

## SUBCONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS

(a) *Inspection/Acceptance.* The SELLER shall only tender for acceptance those items that conform to the requirements of this contract. The BUYER reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The BUYER may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The BUYER must exercise its post-acceptance rights—

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The SELLER or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Government-wide commercial purchase card), the SELLER may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* In the event of an unresolved question, claim, or dispute under this Agreement, such question, claim or dispute shall be settled by arbitration to be held in Maryland before a single arbitrator appointed in accordance with the Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding upon both Parties as to law and fact and may be filed for execution with any court of competent jurisdiction. With respect to any dispute where the requested relief is injunctive or declaratory, either Party reserves the right to initiate action in State or Federal Court in Maryland if such Party determines, in its own discretion, that an arbitral forum does not have the requisite authority to issue the requested injunctive or declaratory relief. The Parties shall share equally in the cost of the arbitrator; however, each Party shall be responsible for its own filing fees and expenses, including but not limited to attorney costs, witness costs, and travel expenses.

(e) *Excusable delays.* The SELLER shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the SELLER and without its fault or negligence, such as acts of God or the public enemy, acts of the BUYER in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The SELLER shall notify the BUYER's representative in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith; shall remedy such occurrence with all reasonable dispatch; and shall promptly give written notice to the BUYER's representative of the cessation of such occurrence.

(f) *Invoice/Payments.* Invoices for each order must show the order number, items, quantities, and prices, and should itemize applicable Federal, State, or local taxes separately. If not so itemized, prices will be deemed to include all such taxes and the price or prices will not be changed as a result of SELLER's failure to include therein any such applicable tax.

Invoices for payment shall be supported by such documents in such form as BUYER may reasonably require and shall bear such certifications as may be required by this order. Except as otherwise expressly provided on the face of this purchase order, all payments are contingent on acceptance by BUYER of the goods or materials supplied or the work performed hereunder.

Unless otherwise specified, upon acceptance of such goods, materials, or work, SELLER shall be paid the amount due less any discounts or deductions. Discount periods shall commence on the date the BUYER received the goods or materials or an acceptable invoice, whichever is later, and shall be considered earned where such date falls on or before the 15th of the month, if payment is mailed on or before the 25th of that month or where such date falls after the 15th of the month, if payment is mailed on or before the 10th of the following month. All payments are subject to adjustment for shortage or rejection.

(g) *Patent indemnity.* The SELLER shall indemnify the BUYER and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the SELLER is reasonably notified of such claims and proceedings.

(h) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the SELLER until, and shall pass to the BUYER upon:

- (1) Delivery of the supplies to a carrier, if transportation is F.O.B. Origin; or

(2) Delivery of the supplies to the BUYER at the destination specified in the contract, if transportation is F.O.B. Destination.

(i) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(j) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the BUYER upon acceptance, regardless of when or where the BUYER takes physical possession.

(k) *Warranty.* In addition to any other express or implied warranties made by the SELLER, SELLER warrants that only new materials will be used in items to be delivered under this order and that at any time of delivery to the BUYER, all goods, materials, or services will fully conform to applicable drawing, specifications, samples or other descriptions; will be free from defects in workmanship and materials; and where they are of SELLER's design, will be free from design defects. BUYER shall have the right to reject goods, materials and services because of SELLER's breach of warranty, delay in performance, or nonconformity of delivery or performance and to revoke any acceptance if use of goods, materials, or services reveals defects not apparent upon receipt or inspection. If BUYER so rejects or revokes, BUYER may, at its option, exercise the following rights and remedies with respect to all or part of the goods, materials, or services: (a) retain the goods or materials at SELLER's risk and expense, subject to SELLER's order; (b) return the goods or materials to SELLER, at SELLER's risk and expense, for repair, replacement or credit, at BUYER's option; (c) retain the goods subject to the SELLER's granting an equitable reduction in price; (d) repair the goods at SELLER's expense; (e) perform, or cause to be performed, the services at SELLER's expense; (f) withhold payment until SELLER has performed the services in accordance with the Terms of the Agreement; and (g) withhold payment and terminate the Agreement without further liability on the part of BUYER. Neither receipt of the goods nor payment therefore shall constitute a waiver of this provision.

The SELLER warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(l) *Limitation of liability.* Except as otherwise provided by an express warranty, the SELLER will not be liable to the BUYER for consequential damages resulting from any defect or deficiencies in accepted items.

(m) *Other compliances.* The SELLER shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

*Export Compliance.* The Offeror certifies that when reviewing a solicitation and/or technical data from the company which contains technical information controlled under the ITAR, EAR or any other applicable laws, rules, and regulations:

1. It is a U.S. firm incorporated under U.S. law.
2. It 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, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or other approval. Without limiting the foregoing, Offeror agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Offeror or Offeror's lower-tier suppliers, without the authority of an export license, technical assistance agreement, or applicable exemption or exception. Offeror agrees to provide pertinent information in the formation of same to the company.

Foreign Persons are those persons who are NOT U.S. Citizens, NOT Permanent Resident Aliens (Green Card Holders), and NOT Protected Persons (Refugees) under the U.S. Regulations. Persons with work and student visas are considered to be foreign persons, and may not have access to ITAR or EAR controlled technical data without prior authorization from the U.S. Government.

3. It shall immediately notify the Company Contracts representative if Offeror is, or becomes, listed in any Denied Parties List or if Offeror's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
4. If Offeror is engaged in the business of manufacturing and/or exporting defense articles or furnishing defense services, Offeror represents that it is currently registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
5. Offeror shall indemnify and hold the company harmless for all damages, costs, fines, penalties, attorney fees, and all other expenses arising from any claim or demand that Offeror's firm failed to comply with stated statutes and regulations.

6. Offeror agrees to comply with the above requirements for technical data provided during the solicitation and any resultant Purchase Order or Subcontract. In the event Offeror is not awarded a Purchase Order or Subcontract, Offeror agrees that all technical data provided to Offeror relative to the solicitation, including all copies thereof made by Offeror, shall be returned within thirty (30) days of non-award notice to Offeror by the Company, and that Offeror shall make no further use or disclosure of such technical data.
7. It agrees not to provide export controlled items, data or services, to foreign firms, parties or entities (including foreign governments), affiliated or non-affiliated, via any method, without the authority of an export license, agreement or other applicable authorization from the U.S. Government.

Signature \_\_\_\_\_

Company \_\_\_\_\_ Date \_\_\_\_\_

U.S. Department of State Registration Number \_\_\_\_\_

(n) *Compliance with laws unique to BUYER contracts.* The SELLER agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(o) Central SELLER Registration (CCR).

- (1) Unless exempted by an addendum to this contract, the SELLER is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the BUYER's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the SELLER is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (2) (i) If a SELLER has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the SELLER shall provide the responsible BUYER's representative a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible BUYER's representative. The SELLER must provide with the notification sufficient documentation to support the legally changed name.  
  
(ii) If the SELLER fails to comply with the requirements of paragraph (o)(2)(i) of this clause, or fails to perform the agreement at paragraph (o)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the SELLER to be other than the SELLER indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the Electronic Funds Transfer (EFT) clause of this contract.
- (3) The SELLER shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the SELLER's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that SELLER will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
- (4) Offerors and SELLERS may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of Section N)