

**PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

**March 31, 2025**

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**PART A: PERFORMANCE IN GENERAL**

**I. Definitions**

- a) **“ABS”** means the American Bureau of Shipping.
- b) **“Buyer”** means National Steel and Shipbuilding Company, aka “General Dynamics NASSCO” or “NASSCO.”
- c) **“Contract”** means these General Terms and Conditions (these “MILGEN terms and conditions”), together with any Purchase Order or other master agreement or the like incorporating these MILGEN terms and conditions, or other instrument of contracting, including all referenced documents, exhibits, and attachments. If these MILGEN terms and conditions are incorporated into a master agreement that provides for releases, (in the form of a Purchase Order or other type of document), the term “Contract” shall also mean the release document for the Contract Work to be performed. Any reference to Seller’s quotation, bid or proposal shall not create any acceptance of any terms, conditions, or instructions contained in such document. Any invoice, acknowledgement or other communication issued by Seller in connection with the Contract shall be construed to be for record keeping and accounting purposes only. Any terms and conditions stated in such communication shall not be applicable to the Contract and shall not be considered to be Seller’s exceptions to the Contract and are not binding on Buyer and Buyer rejects all such terms and conditions.
- d) **“Contract Price”** means the total amount to be paid in consideration of Seller’s full performance.
- e) **“Contract Work”** means the products, material, apparatus, equipment, supplies, articles, data, services and/or goods which are the subject of the Contract.
- f) **“Contracting Officer”** means the person(s) authorized to negotiate, approve, enter into and deliver contracts, and change orders for the Government.
- g) **“Customer”** means NASSCO’s customer, which may be the Government, a commercial entity or another higher tier contractor for which the Contract Work will be performed.
- h) **“Delivery”** means acceptance of the Vessel by the Customer, if any, or acceptance of the Contract Work by Buyer, whichever is later..
- i) **“Facilities”** means: (i) NASSCO’s shipyard or other facilities used by Buyer or its affiliates located in the San Diego, California area or Baja California, Mexico; (ii) Government military bases and Customer shipyards or other Customer locations where Contract Work is performed; and (iii) all other locations designated in writing by Buyer.
- j) **“FAR”** means Federal Acquisition Regulation as contained in Title 48, Code of Federal Regulations, and unless otherwise indicated shall be deemed to include the Department of Defense FAR Supplement (“**DFARS**”) as similarly contained in Title 48, Code of Federal Regulations.
- k) **“Force Majeure”** means any event or occurrence beyond the reasonable control and without the fault or negligence of either party, which by exercise of due diligence, such party shall not have been able to mitigate, avoid or overcome through commercially reasonable efforts. Such events and occurrences may include, by way of example natural disasters, floods, windstorms, unusually severe weather and other acts of God, fires, explosions, riots, wars, acts of terrorism, sabotage, blockades, embargoes, epidemics, interruption or curtailment of utility services, and acts of the Government or Regulatory Body whose approvals or documents are required under the Contract. Failures or delays caused by a Force Majeure circumstance are neither compensable nor a breach.
- l) **“Furnished Property”** means property, equipment, tools, devices, apparatus, material, etc., owned, leased, rented, or held in bailment by Buyer or the Customer and provided to Seller for Seller’s benefit. Seller does not gain any title or interest in the Furnished Property; however, Seller assumes the Risk of Loss for the Furnished Property while the Furnished Property is in Seller’s possession.
- m) **“Government”** means the United States of America, acting through its authorized representative, which may include without limitation the Department of the Navy or the U.S. Coast Guard.
- n) **“Guaranty Period”** means the warranty period, and refers to the period for which Seller guaranties to Buyer, or the Customer, and their successors and assigns, that the Contract Work will conform to the Contract, including without limitation the specifications, and be free from defects in material, workmanship and design. Except as otherwise set forth in an applicable Purchase Order or in the Special Terms and Conditions for the applicable program, the Guaranty Period shall begin after Delivery and continue for: (i) 90 days, for Contract Work delivered in support of Vessel repair for a Government Customer; (ii) 12 months, for Contract Work delivered in support of new Vessel construction for a Government Customer; and (iii) 12 months, for Contract Work delivered in support of new Vessel construction for a commercial (non-Government) Customer.
- o) **“Lien”** means any lien, mechanic’s lien, materialmen’s lien, possessory or other liens, stop notice, bond right, security interest, encumbrance or other right in personam or in rem of every nature, whether arising by statute, common law, or in admiralty, charges, encumbrances or security interests placed in, created by or through Seller or its Suppliers.
- p) **“Manufacturing Materials”** means completed Contract Work, partially completed Contract Work, and materials, parts, tools, dies, fixtures, plans, drawings, information and contract rights that Seller has specifically produced or acquired for the Contract.
- q) **“OCM”** means Original Component Manufacturer.
- r) **“OEM”** means Original Equipment Manufacturer.
- s) **“Open Source”** means with respect to Software and any licenses of the same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software, but which prohibits the user from: (i) withholding improvements and/or modifications made by the user to the source code when and/if the user thereafter distributes the Software; and/or (ii) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of the Contract, “Open Source” Software shall also include “Free Software” as defined by the Free Software Foundation Inc. By way of example and not limitation, “Open Source” licenses shall include such licenses as the GNU General Public License, the Mozilla Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.

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- t) **“Prime Contract”** means the contract between Buyer and the Customer.
- u) **“Procurement Representative”** means the person authorized by Buyer to negotiate, approve, enter into and deliver Purchase Orders, subcontracts and other engagements, and change orders thereto. Procurement Representatives do not include any production, deck plate supervisors, engineering or technical personnel.
- v) **“Purchase Order”** means any written instrument from Buyer for Contract Work. The Purchase Order is an integral part of the Contract.
- w) **“REA”** means Request for Equitable Adjustment.
- x) **“Regulatory Body”** means any Governmental or quasi-Governmental agency or external independent organization (including but not limited to ABS, FCC, FDA, EPA, USCG, Department of Homeland Security, and the Department of State) that regulates compliance of products or activities relating to the parties, the Contract or the Contract Work.
- y) **“Risk of Loss”** is the term used to determine which party should bear the risk of damage or destruction occurring to the Contract Work.
- z) **“Seller”** means the party identified in the Contract to provide the Contract Work, as well as all of their directors, officers, and employees. For purposes of the Independent Contractor clause, Insurance and Indemnity provisions only, “Seller” shall also include Seller’s agents, representatives, subcontractors and suppliers at any tier.
- aa) **“Software”** means: (i) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, and related material that would enable software to be read, reproduced, recreated, or recompiled; (ii) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (iii) derivative works, enhancements, modifications, and copies of the items identified in (i) and (ii) above.
- bb) **“Supplier”** means any supplier, vendor, subcontractor, or entity providing products, goods, services or other items to Seller used in support of the Contract.
- cc) **“Vessel(s)”** means one or more of the ships to be constructed or repaired under the terms of the Prime Contract.

**PLEASE NOTE THAT ALL CLAUSES PRESENTED HEREAFTER APPEAR IN ALPHABETICAL ORDER.**

**2. Acceptance, Conflicting Terms, Integration, Amendment and Governing Law**

- a) Any performance by Seller shall constitute unqualified acceptance of the Contract. The parties agree that a signed acknowledgement is not a condition precedent to Contract enforceability by either party.
- b) Any terms proposed in Seller’s quote or Seller’s acceptance of the Contract that add to, vary from, or conflict with the Contract or any part of the Contract, including any Purchase Order and these MILGEN terms and conditions, are rejected by Buyer and shall have no effect on the Contract unless incorporated by Buyer into the Contract by referencing such additional, varying and conflicting terms on an applicable Purchase Order.
- c) The Contract integrates, merges, and supersedes any contemporaneous and prior offers, understandings, negotiations or agreements concerning the subject matter, and constitutes the entire agreement between the parties. Seller represents that, in entering the Contract, it does not rely on any previous oral or implied representation, inducement, or understanding of any kind.
- d) The Contract may be amended or modified only by a written instrument executed by each party’s authorized representatives.
- e) The Contract is governed by and interpreted under the laws of the Commonwealth of Virginia, excluding Virginia’s conflict or choice of law rules, except that any provision included in the Special Terms and Conditions (i.e., FAR/DFARS clause full text or reference or a Government agency clause flow-down) shall be construed and interpreted according to the federal common law of Government contracts as applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Government. The rights and remedies in the Contract are cumulative with, and in addition to, all other or further rights and remedies provided in law or equity, except as otherwise expressly provided elsewhere in the Contract.
- f) The Contract shall not be varied, supplemented, qualified or interpreted by any prior course of dealing, usage of trade or course of performance between the parties and shall be interpreted without regard to which party drafted or is deemed to have drafted the Contract. If any of the provisions of the Contract are found to be invalid, the remaining provisions shall not be affected, and the Contract shall be interpreted as if not containing such provisions. All headings and numbering are for administrative convenience only and shall not be used to interpret

**3. Assignment**

Seller may not assign, subcontract or delegate any of its rights (including without limitation any right to receive payments), interest or performance, in whole or in part, voluntarily or by operation of law, without obtaining Buyer’s prior written consent. Buyer may assign all or a portion of its rights, duties and obligations under the Contract or the Contract itself in whole or in part to any third party, Customer, or successor contractor pursuant to the Prime Contract

**4. Changes and Requests for Equitable Adjustment Submissions**

- (a) This clause covers all forms of changes to the Contract, including without limitation, all agreed upon change orders as well as Requests for Equitable Adjustment (“REAs”), changes characterized under Government Prime Contracts such as new growth, Condition Found Reports (“CFRs”) and Request for Contract Changes (“RCCs”). Nothing in this clause shall excuse Seller from proceeding with diligent performance.
- (b) Seller is advised that Buyer is under strict contractual terms with the Customer and Buyer is not allowed to make any change without first securing prior written approval from the Customer. Seller must notify Buyer of changes that Seller makes in its design, manufacturing process or

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commercial specifications that affect Contract Work, even if such changes do not materially alter the form, fit or function of such Contract Work. Seller shall inform Buyer of such changes before such changes take effect and not less than 30 days before the applicable delivery date (e.g. milestone/key event) specified in the Purchase Order. Seller is not authorized to make any changes until approved by Buyer's authorized Procurement Representatives pursuant to subparagraph 4(c).

- (c) Only Buyer's authorized Procurement Representatives have authority to make changes to the Contract Work and make an equitable adjustment in the Contract Price. All amendments must be in writing and signed by the parties.
- (d) Engineering or technical personnel whether employed by Buyer or the Customer, may from time-to-time render assistance or give technical advice or discuss or exchange information with Seller's personnel concerning the Contract Work. Such actions, however, shall not be deemed to be a change under this clause and shall not be the basis for any REA. Without limiting the foregoing, Seller acknowledges that absolutely no information, advice, approvals, direction or instructions given by any of Buyer's engineering or technical personnel or any third party, including without limitation the Government, will amend the Contract and Seller will not assert that any of the foregoing is a change or a constructive change to the Contract. Seller assumes all responsibility and risk if it acts upon any direction other than from Buyer's authorized Procurement Representative.
- (e) Upon receiving written direction from Buyer's authorized Procurement Representative, in the form of a request for proposal or otherwise, Seller shall submit a proposal including a written estimate of the impact of any change or proposed change on the Contract Price, the performance or delivery schedule, and the performance capabilities of the Contract Work. A detailed written estimate shall be provided to the Government and shall include Seller's applicable labor hours, labor rates and materials (including total cost of material and, for each material line item, the part number, description, unit cost, quantity, and any applicable Supplier quote), and Seller shall provide all tiered subcontractor and Supplier quotes, if applicable. Each such proposal shall be submitted by Seller to Buyer within 10 days or as otherwise specified following Seller's receipt of Buyer's written request; provided, however, that Seller shall submit such proposals to Buyer within 2 business days following Seller's receipt of Buyer's request pertaining to any change or proposed change under a contract or subcontract for repair or maintenance of any Government Vessel.
- (f) The pricing of any change order, request for proposal, or equitable adjustment or any other adjustment shall be in accordance with the cost principles in FAR Part 31 when cost analysis is applicable. Any proprietary pricing analysis or data shall be submitted from Seller directly to the Customer. Seller's failure to adhere to the time deadlines in asserting its equitable adjustment claim shall cause Seller to waive its ability to make a claim. Buyer may, in its sole discretion, consider any claim regardless of when asserted. Disagreement on price or the settlement of any dispute arising under this Contract shall be addressed pursuant to the Disputes provision of the Contract.
- (g) Buyer will issue a change order in the form of an additional or amended Purchase Order, adding or deleting elements of either the price or the time to complete the Contract Work after the parties reach agreement on the change request. If the parties do not reach agreement or an accord and satisfaction, then Seller shall submit a written REA to Buyer fully stating, with all forms of back-up data, (e.g., specific and clear time records for laborers as to what they were doing, when, for what duration, and at what price, any underlying contracts for additional or different materials, delivery charges, etc.), as to why Seller is entitled to a price and/or time adjustment.
- (h) SELLER'S REA SHALL EITHER BE RESOLVED BY THE PARTIES WITHIN SIX (6) MONTHS FROM THE DATE OF ITS SUBMISSION TO BUYER (UNLESS OTHERWISE AGREED TO BY THE PARTIES) OR IT SHALL BE THE SUBJECT OF THE DISPUTES CLAUSE.
- (i) SELLER AGREES IT SHALL NOT FILE AN REA AFTER BUYER AND SELLER HAVE MUTUAL WRITTEN AGREEMENT THAT THE CONTRACT BETWEEN SELLER AND BUYER IS CLOSED, FINISHED, COMPLETED, TERMINATED OR HAS EXPIRED.
- (j) Seller shall certify that any REA for Contract Work in support of a Government Prime Contract is made in accordance with the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601 *et seq.* Seller shall indemnify and hold Buyer harmless for any regulatory or third-party claims or legal actions resulting from Buyer's submittal of Seller's REA to the Customer in support of a Government Prime Contract.

**5. Compliance with Conflict Mineral Requirements**

- a) Seller certifies that, regardless of whether Seller is publicly traded or not, Seller will notify Buyer in writing if Seller provides any
  - i. Contract Work containing or using Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the
- b) Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ("the Rule"). This written notification shall comply with all SEC Conflict Minerals disclosure requirements defined in the aforementioned Rule.
- c) Seller certifies and warrants that Contract Work that has been or will be delivered to Buyer by Seller under the Contract since January 31, 2013, shall comply with all parts of the Rule.
- d) Seller agrees that, if required by the Rule, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to Buyer pursuant to the Contract originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to Buyer for the Contract, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict Mineral. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.
- e) Seller agrees that it shall require its own subcontractors and Seller (at any tier in the supply chain for a product delivered to Buyer under the Contract) to furnish information to Seller necessary to support Seller's obligations under this Clause.
- f) Seller will maintain records reviewable by Buyer to support its certifications above.
- g) Seller acknowledges that Buyer may utilize and disclose Conflict Minerals information provided by Seller in order to satisfy its disclosure obligations under the Rule.
- h) If Buyer determines that any certification made by Seller under this Clause is inaccurate or incomplete in any respect, then Buyer may terminate the Contract pursuant to the provision of the Contract named "Default; Termination for Cause."

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**6. Compliance with Ethics**

Seller shall review the General Dynamics *Standards of Business Ethics and Conduct*, which can be found at <http://www.nassconorfolk.com/manuals/GeneralDynamicsBlueBook.pdf> or, alternatively, Seller shall comply with the business ethics and conduct standards of Seller. In this respect, both Seller and Buyer have an ethical obligation and legal responsibility to warn one another of any illegal conduct, or acts of impropriety discovered, or reasonably should have been discovered, in the course of performing and to the extent related to the Contract Work. Seller and Buyer shall defend, indemnify and hold one another harmless from any and all regulatory or third-party claims or legal actions asserted against Buyer resulting from noncompliance under this Clause

**7. Compliance with Law**

- (a) Seller shall fully comply with all applicable local, state, and federal laws, orders, rules, regulations and ordinances. Seller shall procure all licenses and permits and pay all fees and other required charges. Seller shall comply with all applicable guidelines and directives of any local, state, or federal governmental agency. Seller further warrants that all Contract Work complies fully with applicable federal and state Occupational Health and Safety legislation, and the related regulations to the extent applicable. Seller certifies that it has an affirmative action policy ensuring equal employment opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status, or any other basis protected by local, state, or federal law and that it maintains no facilities segregated on these bases. Seller certifies that it is in compliance, and shall at all times remain in compliance with all applicable anti-corruption and anti-bribery laws, including without limitation to the U.S. Foreign Corrupt Practices Act of 1977, as amended. The Seller and all subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Seller shall defend, indemnify and hold Buyer harmless from any and all claims and liabilities resulting from noncompliance under this clause.
- (b) Seller shall comply with the Virginia Consumer Data Protection Act , as amended from time-to-time, and implementing regulations (collectively, "VCDPA"). The purpose of this Contract is limited to the requirements stated in the Contract documents, including these terms and conditions, purchase orders, and other related documents which set forth the work obligations of Seller; this Contract is not intended to be a sale of "personal information" as defined for purposes of the VCDPA. Specifically, and without limiting the foregoing statutory and regulatory requirements, with regard to this Contract Seller agrees as follows:
  - (1) Personal information received from NASSCO or collected or otherwise obtained by Seller in connection with this Contract shall be used solely for the performance of Seller's obligations specified in this Contract.
  - (2) Upon notification by NASSCO, Seller agrees to take reasonable and appropriate steps to stop or remediate unauthorized use of personal information.
  - (3) In the event of a release of personal information by Seller outside of the authorized use of such information, Seller shall promptly notify the NASSCO procurement representative of the release along with details about the circumstances, extent and timing of the release.
  - (4) Seller is not authorized to sell or share personal information.
  - (5) Seller shall not retain, use, disclose personal information other than for the purposes specified in this Contract.
  - (6) Seller shall not use or disclose personal information outside the Parties' direct business relationship.
  - (7) Seller shall not combine personal information with personal information received from another party or directly from an individual unless permitted by the VCDPA.
  - (8) To the extent that VCDPA imposes obligations on NASSCO in connection with personal information exchange under this Contract, Seller agrees to comply with such obligations by virtue of Seller's possession or control of such personal information.

**8. Confidentiality of Data and Information**

Information furnished by Buyer and identified by Buyer as "NASSCO-Norfolk" "Proprietary/Trade Secret Information" or otherwise identified as subject to restricted access or dissemination shall be and remain property of Buyer; shall not be duplicated, used or disclosed to third parties except for the purpose and to the extent necessary for the performance of this Contract; and upon completion of this Contract, shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Absent contrary instructions, Seller shall destroy all NASSCO-Norfolk proprietary or confidential data and information within one (1) year after termination or completion of the Purchase Order or Contract and provide written acknowledgment to Buyer of such destruction. Seller shall take all reasonable precautions to maintain in confidence all such information, including the imposition upon any person, firm, or corporation to whom disclosure of such information is made in the course of performance under this Contract of conditions relating to the confidential treatment thereof to the same effect as those imposed upon Seller herein. The obligations imposed upon Seller herein shall not apply to such information that is already known to Seller, is lawfully obtained or obtainable by Seller from another source, is or comes into the public domain other than as a result of breach of this Confidentiality of Data and Information Section.

**9. Contract Acceptance, Integration and Modification**

- a) Seller shall strictly perform this Contract. Any performance, whatsoever, by Seller of any portion of this Contract, without regard to its value, shall constitute complete acceptance of the Contract, including without limitation, these Terms and Conditions. Seller agrees that a signed acknowledgement of these Terms and Conditions is not a condition precedent to the full enforceability of this Contract, including these Terms and Conditions, by NASSCO-Norfolk against Seller.

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- b) Any terms proposed in the acceptance of this Contract, which add to, vary from, or conflict with the terms and conditions of this Contract, are hereby objected to and shall be void.
- c) This Contract constitutes the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, between the parties. No terms other than those set forth herein or in the Contract shall apply. Seller represents that, in entering this Contract, it does not rely on any previous oral or implied representation, inducement, or understanding of any kind. This Contract shall not be varied, supplemented, qualified or interpreted by any prior course of dealing, usage of trade or course of performance between Seller and Buyer, and shall be interpreted without regard to which party is deemed to have drafted this Contract.
- d) This Contract may be amended or modified only by a written instrument executed by authorized representatives of both Buyer and Seller. THIS INCLUDES ANY AND ALL CHANGES TO THE CONTRACT.
- e) This Contract shall be governed by and interpreted under the laws of the Commonwealth of Virginia, excluding Virginia's conflict or choice of law rules. The rights and remedies reserved to Buyer in this Contract are cumulative with, and in addition to, all other or further rights and remedies provided in law or equity.
- f) If any one or more of the provisions of this Contract is found to be invalid, the remaining provisions shall not be affected, and this Contract shall be interpreted as if not containing such provisions. Paragraph and section headings are for administrative convenience only and shall not be used to interpret this Contract.

**10. Counterfeit Electronic Parts Prevention**

*The following clause applies when Seller is providing Contract Work with any Electronic Part.*

(a) Definitions:

- (1) Authentic – shall mean (A) genuine; (B) purchased from the OEM, OCM or through the Authorized Dealers of the OEM or OCM; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
- (2) Authorized Dealer – A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM's/OCM's products.
- (3) Counterfeit Electronic Part – An unlawful or unauthorized reproduction, substitution or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified Electronic Part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Electronic Parts represented as new, or the false identification of grade, serial number, lot, number, data code, or performance characteristics. This definition includes end items, components, subcomponents, parts, or assemblies that contain them.
- (4) Electronic Part – An integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode) or a circuit assembly, and also includes embedded software or firmware.
- (5) Non-Franchised Source – Any source that is not authorized by the OEM or OCM to sell its product lines. Non-Franchised Sources may also be referred to as brokers or independent distributors.
- (6) Obsolete Electronic Part – Any Electronic Part that is no longer in production by the OCM or OEM or an aftermarket manufacturer that has been provided express written authorization from the current design activity or OCM or OEM.
- (7) OCM or OEM – An organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.
- (8) Suspect Counterfeit Electronic Part – A Suspect Counterfeit Electronic Part includes any Electronic Parts that Buyer becomes aware, or has reason to suspect, through credible evidence (including, but not limited to, visual inspection or testing) that provides reasonable doubt about whether the Electronic Part is Authentic. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, or is an Obsolete Electronic Part or provided by a Non-Franchised Source, then the entire lot of parts will be considered to be suspect counterfeit.

(b) Terms and Conditions:

- (1) Seller represents and warrants that only new and Authentic materials are used in Contract Work delivered to Buyer and that the Contract Work delivered contains no Counterfeit Electronic Parts. No material, part, or component other than a new and Authentic part is to be used unless approved in advance in writing by the Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Electronic Parts, Seller shall only purchase Authentic parts/components directly from the OEMs, OCMs or through Authorized Dealers of the OEM/OCM. Seller represents and warrants that all parts/components delivered under the Contract are traceable back to the OEM/OCM. Seller must maintain and make available to Buyer, at Buyer's request, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Buyer. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. The Procurement Representative's approval of Seller's request(s) does not relieve Seller's responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.
- (2) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and the Procurement Representative's approval before parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's Authorized Dealers. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request.
- (3) Seller must maintain an acceptable Counterfeit Electronic Part detection and avoidance system that complies with DFARS 252.246-7007 (Contractor Counterfeit Electronic Part Detection and Avoidance System) and SAE standard AS5553, Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition.
- (4) If it is determined that Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts were delivered to Buyer by Seller, the Suspect Counterfeit Electronic Parts or Counterfeit Electronic Parts will not be returned to Seller or the supplier. Buyer reserves the right to quarantine any and all Suspect Counterfeit Electronic Parts it receives and to notify the Government Industry Data Exchange Program ("GIDEP") and other relevant government agencies. Seller shall promptly reimburse Buyer for the full cost of the Counterfeit Electronic

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Parts or Suspect Counterfeit Electronic Parts and Seller assumes responsibility and liability for all costs associated with the delivery of Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts. The remedies in this Clause shall apply regardless of whether the warranty period or Guaranty Period has ended, and are in addition to any remedies available at law or in equity.

- (5) If the procurement of materials under the Contract is pursuant to, or in support of, a contract, subcontract, or task order for delivery of goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with the Contract may be punishable, as a federal felony, by up to 5 years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.
- (6) Seller shall flow the requirements of this Clause ("Counterfeit Electronic Parts Prevention") to its Suppliers at any tier who render performance or supplies to be used in support of the Contract, even if Seller itself or its Suppliers are (i) exempt from Cost Accounting Standards; (ii) are a small business; or (iii) offer commercial items for Electronic Parts or assemblies containing Electronic Parts.
- (7) Seller agrees to provide records, including traceability records, to Buyer to substantiate Seller's compliance upon Buyer's request. Seller agrees to cooperate in good faith in the event Buyer or Buyer's customers have a need to audit Seller's compliance.

Seller agrees to maintain all necessary records related to Seller's compliance with this Clause for a minimum of 10 years after the Contract Work has been delivered.

**11. Default; Termination for Cause**

- a) In advance of Seller's actual default, if in Buyer's opinion Seller is falling behind in its performance or is likely to breach the Contract, Buyer may request written adequate assurances from Seller that Seller remains able to perform the Contract. If Seller is unable or unwilling to provide adequate assurances within a reasonable period of time, which in no event shall be less than 3 business days, as requested, then Buyer may proceed with termination for default immediately, provided however that such termination shall be without opportunity to cure.
- b) With written notice to Seller, containing a reasonable time to cure, which in no event shall be less than 3 business days, but otherwise solely determined by Buyer, Buyer may terminate all or any part of the Contract if: (i) Seller fails to perform the Contract Work or deliver the Contract Work strictly within the time specified by the Contract or any written extension; (ii) Seller fails to perform any other material provision of the Contract; (iii) Seller fails to make progress so as to endanger performance of the Contract; or (iv) Seller's right to conduct business is suspended, Seller becomes insolvent, Seller becomes subject to the appointment of a receiver or Seller becomes subject to assignment, reorganization or arrangement for the benefit of its creditors.
- c) In the event Buyer terminates the Contract in whole or in part as provided above, Buyer may procure goods or services similar to the Contract Work specified herein, and Seller shall be liable to Buyer for any excess costs for such similar procurement. If the Contract is terminated only in part, Seller shall continue performance of the Contract to the extent not terminated.
- d) If Buyer terminates all or any part of the Contract:
  - i. To the extent Seller has paid all undisputed invoices, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Contract Work; (2) partially completed Contract Work, and (3) Manufacturing Materials. Upon direction of Buyer, Seller shall also protect and preserve property in possession of Seller in which Buyer has an interest.
  - ii. Buyer shall pay the price specified in the Contract for completed Contract Work. Buyer shall pay a proportionate share of the Contract Price for partially completed Contract Work. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at Seller's direct costs. If the Customer withholds payments to Buyer due to Seller's fault, Buyer may withhold from any amount due under the Contract a proportionate sum to Seller's fault that Buyer determines to be necessary to protect Buyer or the Customer against loss because of outstanding Liens or claims of former Lien holders.
  - iii. Additionally, for Contract Work in support of a Government Prime Contract, the following shall apply. If, after termination of the Contract for default, it is determined that Seller was not in default, or that the default was excusable, such notice of default shall be deemed to have been issued pursuant to the clause at FAR 52.249-2 (Termination for Convenience of the Government (Fixed Price)) incorporated herein and the Setoffs/Back-charges Clause and the rights and obligations of the parties hereto shall, in such event, be governed by said clause.
- e) The rights and remedies of Buyer under this Clause are in addition to any other rights and remedies provided by law or under the Contract

**12. Delays / Disruptions**

Seller shall coordinate the work effort with the Buyer on a daily basis to prevent changing situations from causing delays and disruptions. Disruption due to minor delays in obtaining access to spaces and operation of equipment are to be expected. A minor delay is defined as eight (8) hours or less. These disruptions are considered normal rather than unusual occurrences during the performance of tasks ordered under this contract. If, during contract performance, delays greater than those indicated above are encountered, the Seller shall immediately verbally notify the Buyer's Procurement Representative, followed by a written statement within 12 hours after occurrence of delay, stating time of impact, reason for delay, duration of impact, number of people affected, action taken to properly schedule the work, action taken to minimize impact, and the names of the Buyer personnel contacted. Seller shall not be provided any schedule relief for minor delays/disruptions caused by the Government.

**13. Section F - Deliveries or Performance**

SELLER NOTICE REGARDING LATE DELIVERY (NAVSEA) (OCT 2018) [Modified by Buyer]

In the event the Seller anticipates or encounters difficulty in complying with the contract delivery schedule or date, the Seller shall immediately notify, in writing, the Buyer's Representative. The notice shall give the pertinent details; however, such notice shall not constitute a waiver by the

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Buyer of any contract delivery schedule, or of any rights or remedies provided by law or under this contract.

CLAUSES INCORPORATED BY REFERENCE

52.211-17 DELIVERY OF EXCESS QUANTITIES (SEP 1989)

52.242-15 STOP-WORK ORDER (AUG 1989) (Applicable only if Stop Work order initiated by the Government)

(Notes 1 & 2 below in Section I apply.)

52.242-17 GOVERNMENT DELAY OF WORK (APR 1984) (Note 2 below in Section I applies.)

52.247-34 F.O.B. Destination NOV 1991

RESTRICTIONS FOR SHIPPING TO MILITARY AIR OR WATER PORT/ TERMINAL (NAVSEA) (OCT 2018)

The Seller shall not ship directly to a military air or water port/terminal without authorization by the Buyer's Procurement Representative.

(End of text)

**14. Disputes**

- a) Unless there are exigent circumstances and/or the imminent disclosure of information required to be protected pursuant to the Confidentiality Clause of the Contract is evident, any dispute between Buyer and Seller arising out of the Contract shall be resolved by means of the following procedure.
- b) The parties will attempt to settle in good faith all disputes related to this Contract at the lowest practicable level for a reasonable period of time, but in no event longer than four (4) months. If the parties cannot then resolve the dispute, each party reserves all its rights and remedies available at law and in equity and such remedies shall not be exclusive. Disputes upon which the parties cannot reach an amicable settlement will be construed and resolved under the laws in accordance with the clause herein entitled "Acceptance, Conflicting Terms, Integration, Amendment and Governing Law." Seller shall bring any dispute arising under or related to this Purchase Order in accordance with the applicable statute of limitations. Legal proceedings between the parties shall be brought in federal or state court in Norfolk, Virginia.
- c) Notwithstanding any provisions herein to the contrary, if a decision under the prime contract is made by the Contracting Officer and such decision is also related to this Contract, said decision, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller insofar as it relates to this Contract. If Buyer elects to appeal such a decision pursuant to the "Disputes" clause in Buyer's prime contract, any decision from such an appeal, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller insofar as it relates to this Contract.
- d) Pending final resolution of any decision, appeal, disagreement on price or contract terms, or judgment of any proceedings relating to this Contract, or the settlement of any dispute arising under this Contract, Seller shall proceed diligently with the performance of this Contract in accordance with all the terms and conditions contained herein subject to the Buyer paying all undisputed invoices.
- e) THE PARTIES HEREBY CONSENT TO SUCH EXCLUSIVE JURISDICTION AND VENUE FOR ANY DISPUTES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO A TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THE CONTRACT. THE PARTIES FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY. The parties may also agree to arbitrate if they so desire. In resolving any dispute under the Contract, each party shall bear its own attorneys' fees and costs and expenses, without regard to any law or statute to the contrary.

**15. EQUITABLE ADJUSTMENTS: WAIVER AND RELEASE OF CLAIMS (OCT 2018) [Modified by Buyer]**

- a) Whenever Seller, after receipt of a change made pursuant to the clause of this Contract entitled "CHANGES" or after affirmation of a constructive change under the "NOTIFICATION OF CHANGES", submits any claim for equitable adjustment under the foregoing, such claim shall include all types of adjustments in the total amounts to which the foregoing entitle Seller, including but not limited to adjustments arising out of delays or disruptions or both caused by such change.
- b) Further, Seller agrees (except as the parties may otherwise agree) that, if required by Buyer and/or the Government's Contracting Officer, it will execute a release, in form and substance satisfactory to Buyer and/or the Government's Contracting Officer, as part of the supplemental agreement setting forth the aforesaid equitable adjustment, and that such release shall discharge Buyer and the Government, its officers, agents and employees, from any further claims including but not limited to further claims arising out of delays or disruptions or both, caused by the aforesaid change.

DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT--ALTERNATE I (NAVSEA) (JUL 2019)

1. For the purposes of this requirement, the term "change" includes not only a change that is made pursuant to a written order designated as a "change order" but also (i) an engineering change proposed by the Government or by Buyer or Seller and (ii) any act or omission to act on the part of the Government or Buyer in respect of which a request is made for equitable adjustment under the "Changes" clause or any other article or requirement of this contract.



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2. Whenever Seller requests or proposes an equitable adjustment with respect to a change made pursuant to a written order designated as a "change order" or in respect of a proposed engineering change, or whenever Seller requests an equitable adjustment in any amount in respect of any other act or omission to act on the part of the Government or Buyer, the proposal supporting such request shall include the following information for each individual item or element of the request:
3. A description (i) of the work required by the contract before the change, which has been deleted by the change, and (ii) of the work deleted by the change which already has been completed. The description is to include a list of identifiable components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property is to be indicated. Separate description is to be furnished for design and production work. Items of identifiable raw material, purchased parts, components and other identifiable hardware, which are made excess by the change and which are not to be retained by the Seller, are to be listed for later disposition;
  - (a) Description of work necessary to undo work already completed which has been deleted by the change;
  - (b) Description of work which is substituted or added by the change. A list of identifiable components and equipment (not bulk materials or items) involved, should be included. Separate descriptions are to be furnished for design work and production work;
  - (c) Description of interference and inefficiencies in performing the change;
  - (d) Description of disruption attributable solely to the change; which description shall include the following information:
  - (e) Description of each identifiable element of disruption and how work has been, or may be, disrupted;
  - (f) The calendar period of time during which disruption occurred, or may occur;
  - (g) Area(s) of the Seller's operations where disruption occurred, or may occur;
  - (h) Trade(s) or functions disrupted, with a breakdown of manhours and material for each trade or function;
  - (i) Scheduling of trades before, during, and after period of disruption insofar as such scheduling may relate to or be affected by the estimated disruption;
  - (j) Description of any measures taken to lessen the disruptive effect of the change;
  - (k) Delay in delivery attributable solely to the change;
  - (l) Other work or increased costs attributable to the change;
  - (m) Supplementing the foregoing, a narrative statement of the nature of the alleged Buyer or Government act or omission, when the alleged Buyer or Government act or omission occurred, and the "causal" relationship between the alleged act or omission and the claimed consequences thereof, cross-referenced to the detailed information provided as required above.
  - (n) It is recognized that individual claims for equitable adjustment may not include all of the factors listed in subparagraphs (b)(1) through (b)(8) above. Accordingly, the Seller is required to set forth in its request for equitable adjustment information with respect to those factors which are relevant to the individual request for equitable adjustment. In any event, the information furnished hereunder shall be in sufficient detail to permit Buyer and the Contracting Officer to cross-reference the claimed increased costs, or delay in delivery, or both, as appropriate, submitted pursuant to paragraph (c) of this requirement, with the information submitted pursuant to subparagraphs (b)(1) through (b)(8) hereof.
- (o) Until final resolution of any Dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Buyer.

**16. Export Control Compliance and Cooperation Applicable to Contract Work**

- a) Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the U.S. pertaining to the export of any hardware, software, technical data, technology or defense service, provided by, through or with the cooperation of the Buyer in the performance of this Purchase Order, whether in the U.S. or abroad. Applicable U.S. export control laws and regulations include but are not limited to the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794 and 22 C.F.R. §§120-130 International Traffic in Arms Regulations ("ITAR") administered by the U.S. Department of State (available at <http://pmdtcc.state.gov/>); the Export Administration Act, 50 U.S.C. App. 2401-2420 and 15 C.F.R. §§ 730-774 Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce (available at <http://www.bis.doc.gov/>); and the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC") Regulations, 31 C.F.R. Part 500-598 (available at <http://www.ecfr.gov/>). All aforementioned laws and regulations are herein referred to as "US Export Control Laws".
- b) If Seller is in the business of manufacturing, exporting, re-exporting and/or brokering U.S. Munitions List ("USML") items, Seller represents that it maintains registration with the U.S. Department of State, Directorate of Defense Trade Controls as may be required by ITAR Parts 122.1 and/or 129.3, respectively.
- c) To the extent applicable to the Contract Work, Seller shall obtain, and provide copies to Buyer of, all required export or re-export licenses, agreements or applicable license exemptions or exceptions required for Seller to use foreign classification or survey providers and to lawfully export or re-export any hardware, software, technical data, technology or, defense services.
- d) To the extent applicable to the Contract Work, and for hardware, software, technical data, technology or defense services controlled by ITAR or EAR, Seller shall include Buyer and the foreign person or entity on Seller's U.S. export authorization if Seller desires Buyer to engage in export transactions directly with the foreign persons.

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- e) Seller agrees that neither it nor any of its subsidiaries, affiliates or its Suppliers will directly or indirectly export, re-export, transfer, or release, or cause to be exported or re-exported, Buyer's hardware, software, technical data, technology or defense services in violation of the U.S. Export Control Laws or provisions and limitations of any applicable authorizations, licenses, exemptions or exceptions.
- f) All hardware, software, technical data, technology or defense services which Seller will provide to Buyer and which are controlled by U.S. Export Control Laws and/or regulations of the country of origin shall be appropriately labeled by Seller and shall include the relevant U.S. export classification number (e.g., United States Munitions List Category number, Export Control Classification Number, EAR99, etc.) to prevent unauthorized disclosure by Buyer.
- g) Seller may not subcontract a scope of work involving transfer of hardware, software, technical data, technology or defense services unless and until the export compliance provisions of this Clause (Export Control Compliance and Cooperation Applicable to Contract Work) have been provided in writing to the Supplier(s).
- h) Unless the Purchase Order is for goods to be supplied on a "build to print" basis by Seller, and to the extent applicable to the Contract Work, Seller shall provide Buyer, upon request, with either (i) the USML category of such hardware, software, technical data or defense services that is controlled by the ITAR, or (ii) the Export Control Classification Number ("ECCN") of such hardware, software, or technology that is subject to, or controlled by the EAR, including those items designated as "EAR99"; and shall also provide the Harmonized Tariff Schedule number ("HTS"), when applicable, for each item of hardware or software, regardless of any export regulatory designation.
- i) Upon completion of its performance under the Purchase Order, Seller and its Suppliers shall destroy or return to Buyer all of Buyer's hardware, software, technical data or technology, which is controlled under the U.S. Export Control Laws.
- j) Seller shall notify Buyer immediately if Seller is denied an export license, or has a license or agreement revoked, or other adverse action related to export compliance relating to the Contract, Seller shall notify Buyer immediately upon being listed in any export-related Restricted, Denied or Blocked Persons List, Debarred Parties List, U.S. Federal Register General Order, or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- k) Seller shall notify Buyer of any material change in Seller's organization including a change name or address, acquisition or divestment of any subsidiary, or any sub-licensee, or merger with, or acquisition by another entity, whether U.S. or foreign, within 15 days of the event.

**Seller shall request of Buyer, 5 days in advance, in writing, any required access to the Facilities by any and all of Seller's employees, sub-licensee, its Suppliers or other agents, at any tier, and shall include in any such request, the name and citizenship/nationality, (or in the case of dual or third country citizenship/nationality, the countries of citizenship/nationality), of each such person. For the purposes of the Contract, the term "national" refers to an individual's place of birth, all citizenships and all lawful permanent residencies of any country. The request shall be in the form of a Visitor Authorization Letter ("VAL") in accordance with the Security and Access requirements on Buyer's website or as otherwise reasonably preferred by Buyer.**

**17. Force Majeure**

Either party shall provide notice to the other party of a Force Majeure event no later than three (3) days after such first party has reason to know of the existence of the Force Majeure event. This notice shall include the estimated impact on the performance or delivery schedule. No extension of Seller's delivery or performance schedule shall be considered unless Buyer has received this notice. Seller shall likewise immediately provide notice to Buyer when the Force Majeure event has ended, and such notice shall include a statement of the amount of delay in the performance or delivery schedule caused by such event. "Force Majeure" shall mean any event or occurrence beyond the reasonable control and without the fault or negligence of either party, which by exercise of due diligence, such party shall not have been able to avoid or overcome. Such events and occurrences may include, by way of example, natural disasters, floods, windstorms, unusually severe weather and other acts of God, fires, explosions, riots, wars, sabotage, power failures, and acts of government. Failures or delays caused by a Force Majeure are neither compensable nor a breach, under the terms of this Contract.

**18. Furnished Property**

- a) Buyer may provide Furnished Property to Seller for the Contract. Title to Furnished Property remains with the original owner of the Furnished Property. THERE IS NO WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE FURNISHED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.
- b) Seller shall be strictly accountable for any Furnished Property that comes into the control of Seller, including, but not limited to, any oils, fuels or other material removed from any Vessel. Unless already so marked by Buyer, Seller shall clearly mark all Furnished Property to identify the proper ownership and, upon request, shall furnish Buyer with a list of all Furnished Property in its possession. The Furnished Property shall be used only for the Contract and held at Seller's sole risk and insured at Seller's sole risk and insured at Seller's sole expense in an amount equal to its replacement cost, with loss payable to Buyer. Buyer may inspect and/or remove any Furnished Property at any time at no charge to Buyer, and Buyer shall have reasonable access to Seller's premises for such purpose. Seller shall return such Furnished Property upon Buyer's demand, and return expenses paid as specified on the face of the Purchase Order.
- c) Seller shall protect, preserve and maintain records of all such property in conformance with the requirements of FAR Subpart 45.5 when the Contract Work is in support of a Government Prime Contract.

**19. Gratuities and Kickbacks**

Seller is prohibited from offering any gratuities (in the form of entertainment, gifts or otherwise) or kickbacks to Buyer or its employees or agents, or governmental official or any political party, party official or candidate, either directly or indirectly through an intermediary, with a view toward securing favorable treatment under the Contract or for future business opportunities or for the purpose of influencing any official act, omission, or exercise of influence on the recipient, to assist Buyer or Seller in obtaining or retaining business. Seller shall ensure that the substance of this clause

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is flowed down to its own lower tier subcontracts. Seller's material breach of this clause shall be considered a material breach of the Contract and of all other contracts between the parties

**20. Guaranty**

- a) All workmanship of Seller, its Suppliers pursuant to the Contract shall be of good commercial quality performed in accordance with applicable ship repair standards, and all equipment, material, and supplies incorporated into the Contract Work shall be new, suitable and of good commercial quality for the manner intended, with no more than normal production repair of any minor manufacturing deficiencies.
- b) If at any time during the Guaranty Period the Contract Work fails to comply with the Contract or any weakness, deficiency, failure, breaking down, or deterioration in material or workmanship not caused by Buyer, the Customer, or by ordinary wear and tear ("**Guaranty Deficiency**") in the Contract Work shall appear or be discovered, Seller shall repair or replace all material and equipment necessary to correct such Guaranty Deficiency at its sole expense and it shall be liable for any incidental travel and/or transportation costs which may be incurred by Seller.
- c) Prior to the expiration of the Guaranty Period, including any extension, should Buyer reasonably determine that any Guaranty Deficiency requires emergency correction outside the Vessel's normal maintenance schedule, whether or not such Guaranty Deficiency requires the Vessel to be dry-docked, Seller shall correct the Guaranty Deficiency or may choose to pay the actual costs of correcting the Guaranty Deficiency reasonably incurred by Buyer. Any disagreement as to whether a Guaranty Deficiency requires an emergency correction is subject to the Disputes clause. The Guaranty Period shall be extended day for day for any period in which a Vessel is out of service during the Guaranty Period solely related to the correction or repair of a Guaranty Deficiency. Seller guarantees such material and equipment repairs or replacements for a further period of 90 days for Contract Work related solely to repair services on an existing Vessel, from the date of completion of such repairs or replacements or to the end of the Guaranty Period, whichever is later.
- d) BUYER SPECIFICALLY UNDERSTANDS AND AGREES THAT NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE OR WILL BE DEEMED TO HAVE BEEN MADE BY SELLER, EXCEPT THE WARRANTIES EXPRESSLY STATED HEREIN. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR SUITABILITY ARE SPECIFICALLY DISCLAIMED AND EXCLUDED. SELLER'S GUARANTY, AND BUYER'S GUARANTY RIGHTS AGAINST SELLER, SHALL BE SEPARATELY ASSIGNABLE TO THE CUSTOMER, AS THE CASE MAY BE.

**21. Indemnity**

Seller shall defend, indemnify, save and hold Buyer, its parent company, affiliated companies, directors, officers, agents and employees, free and harmless from and against all claims, adjudications, demands, causes of action, damages, penalties and liabilities of any nature, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees) for (i) death or injury to any person or persons (including, but not limited to, agents and employees of Seller and its Suppliers and damages characterized as special, direct, consequential, loss of consortium, or future earnings); (ii) joint employer liability for Seller's employees, Suppliers or agents (to the extent permitted by law); (iii) damage or loss of any property (including, but not limited to, loss of use, lost profits, or diminution in value) arising directly or indirectly out of or in connection with Seller's performance of the Contract, (iv) claims by Seller, Seller's employees or its Suppliers and their employees for wages, benefits and other compensation and claims for resulting penalties; and claims by governmental agencies or others for taxes or contributions allegedly due by reason of Seller or its Suppliers performing the Contract Work; (v) acts or omissions under the Contract including without limitation Seller's acts or omissions that cause Buyer to incur any penalty or owe any liquidated damages to Customer or any third party; and (vi) infringement of any third party intellectual property rights, in all including, without limitation, claims, demands, actions, damages and liabilities based in whole or in part on the negligence or other theory of liability of Seller or its Suppliers, except to the extent such claims, adjudications, demands, causes of action, damages, penalties or liabilities are caused by Buyer. Buyer has the sole right to designate the attorney or law firm that will defend and represent it in or relating to any suit, claim, or action that is subject to indemnification, including without limitation any indemnity provision in the Contract. This provision survives termination of the Contract and is not subject to the Limitation of Liability Clause. Buyer may assign its right to be indemnified hereunder.

**22. Independent Contractor**

Seller is an independent contractor. Seller assumes full and sole responsibility for the payment of all compensation, expenses, benefits (including, but not limited to, vacation pay, overtime, training, travel allowances and reimbursements, workers' compensation, pension and/or retirement, medical and/or health benefits), state and federal income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings.

**23. Inspection and Acceptance**

- a) The Contract Work (which term throughout this Inspection and Acceptance Clause includes, without limitation, raw materials, components, intermediate assemblies, data, manufacturing processes, services, and quality systems) shall be subject to inspection and testing by Buyer, the Customer, or Regulatory Bodies having jurisdiction over the Vessels or the Contract Work at all places and reasonable times, including, but not limited to, Seller's and its Suppliers' facilities. Buyer and Seller shall provide each other with timely advance notification of all visits and requests for visits by Regulatory Bodies. After notification and Buyer's acceptance of specific scheduled inspections or tests, if Seller is not ready to perform the inspections or tests at the designated time(s), then Seller shall reimburse Buyer for its costs incurred for labor and travel to attend the inspections or tests.
- b) The Customer may, from time to time, designate certain Contract Work for source inspection. Upon such designation, Seller shall furnish advance notification of the time (i) when Seller's inspection or tests will be performed in accordance with the terms and conditions of the Contract and (ii) when the Contract Work will be ready for source inspection. The period and method of the advance notification, and the Customer representative to whom

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it shall be furnished, shall be specified by the Customer, but shall not require more than 2 workdays of advance notification if the Customer representative is in residence in Seller's plant, nor more than 7 workdays in other instances.

- c) Approval by the Customer and/or Buyer as required under the Contract and applicable specifications shall not relieve Seller of its obligation to comply with the specifications and with all other requirements of the Contract, nor shall it impose upon the Customer or Buyer any liability it would not have had in the absence of such approval.
- d) Acceptance of delivery of the Contract Work does not alone constitute acceptance of performance under the Contract. The inspection or testing of any portion of the Contract Work does not relieve Seller from its responsibility to correct defects or non-conformities which may be discovered in Contract Work not inspected or tested or which is discovered during the Guaranty Period. If the Contract Work is not ready at the time specified by Seller for inspection or testing, Buyer may deduct from the Contract Price the additional costs to Buyer of inspection or testing. Buyer may further deduct from the Contract Price any reasonable costs to Buyer of inspection or testing when prior rejection makes re-inspection or re-test necessary.
- e) Seller shall provide and maintain an inspection system and documentation in accordance with Seller's mandatory document control and records retention procedures (i.e., records of all inspection work by Seller shall be kept complete and available to the designated Quality Assurance Representative during the performance of Contract Work).
- f) Final acceptance or rejection of Contract Work shall be made as promptly as practicable, but no later than 60 days after Delivery of Contract Work to the delivery point or upon completion of performance and inspection of the Contract Work as applicable. If any inspection or testing is performed on Seller's (or its Suppliers) premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of inspectors in the performance of their duties. The failure to inspect and accept or reject the Contract Work shall neither relieve Seller from responsibility for performing the Contract Work, nor impose liability on Buyer. Seller shall be solely responsible for any reduction in value of samples used in any inspection or test.
- g) Buyer may reject nonconforming Contract Work. Seller shall have a reasonable opportunity to examine the Contract Work before it is rejected. Contract Work, which has been rejected, shall not be re-tendered for acceptance until the defect or nonconformity is corrected.
- h) The Contract Work shall be accepted when, upon final inspection and testing, it is found to conform to the Contract. If at any time prior to such acceptance, the Contract Work is found to be defective in material or workmanship, or otherwise does not conform to the Contract, Seller shall correct or replace such defective Contract Work at Seller's expense. This right specifically extends to, without limitation, any period after acceptance of the Contract Work and prior to commencement of the Guaranty Period. Any and all such defects shall be corrected and made good within the stated notice by Buyer to Seller. In this respect, Seller agrees and acknowledges that there will be instances where immediate corrections are going to be mandated during sea trials. If any such defect is discovered between the Vessel's acceptance trials and Delivery of the Vessel to the Customer, any and all such defects shall be corrected and made good as soon as practical, as determined by Buyer in its sole discretion, after notice thereof by Buyer to Seller.
- i) Final acceptance of the Vessel by the Customer shall be conclusive except for Seller's warranty and Guaranty obligations during the Guaranty Period and except with respect to latent defects, fraud or gross mistakes amounting to fraud. In such cases, Buyer, in addition to any other rights and remedies provided by law, or under other provisions of the Contract, shall have the right in its sole discretion to require Seller (i) at no increase in the Contract Price, to repair or replace the defective or nonconforming Contract Work at the original point of delivery, or at Seller's plant, or at the location of the Vessel at Buyer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between Seller and Buyer; provided, that Buyer may require a reduction in Contract Price if Seller fails to meet such delivery schedule, or (ii) within a reasonable time after receipt by Seller of notice of defects or nonconformance, to repay such portion of the Contract as is equitable under the circumstances if Buyer elects not to require correction or replacement. When Contract Work is returned to Seller, Seller shall bear the transportation cost from the original point of delivery to Seller's plant and return to the original point when that point is not Seller's plant. If Seller fails to perform or act as required in (i) or (ii) above and 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 Buyer specifying such failure, Buyer shall have the right to replace or repair such Contract Work and charge to Seller the cost occasioned Buyer thereby.
- j) If Seller fails to promptly replace or correct rejected Contract Work, Buyer may (i) correct such Contract Work on Seller's account, including without limitation by re-performance, repair or replacement of such Contract Work, (ii) equitably reduce the Contract Price to reflect the reduced value of any defective Contract Work accepted by Buyer that cannot be corrected by re-performance, repair or replacement, and (iii) terminate for default as provided in the Default Clause. Seller authorizes Buyer, its affiliates, agents and its Suppliers, and the Customer and the Customer's subcontractors, to repair, reconstruct or rebuild the Contract Work using Seller's applicable intellectual property without payment of any royalty or other compensation to Seller.

**24. Insurance**

Unless otherwise stated in the Contract, and without prejudice to Buyer's rights and Seller's indemnity obligations under Indemnity Section of this Contract, Seller shall keep and maintain in effect at its sole cost and expense the following policies of insurance:

- (a) Commercial General Liability insurance coverage with the following limits per occurrence:
  - i. General Aggregate, \$2,000,000
  - ii. Products and Completed Operations Aggregate \$1,000,000
  - iii. Personal and Advertising Injury \$1,000,000
  - iv. Each Occurrence \$1,000,000
  - v. Property Damage \$50,000
  - vi. Medical Expenses \$5,000
- (b) Commercial Automobile Liability insurance coverage for owned, hired, and non-owned vehicles, \$1,000,000 per occurrence.
- (c) Workers' Compensation and Longshore and Harbor (USL&H) Workers' Compensation Act insurance with the following limits: i.
  - Employer's Liability Each Accident \$500,000

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- ii. Employer's Liability Disease Policy \$500,000
- iii. Employer's Liability Each Employee \$500,000
- (d) Umbrella Excess Liability, General Aggregate and Each Occurrence, \$5,000,000. This coverage shall be in excess of the above listed insurance coverages.
- (e) For Contract Work consisting of engineering services, consulting, construction management or construction services, Seller shall keep and maintain in effect at its sole cost and expense professional liability (errors and omissions) coverage with minimum limits of liability of \$1,000,000 per occurrence and \$1,000,000 in the aggregate.
- (f) NASSCO-Norfolk shall be listed as the Certificate Holder and identified as the Additional Insured under the General Liability Policy. Certificate Holder shall read:  
**Metro Machine Corp.**  
**200 Ligon Street Norfolk, VA 23523**
- (g) Each such policy shall be underwritten by an insurance company satisfactory to Buyer; shall provide that it is primary insurance to, and noncontributing with, any other insurance carried by Buyer; and shall obligate the insurer to give Buyer not less than thirty (30) days prior written notice in the event of policy cancellation or any material change therein. Certificates evidencing such policies, in a form satisfactory to Buyer, shall be delivered to Buyer upon issuance of the Contract, and renewals thereof shall be sent to Buyer at least ten (10) days prior to the expiration of the respective policy terms. The policies referred to above in subparagraphs (a) (1) and (a) (2) shall be endorsed to name NASSCO-Norfolk as an "additional insured," and the certificates provided to Buyer shall reflect such endorsement. The policies referred to above in subparagraphs (a) (3) and (a) (4) shall contain a waiver of subrogation in favor of Buyer.
- (h) Notices regarding insurance policies shall be provided in writing and shall be deemed delivered five (5) days after deposit in the U.S. Mail, postage prepaid, certified mail and return receipt requested, when addressed to General Dynamics NASSCO-Norfolk, Attention: Director Supply Chain Management, P.O. Box 1860, Norfolk, VA 23501.
- (i) The insurance coverage limits stated above are minimum insurance coverage requirements, not limits of Seller's liability. Notwithstanding the above-required insurance policies, Seller shall be obligated for the full and total amount of any damage, injury, expense or loss.

**25. Invoices, Payment and Taxes**

- a) Invoices shall include: the Purchase Order number; the invoice number; description of all Contract Work performed; rental property furnished; the dates of performance or date(s) on which the rental property was delivered or retrieved; comprehensive, itemized prices; prior payments received; terms; and discounts. Unless otherwise provided, any cash discount period shall commence on the date of receipt of Seller's invoice. Incorrect and incomplete invoices shall be returned for correction and shall delay the commencement of Buyer's obligation to pay for the Contract Work and any discount period, until a corrected invoice is received by Buyer. Buyer shall pay Seller only for the complete, proper and timely performance of this Contract, and Buyer shall have the right to withhold payment for any failure of Seller to strictly comply with this Contract. No payment of any portion of the Contract Price shall constitute acceptance of the Contract Work or of Seller's performance.
- b) Unless otherwise provided in this Contract, payment shall be net thirty (30) days from the latest of the following: (i) Buyer's receipt of a proper invoice; (ii) scheduled delivery of the Contract Work; or (iii) actual delivery of the Contract Work. Payment shall be deemed to have been made as of the date of mailing payment or electronic funds transfer.
- c) Unless otherwise specified, prices include all applicable United States, state, and local taxes, duties, tariffs, and similar fees imposed by any government. Credits resulting or arising from this Contract, including, but not limited to, trade credits, export credits or refund of duties, taxes or fees, belong to Buyer. Seller shall provide all information necessary to permit Buyer to receive these credits.
- d) Payment shall not be construed as acceptance of the Contract Work or Contract Products or waiver of any term or condition of this Contract.
- e) To be timely, all invoices must be received by Buyer within thirty (30) days after completion of the Contract Work. Invoices received later than sixty (60) days after completion of the Contract Work are deemed rejected and void and Seller hereby waives the right to payment of these invoices.

**26. Liens**

- a) Seller waives any and all rights to any lien against Buyer by Seller or Seller's subcontractors.
- b) Buyer shall have the right to withhold any payment until Seller shall furnish, as requested, current written releases and waivers of all rights to claim or file liens, properly executed by Seller and its subcontractors. Seller's acceptance of full payment of the Contract Price shall constitute satisfaction in full and release of all claims or demands of Seller and its subcontractors against Buyer arising out of or connected with this Contract. If Seller fails or neglects to pay any admitted claims for labor or material, Buyer may pay such claims and deduct such payments from funds due Seller hereunder or, if such claims be disputed, withhold sufficient funds to pay such claims until they are resolved. Seller shall immediately discharge or cause to be discharged any lien or charge of any kind, which at any time is filed against the property of Buyer with respect to, or arising from, the performance of the Contract Work. If any such lien or charge is not immediately discharged, Buyer may discharge or cause to be discharged such lien or charge at the expense of Seller.

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**27. Limitation on Liability**

EXCEPT FOR THE RIGHTS AND OBLIGATIONS SET FORTH IN THE INDEMNIFICATION AND GUARANTY CLAUSES HEREIN, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR: (i) PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES ARISING UNDER, OR RELATING TO, THIS CONTRACT; OR (ii) INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF USE, DELAY OR TIME RELATED DAMAGES, LOSS OF INCOME, LOST PROFITS OR LOSS OF ANTICIPATED PROFITS, LOST BUSINESS, LOSS OF BUSINESS REPUTATION, OR LOSS OF BUSINESS OPPORTUNITIES, UNREALIZED SAVINGS, ANY AND ALL ATTORNEYS' FEES AND COSTS) ARISING UNDER, OR RELATING TO THIS CONTRACT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND REGARDLESS OF WHETHER BUYER WAS ADVISED OR, KNEW OF, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGES.

**28. Loss, Destruction or Damage of Rental Property**

Buyer shall not be liable for the loss of or damage to the rental property unless directly caused by Buyer's negligence or intentional misconduct in the care, operation or use of the rental property during the term of this Contract. Seller shall not have, or be entitled to make, any claim for any such loss or damage unless Seller gives Buyer: (a) written notice of any nature, extent and amount of such loss or damage within forty-eight (48) hours after Seller retrieves the rental property; and (b) the opportunity to inspect the rental property within seven (7) days after retrieval. In no event shall Buyer be liable for loss of rent or for any other consequential damages.

**29. New Materials and Authorized Sources**

- a) Seller represents and warrants to Buyer that the Contract Products provided are new (not used or reconditioned) and not of such an age or so deteriorated as to impair their usefulness or safety. If Seller intends to provide used or reconditioned Contract Products, Seller shall notify Buyer in writing and obtain advanced written authorization from Buyer to use such used or reconditioned Contract Products.
- b) Seller shall only purchase Contract Products: (i) directly from the Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM); or (ii) from a distributor or other source that purchases directly from the OCM or OEM and is authorized, franchised or certified by the OCM or OEM. If Seller purchases from sources that are not authorized, franchised or certified sources, Seller shall notify Buyer in writing and obtain advanced written consent from Buyer to use such Contract Products.

**30. No Advertising**

Seller and its Suppliers are prohibited from advertising or publishing any information about the Contract or their Contract Work in support of the Contract, and are prohibited from using Buyer's trademarks or trade names without Buyer's prior written consent. Seller shall include this clause in all lower-tier subcontracts or orders placed in support of the Contract.

**31. Non-waiver**

Buyer's waiver of any provision of this Contract shall not constitute waiver of that provision in any later circumstances or waiver of any other Contract provision.

**32. Notices**

Required notices shall be in writing and shall be deemed effective when served personally; delivered by courier service (with proof of delivery); successfully electronic transmission email, with proof of delivery addressed as follows: To Seller: To the person and at the address as indicated on face of the Purchase Order, and To Buyer: General Dynamics NASSCO Norfolk, 200 Ligon Street, Norfolk, VA 23523, Attn: Buyer's Representative (as specified on the face of the Purchase Order); or deposited in the U.S. Mail, first class postage prepaid, addressed as follows:

To Seller:

As indicated on face of the Purchase Order

To Buyer:

General Dynamics NASSCO-Norfolk  
200 Ligon Street  
Norfolk, VA 23523  
Attn: Subcontracts Manager

**33. Order of Precedence**

Any inconsistency between any provisions of the Contract shall be resolved with the following descending order of precedence:

- a) the provisions on the face of the Purchase Order;
- b) these General Terms and Conditions;
- c) Supplemental General Purchase Order Terms and Conditions applicable to Contract Work performed onsite at NASSCO or Customer Facilities or when access is granted to NASSCO's or Customer's Facilities;

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- d) the Special Terms and Conditions, if any; unless the FARS, DFARS or specific Prime Contract clauses are required to take precedence by federal law;
- e) the statement of work
- f) specifications, and within the specifications, specifications shall prevail over drawings;
- g) other documents incorporated by reference into the Contract; and procurement related representations or certifications or supplier qualification statements signed by Seller and provided

**34. Organizational Conflict of Interest**

Seller represents that its Contract execution and performance does not and will not conflict with or breach any contractual, fiduciary or other duty or obligation to which Seller is bound. Seller further represents that it will not accept work which would create for Buyer or Seller an actual or apparent Organizational Conflict of Interest (“OCI”) as such term is defined in FAR Subpart 9.5 when Seller is providing Contract Work in support of a Government Prime Contract. Seller shall immediately provide notice to Buyer in the event that it discovers any actual or potential personal or business OCI concerns related to or arising out of the Contract or any Purchase Orders.

**35. Packing and Shipment**

Deliveries shall be made as specified, without additional charge for boxing, crating, carting or storage, unless otherwise specified and shall meet the following requirements:

- a) In accordance with the requirements of common carriers, Contract Products shall be suitably packaged to secure the lowest transportation costs and to ensure against damage from transportation or weather.
- b) Contract Products must be reasonably and adequately preserved and protected for storage at Buyer’s facilities, and for handling and protection.
- c) The Purchase Order number, Purchase Order line-item number must be plainly marked on all packages, bills of lading and invoices.
- d) Packing lists shall accompany each shipment listing all material included in the shipment. Buyer’s count or weight shall be final and conclusive for shipments not accompanied by packing lists.
- e) If shipment is from outside of the U.S., pallets must be pest free, and preferably use heat (not chemically) treated bark free wood.
- f) If Seller ships via ocean in sealed Less-Than Container Load (LCL), Full Container Load (FCL), or break-bulk shipments arriving at U.S. seaports from non-U.S. countries, then Seller must provide NASSCO-Norfolk’s Logistics Department with U.S. Customs 10+2 importation data using the Importer Security Filing-Form 10 in accordance with the instructions available on the internet at:

[www.cbp.gov/xp/cgov/trade/cargo\\_security/carriers/security\\_filing/](http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/)

The 10+2 information must be sent to NASSCO-Norfolk’s Logistics Department three to four (3-4) days prior to vessel departure from the port of origin. In addition, updates and corrections must be provided to NASSCO-Norfolk’s Logistics Department at least three to four (3-4) business days prior to the vessel arriving in a U.S. destination port. Expediting costs to free-up shipments with missing or late 10+2 documentation will be charged to Seller at Buyer’s option.

**36. Payment Bonds**

Upon Buyer’s sole discretion when a determination is made that Seller is unable to pay all of its suppliers and subcontractors in a timely manner or is unable to assure timely performance, Buyer may request, and upon such request Seller shall provide, payment (labor and material) bonds in amounts designated by Buyer and issued by surety companies acceptable to Buyer. Seller’s failure to provide such bonds upon request shall constitute a material breach of this Contract.

**37. Pricing**

Unless otherwise specified in the Contract, all pricing agreed to by the parties shall be firm fixed pricing, and Seller shall be wholly responsible for providing the Contract Work at the agreed upon price.

**38. Property Rights in the Contract Work**

All data and materials prepared or developed by Seller in connection with the performance of the Contract Work shall be Buyer’s exclusive property and shall be provided to Buyer upon completion of performance of this Contract, upon termination of this Contract, or upon Buyer’s earlier request.

**39. Quality; Remediation Plan Request**

- a) Seller shall provide and maintain a commercially reasonable quality control system that complies with the quality control requirements of this Contract. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer.
- b) Seller shall notify Buyer of any facts or occurrence that may increase the cost of, or time required for, performance of this Contract or which may cause the Contract Work to fail to conform to this Contract. Seller shall provide such notification within three (3) days upon the manifestation of such facts or occurrence.
- c) Buyer may at any time issue to Seller a Remediation Plan Request that identifies any actual or potential failure of Seller to perform its obligations under this Contract, and that requests information from Seller, including, but not limited to, a factual explanation, a discussion of corrective action,

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and a schedule of performance. Seller shall provide a response reply in writing to any Remediation Plan Request within ten (10) days of receipt unless lesser time is reasonably requested by buyer

**40. Remedies**

All remedies are cumulative, and the exercise of a remedy conferred by this Contract or in law or equity shall not preclude the exercise of any other remedy under this Contract or in law or equity.

**41. Scope of Performance**

- (a) For Contract Products, if the words “or equivalent” are used in the Contract or specifications, proposed “equivalent” must be approved by Buyer in its sole discretion in writing prior to Seller delivering the same to Buyer. Seller shall perform for Buyer the Contract Work described by this Contract. Unless otherwise agreed to in writing, Seller shall provide at the location where the Contract Work is to be performed all labor, materials, equipment, tools and supervision, and Seller shall bear all items of expense for these items. Seller shall perform the Contract Work to the standards of care, skill and diligence, professional or otherwise, normally provided by a competent person when supplying goods or performing services identical or substantially similar to the Contract Work hereunder.
- (b) Seller shall provide all necessary material, equipment and labor to supply the Contract Products in strict conformity with the specifications. Seller shall make no changes in the specifications without Buyer’s written consent, and shall not substitute materials for those specified without Buyer’s written approval. The Contract Products and their components shall be new and of suitable grade for their intended purpose. Upon Buyer’s request, Seller shall furnish full information concerning the origin, quality and condition of the components of the Contract Products.
- (c) All deliverables provided by Seller pursuant to the Contract shall conform in all material respects to the Contract, including without limitation all specifications.

**42. Setoffs/Back charges**

Buyer may in addition to any other amounts to be retained hereunder, retain from any sums otherwise owing to Seller amounts sufficient to cover the full costs of any of the following:

- a) Seller’s failure to comply with any provision of this Contract or Seller’s acts or omissions in the performance of any part of this Contract, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements;
- b) Correction of defective or nonconforming work by redesign, repair, rework or replacement or other appropriate means when Seller states, or indicates, that it is unable or unwilling to proceed with correction action in a reasonable time to support Buyer’s in-yard production need; and/or
- c) Buyer may in addition to any other amounts to be retained hereunder, retain any sums otherwise owing to Seller amounts sufficient to cover the full costs of any of the following:
- d) The cost of back charge work shall include:
  - i. Incurred labor costs including all payroll additives;
  - ii. Incurred net delivered material costs;
  - iii. Incurred lower-tier supplier and Seller costs directly related to performing the corrective action;
  - iv. Expediting costs beyond those normally provided in the normal course of the Contract when required to meet the Project schedule;
  - v. Application of relevant manufacturing and material overhead and SG&A expense to the work performed by Buyer.

**43. Shelf-Life Requirements**

For Contract Products with a manufacturer’s specified expiration date, Seller shall clearly mark the expiration date or the manufacture date on each individual item in each carton or box. NASSCO-Norfolk prefers the expiration date to be marked in MM/DD/YYYY format, but will accept manufacture date and other date formats. Each carton or box shall contain Contract Products with only one expiration date. Seller shall ship such Contract Products timed to arrive on NASSCO-Norfolk’s receiving docks with no less than eighty-five percent (85%) of the specified shelf life remaining unless otherwise approved in writing by Buyer.

**44. Standard of Performance**

- a) Seller shall perform the Contract Work using reasonable diligence, exercising its best judgment, and using the care and skill ordinarily used by reputable similar persons or entities in providing the same or similar services under similar circumstances. Seller is on notice that Buyer is relying on the care, skill, diligence and judgment exercised by Seller in performing the Contract Work.
- b) Seller shall be responsible to Buyer for acts and omissions of Seller’s employees, subcontractors, and their agents and employees, and other persons, including engineers, and other design professionals, performing any portion of Seller’s obligations under this Contract.
- c) If Seller subcontracts any portion of the Contract Work, Seller shall provide Buyer with the company name of such subcontractor prior to executing such subcontract. Buyer may decline the usage of such subcontractor based on Buyer’s independent evaluation of subcontractor’s qualifications.



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- d) The Contract Products and their components shall be new and of suitable grade of their respective kinds for their purpose. Upon Buyer's request, Seller shall furnish full information concerning the origin, quality and condition of the components of the Contract Products.
- e) Design services required by this Contract shall be performed by qualified engineers and other design professionals, who are properly licensed. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of Seller.

**45. Submittals and Approvals**

- a) Seller shall promptly submit to Buyer all documents that require Buyer's review and approval, and Buyer shall promptly approve or reject Seller's submittals.
- b) Approvals provided by Buyer under this Contract, however, shall not relieve Seller of its obligation to comply with all terms of this Contract and shall not impose upon Buyer any obligation or liability that Buyer would not have had in the absence of such approvals.

**46. Survival**

If this Contract expires, is completed or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:

Compliance with Ethics

Compliance with Laws

Confidentiality of Data and Information

Contract Acceptance, Integration and Modification

Delivery and Retrieval of Rental Property

Disputes

Environmental

Export Control Compliance

Indemnity

Insurance

Limitation on Liability

Non-Waiver

Property Rights in the Contract

Remedies

Setoff/Back charges

Survival

Termination

Third Party Rights

**47. Third Party Rights**

This Contract is intended solely for the benefit of Buyer and Seller and is not intended for the use or benefit of any other party. Except as set forth in the Indemnity Section, nothing contained in this Contract is intended to make any person or entity that is not a signatory to this Contract a third party beneficiary of any right created by this Contract.

**48. Time of Performance**

Seller shall perform this Contract in a diligent manner and in no event later than the time(s) specified on the face of the Purchase Order. Time of performance specified in this Contract is of the essence of this Contract. If at any time it reasonably appears to Buyer that Seller is failing to make progress, such that performance may not be completed in accordance with this Contract, Seller shall, within seven (7) days of a written request by Buyer, assure timely performance and represent to Buyer in writing Seller's best completion date. If the represented completion date is not within the original time for completion of performance of this Contract, Buyer may terminate this Contract for default in accordance with the Termination section. Buyer shall further have the right, but not the duty, and without waiver of any other rights and remedies that it may have, to extend the time for completion of performance. The new date for completion of performance shall be final, of the essence of this Contract, and subject to further change only in accordance with this Contract.

**49. Title and Risk of Loss**

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Title to the Contract Work shall pass to Buyer upon delivery of the Contract Work in accordance with the Contract unless stated otherwise in the Purchase Order or specifications. Title will revert back to the Seller when Buyer revokes acceptance, rejects or refused to receive Contract Work for any reason. Risk of Loss shall be as determined by the shipping terms set forth on the face of the Purchase Order unless otherwise agreed in writing by the parties; and Seller shall be responsible for Risk of Loss to the designated delivery point until acceptance occurs unless the loss, destruction or damage results from Buyer's gross negligence. Seller shall remain solely liable for Risk of Loss, after Buyer's rejection, unless such loss, destruction or damage results from Buyer's gross negligence.

**50. Waiver**

No failure or delay in exercising any right, privilege or remedy under the Contract shall operate or be construed as a waiver or modification of the terms of the Contract, and no single or partial exercise of any right, privilege or remedy shall preclude any other further exercise of the same or of any other right, privilege or remedy. the Contract

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**PART B: PERFORMANCE AT BUYER'S FACILITIES**

In the event that Seller, its employees, agents and subcontractors (including delivery persons and rental equipment), enters any facility owned, leased or operated by Buyer (including Buyer's shipyard at 200 Ligon Street, Norfolk, Virginia, Seller shall comply with the following additional terms and conditions. Performance at Buyer's facilities includes, but is not limited to, delivery of the Contract Products, rework and guarantee work, rental property to Lessee's facilities, retrieval of rental property from Lessee's facilities, and the performance of repair and maintenance of the rental property at Lessee's facilities.

**1. Clean-Up of Work Site**

During the performance of this Contract, and upon completion of the Contract Work or earlier termination of this Contract, Seller shall remove all of Seller's tools and equipment from Buyer's facilities. Seller shall also dispose of any debris, garbage or other waste material, including excess materials, scrap and equipment used or generated in performance of this Contract, in the appropriate receptacles at Buyer's facilities, or as otherwise specified in the Contract. Seller shall be liable for and shall pay to Buyer, upon demand, all costs of disposal or removal of tools, materials or equipment not so removed.

**2. Environmental**

**(a) Environmental, Health and Safety (EHS) if Seller Operates Within the Facilities**

Seller must communicate the Buyer's EHS policy and all applicable environmental requirements to workers who will perform work on behalf of the Buyer before they perform such work or arrive at any of Buyer's facilities. This must be documented by the seller and be available upon request from the Buyer.

**(b) Environmental, if Seller Operates Within the Facilities**

- i. Seller shall comply with Buyer's written environmental policies, procedures and requirements, and with all United States Federal, state and local environmental laws and regulations, including without limitation, those regarding the use of any hazardous substances, and shall be responsible for all hazardous waste (both as defined by United States and Virginia law) generated by Seller's employees and subcontractors during the performance of this Contract. The environmental policies and procedures are located at <http://www.nassconorfolk.com/ComplianceDocuments.html> under the heading "About Us". Seller shall notify Buyer of all activities and services Seller is anticipated to conduct (based on Contract Work at the Facilities) that may impact the environment by completing the Environmental Requirements Certification Form (located on the website). Seller must obtain pre-approval for all chemicals or HazMat that the Seller anticipates using in performing Contract Work at the Facilities by submitting the Hazardous Substance Control Form (also found on the website) along with the Safety Data Sheet (SDS) for the material. Seller shall inform Buyer of all hazardous waste generated at the Facilities and shall cooperate with Buyer in disposing of such waste as directed by Buyer. Seller shall bring to the immediate notice of Buyer any risk to the environment which Seller believes has not been adequately assessed and is not under adequate control, so that Buyer can take appropriate action to prevent potential environmental harm or other losses. Any failure to perform these obligations shall be an immediate default under this Contract not subject to any cure period. Seller shall be solely responsible for the consequences of its failure to perform the foregoing obligations and shall defend, indemnify and hold Buyer harmless as set forth in the Indemnity Section.
- ii. Seller's environmental management system or program shall incorporate measures which reasonably demonstrate that its employees are competent to perform their tasks, with due regard for the need to protect the environment and ensure that hazards to the environment have been eliminated, where possible, or are being controlled through formal planning methods and procedures.
- iii. If Seller causes, to any extent, the actual or potential Environmental Incident, and Buyer's On-Scene Emergency Coordinator responds to such an Environmental Incident, Buyer will incur costs and expenses to respond to each such Environmental Incident. The Seller agrees to pay the Buyer for their response to each such Environmental Incident. This includes the Buyer's costs, expenses, and any fines or penalties of remediation resulting from the Environmental Incident, and shall not impair or waive Buyer's indemnification rights as set forth in the Indemnity Section. Buyer shall have the right to offset or reduce any payments to Seller for these expenses.

**3. Safety**

- (a) The safe conduct and health of all persons employed by Seller or its subcontractors and suppliers shall be the sole responsibility of Seller. Seller shall take all reasonable precautions to protect the health and safety of such employees and others and to minimize danger from all hazards to life and property. Seller shall comply with all applicable United States Federal, state, and local laws and regulations, including without limitation health, safety and fire protection laws and regulations in force at Contract award and as modified during the life of the Contract. Seller shall also comply with Buyer's health and safety policies and procedures available at Buyer's EHS Department. Seller is solely responsible for informing itself of said laws (Federal, State, and Local), regulations, policies and procedures, and training its employees. Said training shall be documented by the Seller and made available upon request from the Buyer.
- (b) Unless otherwise addressed in the Contract, the Buyer has the right to reasonably require the Seller to reassign and/or remove any of Seller's or Seller's subcontractors' or suppliers' employees immediately upon Buyer's request should this person's conduct increase Buyer's health and safety concerns. (This includes any on-going operations at the Facilities and in conjunction with Buyer's rights herein).

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- (c) Buyer's health and safety policies and procedures shall be made available to the Buyer's EHS Department. Any failure by Seller or any of its subcontractors or suppliers to comply with any such health and safety policies, procedures, laws or regulations shall constitute a default. Under no circumstances shall compliance with Buyer's safety policies and procedures, alone, be considered complete satisfaction of the requirements of this Section.
- (d) Seller's occupational health and safety management system shall incorporate measures which demonstrate that its employees are competent to perform their tasks safely and ensure that hazards to health and safety have been eliminated, where possible, or are being controlled through formal planning methods and procedures. Further, NASSCO-Norfolk meetings concerning any aspect of subcontractor health and safety must be attended by at least one of Seller's managerial/health and safety staff members for the purpose of ensuring that proper transmission and direction of new safety rules, or current rules, are being communicated, understood, and followed by all of Seller's employees when they are in the Facilities.
- (e) Seller shall complete the following prior to commencement of the Contract Work: (i) Provide to Buyer's EHS Department the name, telephone number and title or position of the Seller's Health and Safety Representative, (ii) Seller's Safety Representative, together with equivalent representatives of Seller's subcontractors or suppliers who are expected to perform at the Facilities, shall meet with Buyer's Health and Safety Manager or designee to review applicable safety policies and procedures, (iii) Provide to Buyer's EHS Department a copy of Seller's written Injury and Illness Prevention Program, (iv) Submit for approval by Buyer's EHS Department a copy of all Safety Data Sheets ("SDSs") for all chemical compounds that Seller anticipates using in performing Contract Work at the Facilities, (see Section B.2(b)(i) for chemical pre-approval process) and (v) Seller's designated managerial/safety leadership who will direct safety compliance in the Facilities to receive NASSCO's subcontractor safety training and complete acknowledgement documentation of Seller's responsibilities with regard to safety, health, and fire protection, and (vi) Seller is required to show compliance with the requirements of 29 CFR 1910.1200.
- (f) Seller represents and warrants that all equipment used by Seller to perform any Contract Work at the Facilities conforms to all federal, state, and local safety, health, and fire protection standards.
- (g) Seller represents and warrants that Seller's employees, subcontractors' and suppliers' employees performing Contract Work at the Facilities are properly trained in all Federal, State, and local health, safety and fire protection laws and regulations and Buyer's health and safety policies and procedures, applicable to the Contract Work.
- (h) Seller shall report all recordable occupational injuries or illnesses occurring at the Facilities during performance of the Contract Work in accordance with the following procedures: (i) Seller shall make an initial report to Buyer's EHS Department as soon as it is known to Seller. This report shall consist of the name of the injured person, place of occurrence, nature of the injury, and a description of the incident. This report can be made orally by telephone call to (757) 966-3600 or by personal visit to Buyer's EHS Department, and (ii) Seller shall submit a written report in the form of a formal accident investigation report, within twenty-four (24) hours of the incident, using NASSCO-Norfolk Form for First Report of Injury (FROI) available at Buyer's EHS Department or any other form which includes all necessary information. This report shall be delivered to Buyer's EHS Department.
- (i) Seller shall immediately notify Buyer's EHS Department, in writing, upon receiving notice of any inspection from either United States OSHA or Virginia OSHA representatives, of their work area at the Facilities. In the event of such an inspection, Seller shall permit Buyer's personnel to be present at any opening conference, the inspection, and any closing conference, and Seller shall provide Buyer with copies of all correspondence, including citations, received from OSHA or Virginia OSHA.
- (j) If, in Buyer's sole opinion, Seller fails to comply with this Safety Section, Buyer may without prejudice to any other legal or contractual rights of Buyer, issue an order stopping all or part of the Contract Work. Seller shall have no claim for extension of time or for compensation or damages by reason of or in connection with such work stoppage.
- (k) To the extent required of Buyer's own employees, personal protective equipment to include but not limited to hard hats, safety shoes, protective eyewear, and hearing protection are required, at Seller's expense, for any and all of Seller's employees, or Seller's subcontractors' or suppliers' employees, who will be conducting Contract Work in production areas of the Facilities.

**4. Security**

Seller shall comply with Buyer's security policies and procedures regarding personnel administration, vehicle operations, and general security practices. Willful or repeated negligent noncompliance by Seller or any of its subcontractors with any such security policies or procedures shall constitute a material breach of this Contract.