

## **NI Industries Purchasing Terms and Conditions**

### **1. Definitions.** The following definitions apply unless otherwise specifically stated:

- “Buyer” – the legal entity issuing this Purchase Order, NI Industries, Inc. (“NI”) or any entity controlling, controlled by, or under common control with it.
- “Supplier” – the legal entity which contracts with the Buyer.
- “Government” – the Government of the United States, and its federal agencies.
- “Purchase Order” – this contractual instrument, including changes.
- “Prime Contract” – the Government contract, if any, under which this Purchase Order is issued.
- “FAR” – the Federal Acquisition Regulation.
- “Contracting Officer” – the government contracting officer for the Prime Contract or authorized representative.
- “DFAR” – the Department of Defense FAR Supplement.

### **2. Scope**

2.1 Supplier acknowledges and agrees that these Purchasing Terms and Conditions (the “Terms and Conditions”) are incorporated in, and made a part of, each Purchase Order, requisition, work Purchase Order, shipping instruction, specification or other document, whether expressed in written form, by electronic data interchange or other tangible format provided to Supplier. The Terms and Conditions shall be applicable to all purchases made by Buyer from the Supplier, whether purchases are for tooling, machines, parts, raw materials, or other various goods or services (the “Supplied Goods”).

2.2 A Purchase Order (as defined below) and the Terms and Conditions shall constitute the entire agreement applicable to and binding on Buyer for the Supplied Goods, and expressly excludes any application by the Supplier to substitute its general terms of sale as well as any documents issued now or in the future by the Supplier relating, directly or indirectly, to the Supplied Goods. Any proposal, offer, counter-offer, or other attempt by the Supplier to vary any of the Terms and Conditions shall be rejected, and Supplier agrees that any such additional or inconsistent terms shall have no force and effect. Notwithstanding the foregoing, any stenographic or clerical errors to the Terms and Conditions are subject to correction by Buyer.

### **3. Price, Invoicing and Conditions of Payment**

3.1 All prices for Supplied Goods shall be as stated in the Purchase Order (the “Purchase Order”). Supplier shall be solely responsible for all transport and unloading costs, customs charges, applicable taxes and insurance costs, unless otherwise specified on the Purchase Order.

3.2 Supplier's invoice shall include all information appearing on the Purchase Order necessary for identification and origin of the Supplied Goods. The invoice shall be sent to the invoicing address written on the face of the Purchase Order.

3.3 No payment shall be made by Buyer in advance of receipt of the Supplied Goods. Unless otherwise stated on the Purchase Order, the Supplier's invoice shall be payable, ninety (90) days from the date of invoice unless otherwise specified on the face of the Purchase Order. All invoicing and payments shall be made through electronic data interchange.

3.4 Payment for Supplied Goods shall not constitute final acceptance of the Supplied Goods or waive Buyer's right to reject the Supplied Goods. Buyer may reject the Supplied Goods and hold Supplier in default if, at any time, Buyer, or any of its customers, discovers the Supplied Goods to be defective or otherwise not conforming with the requirements of the Purchase Order.

3.5 In addition to any right of setoff provided by law, all amounts due to Supplier shall be considered net of indebtedness of Supplier and its affiliates/subsidiaries to Buyer, and Buyer shall have the right to set off against or to recoup any amounts due to Supplier and its affiliates or subsidiaries from Buyer.

3.6 Supplier may not assign any accounts receivable from Buyer to third parties without the prior written approval of Buyer.

3.7 Supplier warrants that the prices for the Supplied Goods sold to Buyer are no less favorable than those prices Supplier currently extends to any other customer for the same or similar Supplied Goods in similar quantities. If Supplier reduces its prices to third parties during the term of a Purchase Order for the Supplied Goods, Supplier shall correspondingly reduce the prices charged to Buyer. Supplier warrants that the prices on the Purchase Order are complete and that no other charges will be added without Buyer's written consent.

3.8 Buyer has the right to audit and review all records of Supplier to enable Buyer to verify the accuracy of the amounts charged for the Supplied Goods, assess Supplier's ongoing ability to perform its obligations under a Purchase Order and Terms and Conditions or to verify any claim submitted to Buyer in accordance with these Terms and Conditions. Supplier agrees to maintain all records relating to the Supplied Goods for a period of four (4) years following final payment under any Purchase Order.

#### **4. Forecasts**

4.1 Buyer may provide Supplier with estimates or forecasts of its future anticipated volume or quantity requirements for Supplied Goods. Supplier acknowledges that any estimates or forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time.

4.2 Buyer makes no representation, warranty, guaranty or commitment, express or implied, regarding any estimates or forecasts provided to Supplier, including the accuracy or completeness of the estimates or forecasts.

## **5. Compliance**

5.1 Without prejudice to the provisions of Section 5.2, the Supplied Goods shall be manufactured in compliance with the Terms and Conditions.

5.2 Supplier warrants that the Supplied Goods shall be manufactured, sold and shipped in compliance with any and all applicable federal, state and local laws, regulations and standards in force in the United States and in the country of manufacture and sale, including those that relate to the quotations, pricing, manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Supplied Goods, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon request from Buyer, Supplier shall certify in writing its compliance with this Section 5.2.

5.3 At the request of Buyer, Supplier shall provide an appropriate certificate stating the country of manufacture of the Supplied Goods.

5.4 Supplier shall comply with all quality requirements as specified by Buyer in writing.

5.5 Supplier shall participate in productivity initiatives in Purchase Order to improve quality of the Supplied Goods, increase customer satisfaction or reduce costs of the Supplied Goods.

## **6. Technical Information (Limited to Non-Governmental Contracts)**

6.1 Supplier shall create, maintain, update and provide to Buyer, all technical information relating to the Supplied Goods, including information subject to industrial or intellectual property rights and information that may relate to tooling, machines or equipment, software, works of authorship, computer programs and databases (including object code, micro code, source code and data structures) and all enhancements, modifications and updates to such information (the "Technical Information"). The Technical Information shall not be subject to any use or disclosure restriction.

6.2 Upon a breach by Supplier of these Terms and Conditions, Supplier grants to Buyer a royalty free, fully paid license for all Technical Information in Purchase Order to manufacture, or have manufactured, the Supplied Goods. At Buyer's request, Supplier shall transfer to Buyer ownership of the tooling and equipment necessary to manufacture the Supplied Goods, whether or not such tooling and equipment has been paid for by Buyer.

6.3 Supplier agrees not to assert any claim (other than patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any Technical Information that Supplier discloses under the Terms and Conditions.

6.4 Buyer shall own all right, title and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property developed by Supplier under these Terms and Conditions. Supplier shall assist Buyer in perfecting its right, title and interest and shall execute and deliver all documents reasonably requested by Buyer in Purchase Order to perfect, register or enforce the same. Buyer shall reimburse any associated costs incurred by Supplier in providing such assistance.

6.5 If a third party asserts claims of actual or alleged infringement of any Technical Information relating to the Supplied Goods, Supplier, at no expense to Buyer, shall obtain for Buyer and its customers, the right to manufacture, use and sell the Supplied Goods or shall substitute an equivalent item acceptable to Buyer, and shall reimburse Buyer for any costs incurred related to this Section 6.5.

## **7. Packaging and Transport**

7.1 Unless otherwise provided in a Purchase Order, the Supplied Goods must be packed and packaged to ensure their safe delivery in accordance with the Terms and Conditions, industry standards and where incorporated, Buyer's packaging specifications.

7.2 Buyer may, at any time, change packaging or transport requirements. Supplier shall be responsible for any damage to the Supplied Goods arising from packaging or transport. If requested by Buyer, Supplier shall promptly furnish to Buyer (a) a list of all ingredients in the Supplied Goods and corresponding amounts of ingredients, and (b) information concerning any changes in or additions to such ingredients.

7.3 Supplier shall provide all Material Safety Data Sheets and "hazardous substance" warnings related to all shipments of Supplied Goods that constitute hazardous materials, together with special handling instructions advising Buyer and third parties, including transportation carriers, as to the degree of care and precaution that will prevent bodily injury or property damage in handling, transporting, processing, using, recycling or disposing of the Supplied Goods.

7.4 The Supplied Goods, as packaged, shall be labeled as required under federal, state and local regulations, regulations from the country of manufacture and supply shall include any storage requirements, Buyer's Purchase Order number, description of the Supplied Goods, and quantity and the gross or net weight of Supplied Goods. Supplier shall include a bill of lading consisting of delivery and identification information for the Supplied Goods, including a clear description of the origin of the Supplied Goods.

## **8. Ownership of the Supplied Goods**

8.1 Notwithstanding Article 9, all right, title and interest in and to the Supplied Goods shall be transferred to Buyer immediately upon its identification in the Purchase Order. Supplier shall not impose or permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supplied Goods.

8.2 If Buyer purchases or finances all or part of the raw materials or semi-finished products for incorporation into the Supplied Goods, the raw materials and semi-finished products shall become the property of Buyer immediately upon payment. Supplier, as bailee, shall identify the raw materials and semi-finished products by plainly marking them as Buyer owned property.

8.3 All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products, materials and other items (collectively "Tools") purchased by or furnished by Buyer, in whole or in part, or by third parties on Buyer's behalf, to Supplier under these Terms and Conditions, or for which Supplier has been reimbursed by Buyer, shall remain the property of Buyer and shall not be pledged to any third party. Supplier shall provide Buyer with drawings, technical specifications, FMEA's and control plans for the Tools. Supplier shall bear the risk of loss and damage to the Tools. The Tools shall at all time (a) be properly stored, operated and maintained by Supplier, (b) not be used by Supplier for any purpose other than the performance of these Terms and Conditions, (c) be deemed to be personal property of Buyer, not a fixture, (d) be conspicuously identified as property of Buyer with relevant part numbers, (e) not be commingled with other property of Supplier or with that of a third party and (f) not be moved from Supplier's premises without Buyer's prior written approval.

8.4 Supplier shall insure the Tools for damage or loss (including theft) in an amount not less than replacement value and shall maintain general liability insurance regarding operation of the Tools in amounts and coverage reasonable in the circumstances and acceptable to Buyer.

8.5 Upon the request of Buyer, the Tools shall be delivered to Buyer by Supplier, either (a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the Terms and Conditions and requirements of the carrier selected by Buyer, or (b) to any location designated by Buyer, provided that Buyer shall pay Supplier the reasonable cost of delivering the Tools to the location. Buyer has the right to enter Supplier's premises at all reasonable times to inspect the Tools and Supplier's records with respect to the Tools.

8.6 Buyer does not guarantee the accuracy of any Tools or the availability or suitability of any Tools furnished by Buyer to Supplier, including any warranty, either express or implied, as to fitness, condition, merchantability, design or operation or fitness for a particular purpose. Supplier agrees to check carefully and approve all Tools supplied by Buyer prior to use. Supplier shall assume all risk, loss, damages, injuries or expenses arising, either directly or indirectly, from the use, maintenance, repair of the Tools, including any interruption of service or loss of business, profits or any other indirect, special or consequential damage and/or personal injury or death.

8.7 In any dispute involving ownership of Tools, there is a rebuttable presumption that Buyer is the sole owner of the Tools and Supplier grants Buyer a security interest in the Tools to secure Supplier's obligations under these Terms and Conditions. Supplier authorizes Buyer, at Buyer's sole option, to file financing statements to evidence Buyer's interest in the Tools.

8.8 Supplier grants Buyer an exclusive, irrevocable option to purchase any Tools owned by Supplier and used in the manufacture of the Supplied Goods at a price agreed upon in writing by the parties, but in no event greater than the replacement cost of the Tools less depreciation. Buyer may exercise this option at any time, provided that Supplier does not utilize the Tools owned by Supplier for staple goods for third parties. Supplier shall obtain any applicable waiver, release or approval from financing sources so that Buyer may exercise its rights under this Section 8.8.

## **9. Delivery**

9.1 Unless otherwise specified in writing by Buyer, delivery of the Supplied Goods shall be F.O.B Buyer facility as indicated on the Purchase Order. Buyer shall have the right, by written notice, to suspend work or make changes from time to time in the Supplied Goods to be provided by Supplier under a Purchase Order, or the delivery thereof.

9.2 Supplier shall take all measures necessary to meet the delivery date for the Supplied Goods and comply with the Terms and Conditions. Deliveries shall be made in the quantities, on the dates, and at the times specified by Buyer in the Purchase Order.

9.3 Supplier shall not fabricate, assemble or ship any Supplied Goods, or procure materials or Tools, except to the extent authorized by the Purchase Order. Buyer shall not pay for any Supplied Goods, materials, Tools and related costs that are not authorized pursuant to the Buyer Purchase Order.

9.4 Time is of the essence in performing this Purchase Order. Should Supplier experience or anticipate any delay in performing this Purchase Order, whether or not such delay is excusable under the DEFAULT FAR clause 52.249-8 in paragraph 18, Supplier shall immediately notify Buyer of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgement by Buyer shall constitute a waiver of the Purchase Order's delivery schedule. The delivery schedule shall not be modified unless the parties do so in writing. Supplier shall be liable for any direct or consequential damages resulting from a delay unless the delay is excusable as described above. Supplier shall be liable for any direct or consequential damages to Buyer resulting from any failure of Supplier to give immediate notice of any anticipated or actual delay.

9.5 Supplier shall provide written notice to Buyer immediately of any actual or potential labor dispute, and all related information relating to the dispute, which may delay or threaten to delay the timely performance of Supplier under a Purchase Order.

Buyer may purchase Supplied Goods from a third party immediately upon receipt of notice from Supplier, if Buyer deems it necessary, in its sole discretion. Supplier shall notify Buyer six (6) months in advance of the expiration of any current labor contract(s). Prior to the expiration of any labor contract, Supplier shall store, at its expense, a minimum thirty (30) day inventory of finished Supplied Goods at a warehouse unaffected by the labor contract.

**10. Risk of Loss.** Risk of loss with respect to the Supplied Goods shall remain with the Supplier until the Supplied goods have been delivered to and accepted by Buyer, or an agent or consignee duly designated by Buyer, at the location indicated on the Purchase Order.

**11. Changes.**

11.1 Buyer shall have the right, by written notice, to suspend work or make changes from time to time in the Supplied Goods to be provided by Supplier under a Purchase Order, or the delivery thereof. Unless subject to Section 13, if any such change causes an increase or decrease in the cost of or time required for performance of a Purchase Order by Supplier, an equitable adjustment shall be negotiated promptly and in good faith by the parties, and the Purchase Order shall be modified in writing accordingly. Supplier must submit in writing any claim for adjustment to Buyer within thirty (30) days from the date that notification of the change is received by Supplier. Upon approval of the claim by Buyer, any excess or obsolete Tools or Supplied Goods set forth in the claim shall become the property of Buyer, to dispose or utilize as Buyer deems necessary. Notwithstanding the foregoing, Supplier shall be required to continue to perform under the revised Purchase Order.

**12. Acceptance of Supplied Goods**

12.1 The Purchase Order shall be deemed to have been accepted by Supplier and constitute a binding contract upon the earlier of Supplier's (a) written acknowledgment, (b) commencement of work on the Supplied Goods or (c) shipment of the Supplied Goods. Buyer may revoke its offer or terminate a Purchase Order without liability to Supplier at any time before Buyer receives actual notice of Supplier's acceptance. If the Purchase Order shall be deemed accepted based on a prior offer by Supplier, such acceptance is limited to and expressly made conditional on assent to the express terms set forth in the Purchase Order.

12.2 Buyer and its customers shall have the right to enter Supplier's premises at reasonable times to verify that the Supplied Goods conform to the Purchase Order. Supplier agrees to provide all supporting documentation requested by Buyer in the course of the investigation. Final acceptance of the Supplied Goods by Buyer shall not be conclusive with respect to latent defects or misrepresentations.

12.3 Buyer reserves the right to reject or revoke acceptance of nonconforming Supplied Goods, which includes but is not limited to defects or defaults revealed by inspection, analysis or subsequent manufacturing operations, even though such items

previously may have been accepted, non-compliance with the Purchase Order or non-compliance with the date and hours of delivery at any time.

12.4 In addition to Article 12.3 and any other remedies Buyer may have, at its option, Buyer may (a) correct or have corrected the non-conforming Supplied Goods at Supplier's expense, (b) reject and return the Supplied Goods at Supplier's own risk and expense or (c) instruct Supplier to retrieve the non-conforming Supplied Goods at its expense within eight (8) days of notification of rejection or revocation of acceptance. Buyer shall be permitted to dispose of the Supplied Goods upon Supplier's failure to retrieve the non-conforming Supplied Goods. If defects or deficiencies in the Tools provided by Supplier are discovered by Buyer prior to a successful runoff and final acceptance, Buyer shall be entitled to, among other remedies, a return of all sums paid to date under this contract.

12.5 Supplier shall be responsible for the design and manufacture of the Supplied Goods to the extent designated by Buyer in the Purchase Order or as otherwise agreed to in writing by the parties, regardless of any assistance provided by Buyer or approval by Buyer.

### **13. Express Warranty.**

13.1 Supplier expressly warrants for the Warranty Period (as defined in this Article 13) that (a) the Supplied Goods shall strictly conform to the Purchase Order, including instructions, advertisements, statements on containers or labels, descriptions and samples, then current release/revision levels of specifications and drawings, (b) the Supplied Goods shall be free from defects in workmanship and material and shall be new and of the highest quality, (c) Buyer shall receive title to the Supplied Goods that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement, (d) the Supplied Goods shall be merchantable, safe and fit for any purpose intended by Buyer or Buyer's customer, including the specified performance in the component, system, subsystem and environment in which the Supplied Goods is or reasonably may be expected to perform and (e) Supplier's performance shall be in strict accordance with these Terms and Conditions.

13.2 The warranties in this Article 13 shall be in addition to all other warranties afforded to Buyer by operation of law or by industry standards, except that no course of dealing or usage of trade shall be applicable unless expressly incorporated into these Terms and Conditions by a writing signed by the parties.

13.3 These warranties shall survive the expiration or termination of the Terms and Conditions and shall apply to Buyer, its successors, assigns, customers and the end-users of Buyer's Supplied Goods. These warranties may not be limited or disclaimed by Supplier.

13.4 Buyer's approval of Supplier's design, material, process, drawing, specifications or the like for the Supplied Goods shall not be construed to relieve Supplier of strict compliance with the warranties in this Article 13. For purposes of these Terms and

Conditions, "Warranty Period" shall be the longer of the following time periods (a) forty-eight (48) months from the date of first use of the Supplied Goods by Buyer or acceptance by Buyer, whichever occurs later, (b) if the Supplied Goods are incorporated, in whole or in part, into products sold by Buyer to third parties, the latter of the following dates (i) eighteen (18) months after acceptance by such third parties, (ii) the time period of warranty that such third parties give to their customers, or (iii) the date on which any longer or broader federal, state or local law, regulations may require, including those regulations of countries in which the Supplied Goods is installed, used or sold.

13.5 Notwithstanding the expiration of the Warranty Period, if Buyer, its customers or the manufacturer of the vehicles (or other finished product) on which the Supplied Goods, or any parts, components or systems incorporating the Supplied Goods, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a "recall"), Supplier shall nonetheless be liable for costs and damages associated with the recall to the extent that the costs and damages are based upon a reasonable determination that the Supplied Goods fails to conform to these Terms and Conditions.

**14. Product Support.** Supplier warrants that the Supplied Goods, including the sub-assemblies and spare parts, shall be made available by Supplier to Buyer and its customers for ten (10) years after the date of final shipment of the Supplied Goods under the Terms and Conditions. During this period, Supplier shall continue to provide technical support and service at the same level as presently provided.

**15. Indemnification and Insurance.**

15.1 To the fullest extent permitted by law, Supplier shall indemnify, hold harmless and defend Buyer and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnities") from and against any loss, liabilities, costs, expenses, suits, legal actions, claims, investigations, or any threat of same, and all other obligations and proceedings, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnities, and any cost incurred in connection therewith (including but not limited to fees and expenses of lawyers and other professionals incurred in investigating or defending the same and any cost of a product recall) ("Liabilities") arising out of a breach of the Purchase Order or Terms and Conditions. However, Supplier's obligation to indemnify Buyer shall not apply to any Liabilities arising from Buyer's sole negligence.

15.2 Supplier will obtain, pay for, provide evidence thereof to Buyer and maintain worker's compensation and employers' liability insurance, commercial general liability insurance to include bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors and broad-form property damage in such minimal amounts as follows: (a) General Liability - including without limitation coverage of operations or subcontractors, liability for injury and damage following

completion of work and contractual liability; (b) bodily and personal injury and property damage combined - \$1,000,000.00; (c) truck and automobile bodily and personal injury property damage \$200,000.00 each person, \$500,000.00 each accident, and \$50,000.00 each accident; and (d) Workmen's Compensation - as required by law. The insurance policy must name Buyer as an additional insured and provide the Buyer 30 days prior written notice of cancellation or changes to the policy. In addition, such insurance shall fully insure Buyer against all liability imposed by law and all liability assumed under these Terms.

**16. Confidentiality.** All information provided to Supplier by Buyer under these Terms and Conditions shall remain Buyer's property and be considered confidential by Supplier. Supplier shall take all necessary measures to ensure that neither Supplier nor its employees, agents, suppliers or authorized subcontractors, communicate such confidential information to any third party without Buyer's prior written consent and that the information is used only for the purpose submitted. Without obtaining the prior written consent of Buyer, Supplier shall not advertise or publish the fact that Supplier has contracted to furnish Buyer Supplied Goods, or use any trademarks or trade names of Buyer in Supplier's advertising or promotional materials. If Supplier is required by legal process to disclose any such confidential information, it shall immediately notify Buyer and use all available efforts to resist such disclosure, or if such resistance is unsuccessful, to obtain a protective Purchase Order. These confidentiality requirements shall be maintained for the duration of performance under the Terms and Conditions and for a period of five (5) years thereafter. Upon the request of Buyer, Supplier agrees to return to Buyer all information, including all copies thereof, confidential or otherwise, related to the Terms and Conditions.

**17. Termination**

17.1 Buyer may terminate any Purchase Order in the event of breach by Supplier of these Terms and Conditions or Supplier's failure to provide Buyer with reasonable assurances of future performance upon request. Additionally, Buyer may cancel any Purchase Order in the event of any of the following (i) insolvency of Supplier, (ii) filing of an involuntary or voluntary petition of bankruptcy against Supplier, (iii) execution by Supplier of an assignment for the benefit of creditors or (iv) appointment of a receiver over Supplier's assets. In the event of termination under this subsection 17.1, Buyer shall not be liable to Supplier for any amount, except for conforming Supplied Goods that have been delivered to Buyer prior to termination, and Supplier shall be liable to Buyer for all damages sustained by reason of the default which gave rise to the termination.

17.2 Supplier may not terminate any Purchase Order once accepted and at all times must continue to deliver the Supplied Goods in accordance with the Purchase Order.

**18. Buy American Certificate.** Seller certifies that, unless otherwise noted in that Purchase Order, all items delivered under this Purchase Order were mined, produced, or manufactured in the United States.

**19. Work on Premises.** If Supplier's work under these Terms and Conditions involves operations by Supplier on Buyer premises or one of its customers, Supplier shall take all necessary precautions to prevent injury to any person or property during the progress of such work. Supplier shall maintain such public liability, property damage and employee's liability and compensation insurance as will protect Buyer from these risks and from any claims under applicable worker's compensation and occupational disease acts. This insurance is in addition to the insurance provisions as set forth in Section 15.2. Supplier's performance under these Terms and Conditions shall be consistent and in accordance with current labor agreements between Buyer and any union organization with which Buyer may have a collective bargaining agreement.

**20. Miscellaneous Provisions.**

20.1 Assignment/Change in Control. Supplier shall not assign, in whole or in part, any Purchase Order or delegate the performance of its duties under any Purchase Order or these Terms and Conditions without the prior written consent of Buyer. Any assignment or delegation without the prior written consent of Buyer, at the option of Buyer, shall serve as a cancellation of the Purchase Order. Any consent by Buyer to an assignment shall not waive Buyer's right to recoupment from Supplier or its assigns for any claim arising out of these Terms and Conditions. If Buyer agrees to the assignment of the Purchase Order, in whole or in part, Supplier shall remain solely liable to Buyer for the adherence of the assignee to these Terms and Conditions. In addition, Buyer may terminate these Terms and Conditions upon giving at least thirty (30) days written notice to Supplier, without any liability to Supplier, if Supplier (i) sells, or offers to sell, a material portion of its assets, (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Supplier or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Supplier.

20.2 Force Majeure. Any delay or failure of either party to perform its obligations shall be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks and sabotage. Written notice of the delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Supplier, Buyer, at its option, may purchase Supplied Goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Buyer, or cause Supplier to procure the Supplied Goods from other sources in quantities and at times requested by Buyer and at the price set forth in the Purchase Order. If requested by Buyer, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay shall not exceed a period of time that Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Supplier does not provide adequate assurance that the delay will cease within the time period, Buyer may, among its other remedies,

immediately cancel the Purchase Order and seek damages against Supplier for nonperformance.

20.3 Duty Drawback Rights. The Purchase Order includes all related customs duty and import drawback rights, if any, which Supplier can transfer to Buyer, including rights developed by substitution and rights which may be acquired from Supplier's suppliers. Supplier agrees to inform Buyer of the existence of any such rights and upon request shall supply documents as may be required to obtain the drawback.

20.4 Limitation on Buyer's Liability/Waiver. In no event shall Buyer be liable to Supplier for anticipated profits or for incidental or consequential damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from these Terms and Conditions, or from any performance or breach, shall in no case exceed the price allocable to the Supplied Goods giving rise to the claim. No action or inaction by Buyer to enforce the Terms and Conditions shall constitute a waiver of compliance with any of the provisions in these Terms and Conditions.

20.5 Relationship of Parties. Supplier and Buyer are independent contracting parties and nothing in these Terms and Conditions shall make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

20.6 Remedies and Injunctive Relief. The rights and remedies to Buyer in these Terms and Conditions are cumulative with, and in addition to all other and further remedies provided in law or equity. To the extent that these Terms and Conditions are for Supplied Goods for use as, or fabrication into, parts, components or systems, Supplier acknowledges and agrees that money damages would not be sufficient remedy for any actual, anticipatory or threatened breach of these Terms and Conditions by Supplier and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and injunctive or other equitable relief.

20.7 Customs-Trade Partnership Against Terrorism. To the extent that any Supplied Goods covered by these Terms and Conditions is to be imported into the United States of America, Supplier shall comply with all applicable recommendations or requirements of the Bureau of Customs and BPurchase Order Protection's Customer-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Supplier shall certify in writing its compliance with the C-TPAT initiative.

20.8 Continuing Obligations. The obligations of Supplier under Sections 3.8, 6.4, 6.5, 8.4, 20.4, 20.6, 20.8 and Articles 5 and 13 through 16 and 21, shall survive the expiration, nonrenewal or termination of any Purchase Order.

20.9 Amendment. These Terms and Conditions may not be varied or modified in any manner, without the prior written consent of both parties.

20.10 Entire Agreement. A Purchase Order and these Terms and Conditions shall constitute the entire agreement between the parties with respect to its subject matter,

and shall supersede all prior and contemporaneous agreements, representations, and understandings of the parties with respect to its subject matter.

20.11 Severability. In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation with invalidating any other provision hereof.

## **21. Clauses Incorporated by Reference**

As listed below, the clauses from the Federal Acquisition Regulation, 48 C.F.R. § 1 et seq. are incorporated by reference into this Purchase Order with the same effect as if they were printed in full. The designated language of a clause will be used unless the use of alternate language is indicated. Unless otherwise indicated in this Purchase Order, the clauses listed in this paragraph are modified as follows: Change “Contractor” to “Supplier”; “Subcontractor” to “Supplier’s Subcontractor” and “Contract” to this “Purchase Order.” The version of the clauses in effect on the date of this Purchase Order shall be used.

### **52.215-19 NOTIFICATION OF OWNERSHIP CHANGES**

### **52.222-3 CONVICT LABOR**

52.243-6 **CHANGE ORDER ACCOUNTING** (delete the first sentence)

### **52.244-5 COMPETITION IN SUBCONTRACTING**

In the following clauses, also change “Government” to “Government or Buyer” and “Contracting Officer” to “Contracting Officer or Buyer”:

52.203-3 **GRATUITIES** (change “Agency Head or Designee” and Government to “Buyer”; but “Government” means “Government or Buyer” in (a)(1); delete parenthetical in (c)(2); and change “Contract” to “Prime Contract” in (c)).

### **52.236-12 CLEANING UP**

52.246-2 **INSPECTION OF SUPPLIES – FIXED PRICE.** (Delete last sentence of (k); replace the first thirteen words of (l) with: “If the Articles are defective for any reason,”; replace the terms “the original point of delivery” and “the original point” in (l) with: “the location of the Articles at the time the defect or failure is discovered, wherever in the world.”; and add as (m) “Records will be retained for three years.”)

52.246-4 **INSPECTION OF SERVICES – FIXED PRICE.** (Only if this Purchase Order requires the performance of services, and replace the last word of (e) with: “Performed and to reimburse Buyer to the full extent of all expenses, damages, losses or liability;” and add as (g): “Records will be retained for three years.”)

In the following clauses, also change “Contracting Officer” and “Government” to “Buyer”:

52.211-5 **MATERIAL REQUIREMENTS** (Except “Government” means “Government” in (c) and (e))

### **52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES**

### **52.232-11 EXTRAS**

52.232-17 **INTEREST** (Delete the first parenthetical expression.)

**52.236-7 PERMITS AND RESPONSIBILITIES**

**52.242-13 BANKRUPTCY**

**52.242-14 SUSPENSION OF WORK**

**52.243-1 CHANGES – FIXED PRICE** (Reduce “30” to “15” in (c))

**52.246-16 RESPONSIBILITY FOR SUPPLIES**

**52.247-21 CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE**

**52.247-27 CONTRACT NOT AFFECTED BY ORAL AGREEMENT**

**52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE)** (“Government” means “Government” in (m) and “45” is changed to “90” in (d), and “1 year” is changed to “6 months” in (e))

**52.249-4 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES)**  
(Only if this Purchase Order requires the performance of services)

**52.249-8 DEFAULT FIXED PRICE SUPPLY** (Add at the end of (a)(1)(i), “or if Supplier becomes insolvent, makes a general assignment for the benefit of creditors, files a petition in bankruptcy, has filed a petition to have Supplier declared bankrupt, pursues any remedy under any law relating to relief for debtors or a receiver or trustee is appointed for Supplier’s property;” and add at the end of (c), “Supplier shall notify Buyer within 10 days of any excuse for nonperformance or default.”)

**22. Government Clause Contracts** In addition to the clauses listed in paragraph 21, the FAR clauses listed in this paragraph are incorporated into this Purchase Order if the face of this Purchase Order contains a U.S. Government contract number or otherwise indicates that the Purchase Order is pursuant to a government contract. The clauses incorporated by reference have the same effect as if they were printed in full. The designated language of a clause will be used unless the use of alternate language is indicated. Unless otherwise indicated in this Purchase Order, the clauses are modified as follows: Change “Contractor” to “Supplier,” “Subcontractor” to “Supplier’s Subcontractor,” and “Contract” to this “Purchase Order.” The version of the clause in effect on this date of this Purchase Order shall be used.

**52.203-5 COVENANT AGAINST CONTINGENT FEES** (Change “Contract” to “Prime Contract” in the first sentence of (a), and “Government” to “Buyer” in (a))

**52.203-6 RESTRICTIONS ON CONTRACTOR SALES TO THE GOVERNMENT**

**52.203-8 CANCELLATION, RESCISSION AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY**

**52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS** (Only if this Purchase Order exceeds \$100,000)

**52.204-2 SECURITY REQUIREMENTS**

**52.211-15 DEFENSE PRIORITIES AND ALLOCATION REQUIREMENTS** (Only when priority rating is listed on this Purchase Order)

**52.215-2 AUDIT RECORDS - NEGOTIATION** (Only when this Purchase Order exceeds \$100,000)

**52.215-8 ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT**

**52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA** (Add “In addition to any other remedies provided by law or under this Purchase Order, if Buyer is subject to any liability or expense, including Government withholding of payments. As the result of Supplier’s or its lower-tier Subcontractors’ submission and certification of alleged or actual defective cost or pricing data for this Purchase Order or for any modification to this Purchase Order, as set forth in (a)(1) and (a)(2) of this clause or their furnishing of data of any description that is allegedly or actually inaccurate as set forth in (a)(3), then Supplier agrees to indemnify and hold Buyer harmless to the full extent of any damage or expense, including lost profit, attorney’s fees and court costs, resulting from such action)

**52.215-12 SUBCONTRACTOR COST OR PRICING DATA**

**52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS**

**52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS**

**52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA-MODIFICATIONS**

**52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS**

**52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN** (Only if this Purchase Order exceeds \$500,000)

**52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION** (Add as paragraph (f): “Buyer may withhold or recover from Supplier such sums as the Contracting Officer withholds or recovers from Buyer because of alleged or actual liabilities of Supplier or its Subcontractors under this clause.”)

**52.222-19 CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES**

**52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT** (Insert “The Prime Contract” between “and” and “is subject” in the first paragraph of the clause)

**52.222-21 PROHIBITION OF NONSEGREGATED FACILITIES**

**52.222-26 EQUAL OPPORTUNITY**

**52.222-29 NOTIFICATION OF VISA DENIAL**

**52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS** (Only if this Purchase Order is for \$25,000 or more)

**52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES** (Only if this Purchase Order exceeds \$10,000)

**52.222-37 EMPLOYMENT REPORTS ON SPECIALLY DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS** (Only if this Purchase Order exceeds \$25,000)

**52.222-38 COMPLIANCE WITH VETERAN’S EMPLOYMENT REPORTING REQUIREMENTS**

**52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED** (Only if this Purchase Order exceeds \$2,500)

**52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA** (Change “Government” to “Government and Buyer” in (e))

**52.223-11 OZONE-DEPLETING SUBSTANCES**

**52.223-14 TOXIC CHEMICAL RELEASE REPORTING** (except paragraph e)

**52.224-2 PRIVACY ACT**

**52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

**52.227-1 AUTHORIZATION AND CONSENT** (Only if this Purchase Order exceeds \$100,000)

**52.227-10 FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER**

**52.227-12 PATENT RIGHTS - RETENTION BY THE CONTRACTOR** (Long Form)  
(Only if Supplier is not a small business or non-profit organization)

**52.227-14 RIGHTS IN DATA - GENERAL**

**52.230-2 COST ACCOUNTING STANDARDS** (Except (b) and only if this Purchase Order exceeds \$500,000)

**52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES**  
(Except (b) and only if this Purchase Order exceeds \$500,000)

**52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS** (Only if stated in body of subcontract or letter of award)

**52.232-13 ACCIDENT PREVENTION**

**52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III**

**52.242-2 PRODUCTION OF PROGRESS REPORTS**

**52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS**

**52.245-1 GOVERNMENT PROPERTY** (Only if Supplier is furnished “Government Property”)

In the following FAR clauses, also change “Government” to mean “Government or Buyer” and “Contracting Officer” to mean “Contracting Officer or Buyer”

**52.214-26 AUDIT AND RECORDS - SEALED BIDDING** (Only if this Purchase Order exceeds \$650,000)

**52.222-50 COMBATING TRAFFICKING IN PERSONS**

**52.225-8 DUTY-FREE ENTRY**

**52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT** (Only if this Purchase Order exceeds \$100,000)

**52.227-3 PATENT INDEMNITY**

**52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION**

**52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION**

**52.242-13 BANKRUPTCY**

**52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS**

**52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. – FLAG COMMERCIAL VESSELS**

In the following FAR clauses, also change “Contracting Officer” and “Government” to “Buyer.”

**52.203-7 ANTI-KICKBACK PROCEDURES** ((a) and (b) remain unaltered, and change “United States” to “Buyer” in (c)(4)(i) and only if this Purchase Order exceeds \$100,000)

**52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY**

52.203-12 **LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS** (Only if this Purchase Order exceeds \$100,000)

52.209-6 **PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT** (Only if this Purchase Order exceeds \$25,000, in (a), "Government" means "Government")

52.215-14 **INTEGRITY OF UNIT PRICES** (Only if Purchase Order exceeds \$100,000)

52.216-7 **ALLOWABLE COST AND PAYMENT** (Only for cost reimbursement Purchase Orders)

52.232-16 **PROGRESS PAYMENTS**

**23. Value Engineering.** The Seller is encouraged to develop, prepare and submit value engineering change proposals (VECP) in a format prescribed by FAR § 52.248-1. If the Seller's VECP is accepted by the Buyer and the contracting officer and is incorporated into the prime contract, the Seller is entitled to its allowable development and implementation costs and one-half of the amount of net acquisition savings received by Buyer resulting from the Seller's VECP.

**24. Information.** In addition to the requirements set forth in the Security Requirements clause, FAR 52.204-2, upon completion of work by Seller under this Purchase Order, Seller shall return to Buyer all classified information furnished by Buyer in connection herewith, including all reproductions thereof, then in Seller's possession or control and Seller shall surrender all classified information or materials developed by Seller in connection with this Purchase Order, unless the information has been destroyed or the retention of the information is authorized in writing by Buyer or the Government.

**25. Use of Government Facilities.** If this Purchase Order authorizes rent-free use of government facilities, Seller agrees that it will not directly or indirectly, through overhead charges or otherwise, include in the price of this Purchase Order, or seek reimbursement under this Purchase Order for any rental charge paid by the Seller for the use on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use government facilities on a no-charge basis shall contain a provision to the same effect as stated herein.

**26. Pricing.** When costs are a factor in any determination of the price to be paid hereunder, including price adjustments pursuant to the Changes clause or any other provision of this Purchase Order, such costs shall be in accordance with FAR § 31.2, and, when applicable, DFAR § 31.2 in effect on the date of this Purchase Order.

**27. DOD Supplementary Clauses – (DFAR).** In addition to the clauses listed in paragraphs 21 and 22, the following DOD FAR Supplement clauses, 48 C.F.R. Part 252, are incorporated into this Purchase Order if the face of this Purchase Order contains a Department of Defense contract number or the word "military" or otherwise indicates that the Purchase Order is issued pursuant to a Department of Defense contract. The clauses incorporated by reference have the same effect as if they were

printed in full. The designated language of a clause will be used unless the use of alternate language is indicated. Unless otherwise indicated in this Purchase Order, the clauses are modified as follows: Change "Contractor" to Seller," "Subcontractor" to "Seller's Subcontractor," and "Contract" to this "Purchase Order." The version of the clause in effect on the date of this Purchase Order shall be used.

**252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES** (Only if this Purchase Order exceeds \$100,000)

**252.203-7004 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT**

**252.204-7000 DISCLOSURE OF INFORMATION**

**252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY**

**252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY**

**252.211-7000 ACQUISITION STREAMLINING** (only if this Purchase Order exceeds \$1,000,000)

**252.212-7000 OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS** (Delete (c))

**252.215-7000 PRICING ADJUSTMENT**

**252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS** (Only if cost or pricing data submitted for this Purchase Order)

**252.215-7003 EXCESSIVE PASS-THROUGH CHARGES-IDENTIFICATION OF SUBCONTRACT EFFORT**

**252.215-7004 EXCESSIVE PASS-THROUGH CHARGES**

**252.219-7003 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN**

**252.222-7006 COMBATING TRAFFICKING IN PERSONS** (If this Purchase Order is performed outside of the United States)

**252.223-7001 HAZARDOUS WARNING LABELS**

**252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES**

**252.223-7003 CHANGE IN PLACE OF PERFORMANCE-AMMUNITION AND EXPLOSIVES**

**252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION AND EXPLOSIVES**

**252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS**

**252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE OF UNITED STATES** (If this Purchase Order exceeds \$550,000)

**252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES**

**252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES**

**252.225-7014 PREFERENCE FOR DOMESTIC SPECIALTY METALS**

**252.225-7025 RESTRICTION ON ACQUISITION OF FORGINGS**

**252.225-7043 ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES**

252.226-7001 **UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS** (If this Purchase Order exceeds \$500,000)  
252.227-7013 **RIGHTS IN TECHNICAL DATA-NONCOMMERCIAL ITEMS**  
252.227-7016 **RIGHTS IN BID OR PROPOSAL INFORMATION**  
252.227-7037 **VALIDATION OF RESTRICTIVE MARKETING ON TECHNICAL DATA**  
252.231-7000 **SUPPLEMENTAL COST PRINCIPLES**  
252.243-7001 **PRICING OF CONTRACT MODIFICATIONS**  
252.244-7000 **SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS**  
52.247-7023 **TRANSPORTATION OF SUPPLIES BY SEA**  
52.247-7024 **NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA**

In the following clauses, also change "Government" or "Contracting Officer" to "Buyer."

252.204-7000 **DISCLOSURE OF INFORMATION**  
252.227-7030 **TECHNICAL DATA-WITHHOLDING OF PAYMENT**  
252.246-7001 **WARRANTY OF DATA** (Delete (d)(3); replace the last sentence of (b) with: "The warranty period shall extend for four (4) years after delivery."; change "Contracting Officer" in (c) to "Contracting Officer and Buyer"; replace the language at (d)(3) with: "In addition to any other remedies provided by this Purchase Order or under law, Seller shall indemnify and hold Buyer harmless to the full extent of any loss, liability, damage or expense including lost profits, attorney's fees and court costs resulting from any breach or alleged breach of this warranty.")  
252.247-7023 **TRANSPORTATION OF SUPPLIES BY SEA**  
252.247-7024 **NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA**

In the following clauses, also change "Government" to Government and Buyer" and "Contracting Officer" to "Contracting Officer and Buyer":

252.223.7002 **SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES**  
252.223-7007 **SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION AND EXPLOSIVES** (Only if Purchase Order involves arms, ammunition or explosives)  
252.243-7002 **REQUESTS FOR EQUITABLE ADJUSTMENT**  
252.246-7003 **NOTIFICATION OF POTENTIAL SAFETY ISSUES**

**28. Direct Shipments to the US Government.** If deliveries of goods, including data, under this Purchase Order are to be made directly to the Government, Seller agrees to prepare and distribute the DD Form 250 (Material Inspection and Receiving Report), as set forth in Appendix I of DFAR and to enter thereon the price of all Government Furnished Material (GFM) included in items so delivered to the Government. The price of GFM will be made available to Seller by the Government. However, no delivery shall be delayed by reason of failure of the Government to furnish such prices to Seller. Seller shall include a similar provision in each subcontract hereunder.

**29. Disputes.** (A) This Purchase Order and the performance of the parties hereunder shall be controlled and governed by the law of federal government contracts and, where federal government contract law is not applicable, the law of the State of California. Pending final resolution of any dispute under this Purchase Order, Seller shall proceed diligently with the performance of this Purchase Order.

(B) In the event (1) Seller's claim, or any portion thereof, against Buyer is the proper subject for a claim by Buyer against a higher-tiered contractor, including the U.S. Government, under the terms of the Buyer's contract with a higher-tiered contractor ("Buyer's Contract") or (2) Buyer's claim against Seller, or any portion thereof, is based upon a corresponding claim against Buyer by a higher-tiered contractor, including the U.S. Government, under Buyer's Contract, then the dispute shall be litigated only pursuant to the Disputes clause of Buyer's Contract. Seller will cooperate fully with Buyer in drafting and documenting any claim to be presented to the higher-tiered contractor or in responding to any claim by a higher-tiered contractor. Seller agrees to certify that its claim or defense is made in good faith, all supporting data for its claim or defense are accurate, current and complete, and the amount of the claim accurately reflects the amount for which the Seller believes it is entitled.

Seller and Buyer agree that the claim of a higher-tiered contractor or the decision of the higher-tiered contractor on a claim presented by Buyer is final and binding on the parties unless the higher-tiered contractor's action is appealed pursuant to Buyer's Contract. Buyer shall notify Seller of the higher-tiered contractor's action within 10 days after Buyer's receipt thereof. Within 10 days of such notice, Seller shall advise Buyer in writing whether Seller desires to appeal the action. If Seller desires the action appealed, Seller's notice to Buyer shall set forth in detail its reasons and shall specifically request Buyer to appeal such decision. Buyer shall have absolute discretion whether to appeal such decision.

If Buyer agrees to appeal a decision, Seller agrees to indemnify and hold harmless Buyer for the cost of said appeal and applicable attorney's fees incurred in prosecuting any such appeal initiated by Buyer at Seller's request. Seller may participate in any such appeal at its own expense. Buyer may require the Seller to prosecute the appeal in Buyer's name and at Seller's expense. Buyer and Seller will assist and cooperate in the prosecution of appeals. The outcome of the appeal shall be final and binding on the parties. Buyer agrees that it will take no action to settle or prejudice Seller's claim without Seller's consent. Seller's right to interest is limited to its apportioned share of interest recovered pursuant to the appeal.

For all other disputes, the parties agree that only courts located in the county and state in which the Buyer is located, as indicated by its address on the front side of this Purchase Order, shall have jurisdiction to decide any dispute arising under or relating to this Purchase Order.

**30. Option.** Buyer may increase the quantity of each item listed herein by an additional number of units not to exceed 100 percent of the original Purchase Order quantity of each item. The unit price for such option quantity shall be no higher than the original Purchase Order unit price. This option may be exercised by Buyer at any time within 180 days after the date of this Purchase Order. Delivery of the items added by

Exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this Purchase Order, unless the parties agree otherwise in writing.

**31. Specification.** Unless otherwise directed by this Purchase Order, Seller shall manufacture the Articles in accordance with the current specifications, drawings and designs for the Article. All provisions of NI's drawings requiring Government approval of personnel and equipment, etc. apply to this Purchase Order. Seller is responsible for validating that the Purchase Order's specifications, drawings and designs are the current revisions. If Seller determines that any of the specifications, drawings or designs are not the most current revision, Seller shall so notify Buyer immediately.

**32. Reporting.** Seller will provide status reports upon request as to its performance under this Purchase Order.

**33. Political Contributions, Fees or Commissions.** Seller agrees to furnish information, within 7 days of Buyer's request, regarding any payment, offer or agreement to pay "political contributions" or "fees or commissions" (as those terms are defined at 22 C.F.R. § 130) with respect to any sale by the Buyer for which a license or approval from the Office of Munitions Control, Department of State is required or any sale pursuant to a contract with the Department of Defense under Section 22 of the Arms Export Control Act (22 U.S.C. § 2762).

**34. Disclosure of Unclassified Information.** Army FAR supplement clause 5652.204-9003, Disclosure of Unclassified Information is incorporated herein by reference.