-1 (Feb 1998)**

Solicitation Provisions Incorporated by Reference

**B. Mandatory DFARS:****252.203-7000 (Sep 2011)**

Requirements Relating to Compensation of Former DoD Officials

**252.203-7002 (Sep 2013)**

Requirement to Inform Employees of Whistleblower Rights

**252.203-7005 (Nov 2011)**

Representation Relating to Compensation of Former DoD Officials

**252.204-7000 (Oct 2016)**

Disclosure of Information

**252.204-7003 (Apr 1992)**

Control of Government Personnel Work Product

**252.204-7007 (Dec 2018)**

Alternate A, Annual Representations and Certifications

**252.204-7008 (Oct 2016)**

Compliance with Safeguarding Covered Defense Information Controls

**252.204-7009 (Oct 2016)**

Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information

**252.204-7012 (Oct 2016)**

Safeguarding Covered Defense Information and Cyber Incident Reporting

**252.204-7015 (May 2016)**

Notice of Authorized Disclosure of Information for Litigation Support

**252.213-7000 (Jun 2015)**

Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System – Statistical Reporting in Past Performance Evaluations

**252.223-7001 (Dec 1991)**

Hazard Warning Labels

**252.225-7007 (Sep 2006)**

Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies

**252.225-7048 (Jun 2013)**

Export-Controlled Items

**252.232-7003 (Jun 2012)**

Electronic Submission of Payment Requests and Receiving Reports

**252.232-7006 (May 2013)**

Wide Area Work Flow Payment Instructions

**252.232-7010 (Dec 2006)**

Levies on Contract Payments

**252.243-7001 (Dec 1991)**

Pricing of Contract Modifications

**252.244-7000 (Jun 2013)**

Subcontracts for Commercial Items

**252.246-7003 (Jun 2013)**

Notification of Potential Safety Issues

**252.247-7023 (Feb 2019)**

Transportation of Supplies by Sea - Basic

**C. Mandatory DLAD:**

**52.233-9001 (Dec 2016)**

Disputes – Agreement to Use Alternate Dispute Resolution (APR)

**D. Conditional FAR:**

**52.209-1 (Feb 1995)**

Qualification Requirements: *Applies when QML, QPL, QBL is cited in the item description of the solicitation/order. The agency activity name and address are in the QPL specification, which is cited in Item.*

**52.209-3 (Sep 1989)**

First Article Approval – Contractor

Testing: *Applies when a fixed-price contract is contemplated, first article approval is required, and the contractor is responsible for conducting the first article testing.*

**52.209-3 (Jan 1997)**

First Article Approval – Contractor Testing ALT 1. *Applies if the first article and the production quantity shall be produced at the same facility.*

**52.209-4 (Sep 1989)**

First Article Approval – Government

Testing: *Applies when a fixed-price contract is contemplated, first article approval is required, and the Government will be responsible for conducting the first article test.*

**52.209-4 (Jan 1997)**

First Article Approval – Government

Testing ALT I: *Applies if the first article and the production quantity shall be produced at the same facility.*

**52.211-16 (Apr 1984)**

Variation in Quantity: *For DLA Land and Maritime acquisitions: A variation in quantity will not be accepted unless the unit of issue is in feet and only when within +/- 10% when authorized in the individual order.*

**52.213-1 (May 2006)**

Fast Payment Procedure: *Applies to acquisitions valued at \$35,000 or less, unless a deviation exists, which are OCONUS Customer Direct deliveries with destination inspection and acceptances, or unless solicitation/award specifically prohibits fast pay.*

**52.219-6 (Nov 2011)**

Notice of Total Small Business Set-Aside: *Applies when the acquisition exceeds the micro-purchase threshold and is set-aside for*

*small business unless the product being acquired is subject to 52.219-6 ALT I*

**52.219-6 (Nov 2011)**

Notice of Total Small Business Set-Aside, ALT I: *Applies when acquisition exceeds the micro-purchase threshold, is set-aside for small business, and the item is one for which the SBA has determined that the waiver of the non-manufacturer rule applies. Refer to the following website, <http://www.sba.gov/gc>.*

**52.246-1 (Apr 1984)**

Contractor Inspection Requirements: *Applies when inspection and acceptance are at destination.*

**52.246-11 (Dec 2014)**

Higher-Level Contract Quality Requirement: *Refer to schedule for applicability.*

**52.246-15 (Apr 1984)**

Certificate of Conformance: *Applies when Inspection and Acceptance at Origin is cited in the order. Clause is operative at the discretion of the DCMA quality assurance representative. Does not apply to hazardous material, items under FSC 1560, 1670, 1680, 3110, 3120, or FSG 28 and 29, or when solicitation/ order specifically prohibits.*

**52.246-17 (Jun 2003)**

Warranty of Supplies of a Noncomplex Nature: *Applies to solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated.*

**52.246-18 (May 2001)**

Warranty of Supplies of a Complex Nature: *Applies to solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated.*

**52.246-19 (May 2001)**

Warranty of Systems and Equipment under Performance Specifications or Design Criteria: *Applies to solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development*

*contract for systems and equipment is contemplated.*

**52.247-1 (Feb 2006)**

Commercial Bill of Lading Notations: *Applies to all F.O.B. origin awards.*

**52.247-29 (Feb 2006)**

F.O.B. Origin: *Applies when the delivery term is f.o.b. origin.*

**52.247-34 (Nov 1991)**

F.O.B. Destination: *Applies when the delivery term is f.o.b. destination.*

**52.247-48 (Feb 1999)**

F.O.B. Destination - Evidence of Shipment: *Applies when the delivery term is f.o.b. destination and inspection and acceptance are at source.*

**52.247-51 (Jan 2001)**

Evaluation of Export Offers: *Applies to solicitations when supplies are to be exported through CONUS ports and offers are solicited on an f.o.b. origin or f.o.b. destination basis.*

**52.247-52 (Feb 2006)**

Clearance and Documentation Requirements – Shipments to DoD Air or Water Terminal Transshipment Points: *Applies when shipments will be consigned to DoD air or water terminal transshipment points or container consolidation points (CCPs).*

**52.247-65 (Jan 1991)**

F.O.B Origin, Prepaid Freight - Small Package Shipments: *Applies to all F.O.B. origin awards except Foreign Military Sales (FMS) requirements.*

**52.247-68 (Feb 2006)**

Report of Shipment (REPSHIP): *Applies to shipment when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.*

**E. Conditional DFARS:**

**252.209-7010 (Aug 2011)**

Critical Safety Items: *Applies when the item being acquired is identified as a Critical Safety Item.*

**252.211-7003 (Mar 2016)**

Item Unique Identification and Valuation: *Applies when the item description contains the statement "IUID MARKING IS REQUIRED." If the unit cost is \$5,000 or more and the item description is silent as to IUID, DFARS 252.211-7003(c)(1)(i) applies (there is an IUID exemption requested by the Service customer).*

**252.211-7006 (Dec 2017)**

Passive Radio Frequency Identification: *Applies to solicitations and contracts that will require shipment of items meeting criteria in DFARS 211.275-2: (1) In any of the following classes of supply: (i) Subclass of Class I – Packaged Operational Rations; (ii) Class II – Clothing, Individual Equipment, Tentage, Organizational Tool Kits, Hand Tools, and Administrative and Housekeeping Supplies and Equipment; (iii) Class III P – Packaged Petroleum, Lubricants, Oils, Preservatives, Chemicals, and Additives; (iv) Class IV – Construction and Barrier Materials; (v) Class VI – Personal Demand Items (Non-Military Sales Items); (vi) Subclass of Class VIII – Medical Materials (Excluding Pharmaceuticals, Biologicals, and Reagents (Suppliers should limit mixing of excluded and non-excluded materials); and (vii) Class IX – Repair Parts and Components including Kits, Assemblies and Subassemblies, Repairable and Consumable Items Required for Maintenance Support of All Equipment, excluding Medical-Peculiar Repair Parts; AND (2) when supplies will be shipped (i) to one of the locations listed on the website; (ii) to a location outside the contiguous United States when the shipment has been assigned Transportation Priority1; or (iii) to any additional location(s) deemed necessary by the requiring activity. Does not apply to (i) shipments of bulk commodities; or (ii) shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213-1, Fast Payment Procedures.*

**252.225-7000 (Nov 2014)**

Buy American -- Balance of Payments Program Certification – BASIC: *Applies to all acquisitions over the micro-purchase*

*threshold up to \$25,000 and to acquisitions above \$25,000 unless 252.225-7036 or its ALT applies.*

**252.225-7001 (Dec 2016)**

Buy American and Balance of Payments Program – BASIC: *Applies to all acquisitions over the micro-purchase threshold up to \$25,000 and to acquisitions above \$25,000 unless 252.225-7036 or its ALT applies.*

**252.225-7002 (Dec 2016)**

Qualifying Country Sources as Subcontractors: *Applies when either DFARS 252.225-7001 or DFARS 252.225-7036 is cited in the solicitation.*

**252.225-7012 (Dec 2017)**

Preference for Certain Domestic Commodities: *Applies to acquisitions for athletic footwear purchased for use by members of the Army, Navy, Air Force, or Marine Corps upon initial entry into the Armed Forces.*

**252.225-7013 (May 2016)**

Duty-Free Entry: *Applies when acquisition exceeds the micro-purchase threshold except when set-aside for small business or when the supplies will be shipped directly from a source outside the U.S. to a customer outside the U.S.*

**252.225-7016 (Jun 2011)**

Restriction on Acquisition of Ball and Roller Bearings: *Applies to all acquisitions unless the items being acquired are not, or do not contain, ball and roller bearings.*

**252.225-7019 (Dec 2009)**

Restriction on Acquisition of Anchor and Mooring Chain: *Applies to solicitations and contracts requiring welded shipboard anchor or mooring chain four inches or less in diameter.*

**252.225-7028 (Apr 2003)**

Exclusionary Policies and Practices of Foreign Governments: *Applies to solicitations/orders for Foreign Military Sales (FMS).*

**252.225-7036 (Dec 2017)**

Buy American – Free Trade Agreements – Balance of Payments Program – Basic: *Applies to solicitations and contracts when the **estimated value equals or exceeds \$100,000, but is less than \$180,000, except if the acquisition is of end products in support of operations in Afghanistan.***

**252.225-7036 (Dec 2017)**

Buy American – Free Trade Agreements— Balance of Payments Program – Alt I: *Applies to solicitations and contracts when the **estimated value equals or exceeds \$25,000 but is less than \$80,317, except if the acquisition is of end products in support of operations in Afghanistan.***

**252.225-7036 (Dec 2017)**

Buy American – Free Trade Agreements – Balance of Payments Program – Alt IV: *Applies to solicitations and contracts when the **estimated value equals or exceeds \$80,317 but is less than \$100,000, except if the acquisition is of end products in support of operations in Afghanistan.***

**252.225-7041 (Jun 1997)**

Correspondence in English: *Applies when performance will be wholly or in part in a foreign country.*

**252.225-7976 (Aug 2018)**

Contractor Personnel Performing in Japan (DEVIATION 2018-O0019): [https://www.acq.osd.mil/dpap/policy/policy\\_vault/USA002186-18-DPC.pdf](https://www.acq.osd.mil/dpap/policy/policy_vault/USA002186-18-DPC.pdf). *Applies to solicitations and contracts that will require contractor personnel to perform in Japan.*

**252.225-7981 (Sep 2015)**

Additional Access to Contractor and Subcontractor Records (Other than USCENTCOM) (DEVIATION 2015-O0016) [https://www.acq.osd.mil/dpap/policy/policy\\_vault/USA004860-15-DPAP.pdf](https://www.acq.osd.mil/dpap/policy/policy_vault/USA004860-15-DPAP.pdf). *Applies to solicitations and contracts with **an estimated value in excess of \$50,000 that are to be performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged***

*in hostilities, except for contracts that will be performed in the United States Central Command theater of operations (see Class Deviation 2015-0013).*

**252.225-7993 (Sep 2015)**

Prohibition on Providing Funds to the Enemy (DEVIATION 2015-O0016) [https://www.acq.osd.mil/dpap/policy/policy\\_vault/USA004860-15-DPAP.pdf](https://www.acq.osd.mil/dpap/policy/policy_vault/USA004860-15-DPAP.pdf). *Applies to solicitations and contracts to be awarded on or before **December 31, 2019, with an estimated value in excess of \$50,000 that are being, or will be, performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.***

**252.227-7025 (May 2013)**

Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. *Applies to solicitations and contracts when the Government expects to provide the contractor, for performance of its contract, technical data or computer software/ software documentation marked with another contractor's restrictive legends.*

**252.239-7017 (Sep 2018)**

Notice of Supply Chain Risk (DEVIATION 2018-O0020) [https://www.acq.osd.mil/dpap/policy/policy\\_vault/USA002323-18-DPC.pdf](https://www.acq.osd.mil/dpap/policy/policy_vault/USA002323-18-DPC.pdf). *Applies to solicitations for information technology services or supplies.*

**252.239-7018 (Sep 2018)**

Supply Chain Risk (DEVIATION 2018-O0020) [https://www.acq.osd.mil/dpap/policy/policy\\_vault/USA002323-18-DPC.pdf](https://www.acq.osd.mil/dpap/policy/policy_vault/USA002323-18-DPC.pdf). *Applies to solicitations and contracts for information technology services or supplies.*

**252.246-7007 (Aug 2016)**

Contractor Counterfeit Electronic Part Detection and Avoidance System: *Applies to solicitations and contracts when procuring, electronic parts; end items, components, parts or assemblies containing electronic parts.*

*Does not apply to acquisitions set-aside for small business.*

**252.246-7008 (May 2018)**

*Sources of Electronic Parts: Applies to solicitations and contracts when procuring, electronic parts; end items, components, parts or assemblies containing electronic parts; or services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts or components, parts, or assemblies containing electronic parts as part of the service.*

**F. Conditional DLAD:**

**52.232-9006 (Apr 2013)**

*Transporter Proof of Delivery (TPD): Applies to solicitations and awards issued by DLA Aviation, DLA Land and Maritime, and DLA Troop Support for supplies when (1) either FAR 52.232-25 or FAR 52.212-4 is cited in the solicitation; and (2) all of the following conditions apply: (a) contract deliveries will be made directly to DLA customers; (b) award will be made on a fixed-price basis; (c) inspection or acceptance at source is not required; (d) use of fast payment procedures is not authorized; (e) shipments to overseas destinations or to containerization consolidation points are not required; and (f) acquisition is not being conducted under the subsistence total order and receipt electronic system (STORES), Defense Medical Logistics Standard Support (DMLSS).*