

## Purchasing Terms & Conditions



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F-840-008 rev A - June 23, 2021

### 1. **CONTRACT FORMATION.**

- a. The Purchase Order ("PO") or Blanket Purchase Agreement ("BPA") to which these General Provisions are incorporated by reference (hereafter the "Order") constitutes an offer by the Jonesboro Tool & Die or JTD legal entity (e.g., Jonesboro Tool and Die Inc.) (hereafter referred to as the "Company" or Buyer) identified in such Order to purchase the products or materials ("Goods") and Services (Goods and Services comprise the "Work") described in the Order from the supplier identified in such Order (the "Seller"). If Seller accepts such offer, the Company and the Seller will have formed a contract on the terms and conditions set forth below (the "Contract").
- b. The Company limits acceptance of this offer to the terms and conditions contained in this Order, and objects to and rejects any terms and conditions that add to or differ from those set forth below unless accepted in writing by the Company.

### 2. **CONTRACT DIRECTION.**

- a. The person authorized by the Company's procurement organization to administer the Contract (the "Company Buyer" or "Buyer") is the only person with authority to modify its terms.
- b. Occasionally, the Company's engineering and technical personnel may provide assistance or technical advice, or exchange information with Seller's personnel concerning the Work. Such actions shall not be deemed a change under the Changes clause of the Contract and shall not provide a basis for an Equitable Adjustment. If Seller is in doubt as to whether it has received direction it is obligated to follow, it must promptly confirm with the Buyer in writing whether a change was intended. If Seller proceeds absent confirmation from the Buyer, Seller waives any right to request an Equitable Adjustment and is at risk of noncompliance with Contract requirements.
- c. Unless the Contract provides otherwise, all notices to be furnished by Seller shall be sent to the Buyer, including notices of delays, and bankruptcy or insolvency.

### 3. **TIMELY PERFORMANCE.** Time is of the essence in the performance of this Contract and failure to perform on time, if unexcused, shall be considered a material breach of this Contract. Seller shall immediately provide written notice to the Company of all pertinent details regarding any actual or potential cause or event that threatens the timely performance of the Contract. In the event of any actual or potential delay, Seller shall promptly notify the Buyer of the actions being taken to overcome or minimize the delay, provide the Buyer with a written recovery schedule, and unless Seller is excused from timely performance as provided in the *Force Majeure* or *Excusable Delay* clause of this Contract, ship via air or other expedited routing, without additional cost to the Company, to avoid or minimize delay to the maximum extent possible. Unless advance shipment has been authorized in advance in writing by Company's Buyer, Company shall refuse or return, at Seller's risk and expense, shipments made prior to thirty (30) days before the required scheduled delivery dates, and Company shall not be liable for any payment to Seller on such advance deliveries until the scheduled delivery dates in accordance with Section 18, Payment, below.

### 4. **NOTICE OF OBSOLESCENCE ISSUES.** Seller shall monitor and report any and all obsolescence issues that can be reasonably anticipated to adversely affect the availability of Goods or materials currently used in production for the Company. The Seller shall report this information in writing to the Buyer promptly, and in no event later than seven (7) days of Seller's first knowledge, and subsequently as directed by the Buyer. Additionally, notification shall be sent to [blandon@jonesborotool.com](mailto:blandon@jonesborotool.com). These obligations shall be effective during the performance of the Contract and shall survive the expiration of this Contract for a minimum of one (1) year following the end of the period of performance inclusive of Contract close-out.

### 5. **COUNTERFEIT PARTS PREVENTION.** (Applicable if the Work Includes the Delivery of Goods)

- a. For purposes of this Contract, Counterfeit Part means a product produced or altered to resemble a product without authority or right to do so, with the intent to mislead or defraud by presenting the imitation as the original or genuine or a new item. Such parts may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. A part is a suspect Counterfeit Part if visual inspection, testing, or other information provides reason to believe that the part may be a Counterfeit Part.
- b. Seller represents and warrants that only new and authentic materials are used in Goods to be delivered to Buyer under this Contract and that the Goods delivered contain no Counterfeit Parts or suspect Counterfeit Parts.
- c. Seller shall only purchase products to be delivered or incorporated as Goods to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Such products shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. Seller must make available to Buyer, at Buyer's request, OCM/OEM documentation that authenticates traceability of the components to that applicable OCM/OEM.
- d. If this Contract is issued under a U.S. Government contract, Seller shall maintain a documented system (policy, procedure, or other documented approach), consistent with applicable industry standards for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and untrusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining suspect counterfeit electronic parts and counterfeit electronic parts, and taking corrective action.
- e. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware that it has furnished Counterfeit Parts or suspect Counterfeit Parts to Buyer. Additionally, if this Contract is issued under a U.S. Government contract, for confirmed counterfeit electronic parts, notification must also be made not later than 60 days after discovery to the Government – Industry Data Exchange Program (GIDEP). Seller shall cooperate with

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Buyer in any investigation relating to such Counterfeit Electronic Parts or suspect Counterfeit Electronic Parts, including the impounding by Buyer or government agencies of the Counterfeit Electronic Parts or suspect Electronic Counterfeit Parts for purposes of investigation.

- f. This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Goods. To the extent such provisions conflict with this clause, this clause prevails.
- g. In the event that Goods delivered under this Contract constitute or include Counterfeit Parts or suspect Counterfeit Parts, Seller shall, at its expense, promptly replace such Goods so as to conform to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to Counterfeit Parts or suspect Counterfeit Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion such parts, including without limitation Buyer's costs of removing Counterfeit Parts, of installing replacement Goods and of any testing necessitated by the reinstallation of the Goods after Counterfeit Parts have been exchanged. All such costs shall be deemed direct damages. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Contract.
- h. Seller shall include the requirements of this paragraph or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Goods to Buyer.

### 6. **CHANGES.**

- a. The Buyer may at any time, by written notice to Seller, and without notice to sureties or assignees, make changes and give Contract direction within the general scope of the Contract to any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; (iv) property furnished by the Company or its customer; (v) time or place of performance; (vi) quantity; (vii) delivery schedule; and (viii) terms and conditions required to meet Buyer's obligation under its customer contracts, including but not limited to, any mandatory flowdown clauses.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Contract, the Company shall make an Equitable Adjustment in the Contract price or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- c. Seller waives a claim for an Equitable Adjustment under this Clause unless it submits such claim in writing to the Company within fifteen (15) days from the date of the notice of the change, unless the Company agrees in writing to a longer period.
- d. Failure to agree to any Equitable Adjustment shall be resolved in accordance with the Disputes clause of the Contract. However, nothing contained in this Clause shall excuse Seller from proceeding immediately in the performance of the Contract as changed.

### 7. **PRICING OF ADJUSTMENTS.** All price adjustments, including but not limited to Equitable Adjustments, under this Contract shall be based upon Seller's costs and a reasonable profit for work performed, unless profit is expressly excluded by terms of this Contract. The Company shall recognize costs that are reasonable, allowable and allocable under the standards of Part 31 of the Federal Acquisition Regulation ("FAR", Title 48, Code of Federal Regulations) in effect on the date of this Contract.

### 8. **STOP WORK ORDER.** As directed in writing by the Buyer, Seller shall stop performance of all or part of the Work for up to ninety (90) days, or for such longer time as the parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the stopped Work during the period of the Stop Work order. The Buyer shall either terminate or continue the stopped Work by giving written notice to Seller before the expiration of the Stop Work order. An Equitable Adjustment may be made, as provided by the Pricing of Adjustments and Changes clauses of the Contract, if the stopped Work is changed or continued, in whole or in part.

### 9. **CANCELLATION OR TERMINATION FOR BUYER CONVENIENCE.**

- a. The Company may terminate the Contract for its convenience at any time and without cause, in whole or in part, by giving Seller written notice of such termination. In the event of such a termination, Seller shall stop work immediately, and shall cause all of its suppliers and subcontractors to stop work immediately, on the terminated portion of the Contract. Seller shall continue all work that is not terminated. Buyer may take immediate possession of all goods, complete or incomplete, and all products resulting from services upon written notice of termination to Seller.
- b. Seller shall be entitled to an Equitable Adjustment, including reasonable settlement expenses. Seller shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit for work performed to date of termination. Seller shall not be paid for any work performed or costs incurred that could have been reasonably avoided. Seller must submit its proposal to the Buyer for costs relating to the termination within sixty (60) days after the effective date of the termination. In no event shall the Company be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price.

### 10. **TERMINATION FOR SELLER BREACH OR DEFAULT.** The Company may terminate the Contract for default, in whole or in part, if Seller fails to comply with any of the material terms of the Contract; endangers performance of the Contract by failing to make progress; upon reasonable request by the Company, fails to provide adequate assurances of future performance; files or has filed against it a petition in bankruptcy; or becomes insolvent or suffers a material adverse change in financial condition. Seller shall have ten (10) days, or such longer period as the Company may authorize in writing, to cure any such failure after receipt of notice from the Company. However, Seller shall not be entitled to a cure notice for a default involving delivery schedule delays. The Company shall only be liable for Work accepted, and Seller will be liable to Company for all direct losses and direct damages which may be suffered by Company by reason of the default, including any increase in the costs incurred by Company in procuring Work from another source. The Company may require Seller to deliver any supplies, materials, tooling and drawings that Seller has specifically produced or acquired for the terminated portion of the Contract. The Company and Seller shall agree on the amount of payment for these manufacturing materials. However, nothing contained in this Clause shall excuse Seller from proceeding immediately in the performance of all work not terminated. If after termination

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under this Clause, it is later determined that Seller was not in default, the termination shall be deemed a Termination for Convenience. The rights and remedies of Company are in addition to any other rights provided to the Company at law, in equity, or under the terms and conditions of the Contract.

11. **FORCE MAJEURE OR EXCUSABLE DELAY.** Except for a default of Seller's subcontractor at any tier, Seller shall not be in default or charged for any liability because of a failure to perform the Contract under its terms, or because of a failure to make progress so as to endanger performance, if the failure arises from causes beyond the control of and without the fault of Seller; provided, Seller gives to the Buyer prompt notice in writing as soon as it appears that such cause will delay performance of the Contract. Such causes shall include, without limitation: acts of God or of the public enemy; acts or orders of any Governmental authority, including acts of the Government in its sovereign or contractual capacity; natural disasters including earthquakes, fires, storms, floods, or unusually severe weather; epidemics or quarantine restrictions; unavoidable labor strikes, civil disturbances or acts of terrorism; and freight embargoes. Failure of any relevant government to issue any required import or export license, or withdrawal/termination of a required import or export license by such relevant government, shall relieve Buyer of its obligations under this Contract, and shall relieve Seller of its corresponding obligations. Correspondingly, the Company shall not be liable for any failure or delay in performance of the Contract due to causes or circumstances beyond its control and without its fault or negligence.
12. **INSPECTION.** All Work shall be subject to inspection, monitoring, and testing ("Inspection") by the Company and its customers at reasonable times and places. The Company shall have the right to inspect work in process. Seller shall provide information and access to facilities necessary for a safe and convenient Inspection at no additional charge, so long as the Inspection does not unduly delay work. No Inspection shall relieve Seller of any of its obligations to furnish all Work in accordance with requirements of the Contract.
13. **ACCEPTANCE AND REJECTION.**
  - a. Neither receipt nor payment shall constitute final acceptance. The Company shall accept or reject the Work within a reasonable time after delivery. The Company will not be obligated to accept substitutions, untimely deliveries, deliveries in quantities other than those ordered by the Buyer or deliveries of Work failing to conform to the Company's specifications or Seller's warranties described in the Contract. The Company will not accept any delivery received thirty (30) days or more prior to the delivery schedule on the Contract. Acceptance by the Company of substitutions, untimely deliveries, partial deliveries or non-conforming Work shall not waive the delivery schedule or other requirements of the Contract.
  - b. If Seller delivers non-conforming Work, the Company may (i) accept all or part of such Work; (ii) return the Work for credit or refund; (iii) require Seller to promptly correct or replace the Work; (iv) correct, or have a third party correct, the Work; or (v) perform, or have a third party perform, replacement Work.
  - c. Seller shall not redeliver corrected or rejected Work without disclosing the corrective action taken. In the event non-conforming Work is re-delivered subsequent to corrective action, the Company may require Seller, at Seller's expense, to include an inspection report from a third-party inspector acceptable to the Company with any subsequent redelivery.
14. **DUTY OF COOPERATION.** Upon reasonable suspicion that Goods or services procured under this Contract may contribute to a Company product failure of any type, the Seller shall immediately upon direction take reasonable actions and incur reasonable costs toward a cooperative failure cause investigation, for the duration of a reasonable investigation opportunity. The responsibility for costs incurred pursuant to this Clause will be determined in accordance with the terms of this Contract.
15. **DISPUTES.** Before commencing litigation, the parties shall attempt to negotiate in good faith any matters that are in dispute by escalating to successive levels of management. Any dispute not settled between the parties may be decided by recourse to an action at law or in equity and will be referred to a court of competent jurisdiction in the state of California. Pending final resolution of any dispute between the parties, Seller shall diligently proceed with performance of the Contract, as directed by the Company, as though no dispute existed. The Contracts Disputes Act shall have no application to this Contract, and nothing in this Contract grants Seller a direct claim or cause of action against the Government.
16. **PRICES AND TAXES.**
  - a. The Company will not pay prices for Work higher than those prices stated in the Contract. Seller warrants that the prices of the items covered by this Contract are not in excess of Seller's lowest prices in effect on the date of this Contract for comparable quantities of similar items. If Seller reduces prices for this Work after formation of the Contract, but prior to payment, such price reductions will apply to this Contract. Unless otherwise specified, the prices include all charges for packaging, handling, storage and delivery.
  - b. Unless prohibited by law or otherwise specified, Seller shall pay and has included in the price of the Contract any federal, state or local tax, transportation tax, or other tax which is required to be imposed upon the items ordered hereunder, or by reason of their sale or delivery, except for applicable sales and use taxes that are listed separately on Seller's invoice. Prices shall not include any taxes, duties, tariffs or similar fees for which the Company has furnished a valid exemption certificate or other evidence of exemption.
17. **INVOICES.**
  - a. All invoices must include the following data elements required for timely receipt and payment without error and matching Company's PO/Contract: (i) Seller's name; (ii) invoice number; (iii) invoice date; (iv) invoice payment terms; (v) PO/Contract number; (vi) PO/Contract line item number and schedule number (if applicable); (vii) line item description of the Work/nomenclature; (viii) quantity invoiced; (ix) unit of measure; (x) unit price; (xi) line item extended total price; (xii) total invoice amount; (xiii) Seller's packing slip number and lot/serial number(s), if required; and (xiv) name and address for remittal of payment. Additional required data elements may be identified and included in other instructions in the PO/Contract. Any deviation to this requirement must be approved by the Buyer in writing in advance of shipment or invoice submittal. Failure to adhere to this clause may delay receipt or result in rejection of items shipped or delay in payment of invoices.

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- b. Seller shall deliver invoices to [amber@jonesborotool.com](mailto:amber@jonesborotool.com). Failure to deliver invoices to Accounts Payable at the email address or the address on the face of the PO/Contract may result in delay in payment.
  - c. If invoicing at times other than at delivery, Seller shall substantiate invoices by evidence of actual payment and individual daily job timecards, or by other evidence approved by the Buyer.
  - d. The Company may audit, or cause to be made such audit, of the invoices and substantiating information at any time or times prior to final payment under the Contract. Each payment made by the Company shall be subject to reduction to the extent of amounts that are found by the Company not to have been properly payable, and shall be subject to reduction for overpayments or to increases for underpayments on preceding invoices.
18. **PAYMENT.**
- a. Unless provided otherwise in the Contract, payment due date, including discount period, shall be computed from the later of the scheduled Work date; the actual Work date; or, the date of receipt of a proper invoice. However, if specified in the Contract, the Company shall not be obligated to pay until final acceptance of delivered goods. The Company may, but shall not be obligated to, pay any invoice that is received later than sixty (60) days past the associated Work completion.
  - b. Payment shall be deemed to have been made on the date payment is processed by check print or electronic funds transfer is initiated.
  - c. The Company may take advantage of the most favorable discount incorporated in the Contract or found on individual invoices. Delays attributable to the fault of Seller, such as late invoices, errors or omissions on invoices, or lack of supporting documentation required by the Contract, will entitle the Company to withhold payment without losing any discount privileges or incurring any interest expense payable to Seller.
  - d. The Company shall not be obligated to pay Seller any amount in excess of the price set forth in the Contract, unless and until the Buyer modifies the price for performance under the Contract. When and to the extent that the price set forth in the Contract has been increased, any hours expended and material costs incurred by Seller in excess of the price prior to the increase shall be payable to the same extent as if such hours expended and material costs had been incurred after such increase in the price.
19. **SET-OFFS.** The Company may set-off any amounts the Company in good faith claims to be due from Seller against any sums otherwise due to Seller whether such claims arise under or outside the Contract.
20. **GENERAL INDEMNIFICATION FROM SELLER NEGLIGENCE.**
- a. Seller shall be solely responsible for the safe conduct of the work under the Contract and for the protection of all persons, premises, or facilities involved in the performance of the Contract. Seller shall take all precautions to prevent the occurrence of any accident, injury, death or loss to any person or property in the performance of the Contract, whether on Seller's property, the Company's property or elsewhere.
  - b. Seller shall indemnify, defend, and hold harmless the Company, its subsidiaries, affiliates, parent, and their customers, successors, assigns, employees, officers, attorneys and agents from and against any and all losses, liabilities, damages, claims, demands, subrogation, suits, actions, proceedings, costs, and expenses, including attorneys' fees and costs of litigation related thereto or incident to establishing the right to indemnification, for property damage, or for personal injury to, or death of, any person, including, but not limited to, employees of Seller or its subcontractors, arising from or relating to the performance of the Contract, to the extent of the negligence or misconduct of Seller, its subcontractors or any of their respective employees.
21. **PROPERTY.**
- a. Unless otherwise agreed herein, Seller at its cost shall supply all material, equipment, designs, drawings, tools, and facilities required to perform this Contract. Seller assumes, and shall ensure that its subcontractors assume, for it and its employees, the risk of loss and destruction of, and damage to any of its property, whether owned, rented, borrowed or otherwise. Seller waives, and shall ensure that its subcontractors waive, for it and its employees, all rights of recovery against the Company, its subsidiaries, affiliates, parent, and their customers, successors, assigns, employees, officers, attorneys and agents for any such loss and destruction of, or damage to, any of its property. "Subcontractor" as used in this Contract shall include Seller's subcontractors at any tier.
  - b. Seller shall be responsible and accountable for all property provided to Seller that is owned by either Company or its customer and all property acquired, fabricated, or otherwise provided by the Seller for performing this Contract, and to which the Company or Government has title ("Accountable Property"). Seller shall use, manage, maintain, protect, and preserve Accountable Property in accordance with good commercial practices, at Seller's risk and sole expense. Seller's obligation to maintain Accountable Property shall continue until formally relieved of responsibility by authorized means. Seller's obligation to maintain Accountable Property shall continue until formally relieved of responsibility by authorized means. This requirement applies to all Accountable Property under the Seller's stewardship, possession or control, including its vendors or subcontractors. The Company or its customer shall have access at all reasonable times to the premises at which Accountable Property is located for the purpose of inspecting the Accountable Property.
  - c. Seller shall maintain insurance covering the full replacement value of all Accountable Property and providing protection against all perils normally covered in an "all-risk" policy, including, but not limited to, fire, windstorm, explosion, riot, civil commotion, aircraft accident, earthquake, flood or other acts of nature. Seller is responsible for any loss, theft, destruction or damage of Accountable Property while in Seller's possession, custody or control. Seller shall promptly, and in no event more than ten (10) days after first learning of such an event, inform the Buyer in writing of any loss or damage to Accountable Property. However, Seller is not responsible for reasonable wear and tear to Accountable Property or for Accountable Property that is properly consumed in performance of the Contract.
  - d. Unless the Company otherwise expressly permits in writing, Seller shall use Accountable Property only in the performance of the Contract. Seller shall mark, tag or segregate Accountable Property. The Company does not warrant the suitability of Accountable Property and all Work performed

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must be in strict accordance with drawings and specifications. As directed by the Buyer or upon completion or termination of the Contract, Seller shall provide the Buyer, in acceptable form, an inventory list of Accountable Property and shall deliver such Accountable Property, to the extent not incorporated in delivered materials, to the Buyer.

- e. Title to Accountable Property shall remain in the Company or its customer and shall not be affected by its incorporation into or attachment to any property not owned by the Company or its customer, nor shall Accountable Property become a fixture or lose its identity as personal property by being attached to any real property. Title to all property (including material) purchased by Seller for which Seller is entitled to be reimbursed as a direct item of cost under this Contract shall pass to and vests in the Company upon Seller's delivery of such property. Title to property purchased by Seller, the cost of which is reimbursable to Seller, shall pass to and vest in the Company upon the earliest of (i) issuance of the property for use in performance of the Contract; (ii) commencement of processing of the property for use in performance of the Contract; or (iii) reimbursement of the cost of the property by the Company.
- f. The Government Property Clause contained in this Contract shall apply in lieu of paragraphs b. through e. above with respect to Government-furnished property, or other property to which the Government has title, or may take title under this Contract.

### **22. COMPANY AND SELLER PROPRIETARY INFORMATION.**

- a. Information, including but not limited to technical information contained in documents, drawings, publications, specifications, schedules and the like, provided by the Buyer to Seller remains the property of the Company, and may not be disclosed to any person or organization by Seller, without the express prior written approval of the Buyer. Seller shall not use or reproduce such information except as necessary for the performance of this Contract, or as the Company may otherwise allow in writing. Seller will not use such designs, tools, patterns, drawings, information or equipment for the production of larger quantities than those specified herein or for customers other than the Company. Seller shall maintain data protection processes and systems sufficient to protect Company information adequately.
- b. Unless otherwise agreed, within sixty (60) days after completion of work under this Contract, Seller shall return to the Company all information covered by this Clause, or destroy such information and certify to the Buyer in writing that such destruction has been completed.
- c. Seller agrees that failure to (i) comply with the terms of any and all proprietary information or nondisclosure agreements Seller may have with the Company or (ii) respect all "Proprietary Information," "Confidential," or similar markings and restrictive legends applied by the Company to any information provided to Seller, will constitute a material breach of this Contract.
- d. Seller shall not provide any proprietary information of Seller or any third party to the Company without prior execution of a proprietary information or nondisclosure agreement by the parties. Any knowledge or information that Seller has disclosed or may disclose to the Company incident to the award of this Contract or the performance of the Contract shall not, unless otherwise agreed in writing by the Buyer, be considered confidential or proprietary to Seller and shall be acquired free from any restriction other than restrictions that may be imposed by intellectual property considerations such as patent rights, copyrights, and trademarks.

### **23. DATA RIGHTS, INTELLECTUAL PROPERTY INDEMNIFICATION AND INVENTIONS.**

- a. This clause is not applicable for commercial off-the-shelf Work, unless such Work is modified or redesigned pursuant to this Contract.
- b. To the extent any independently conceived, created, developed or generated inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are delivered to the Company as part of the Work and not owned or otherwise licensed to the Company, Seller grants to the Company an irrevocable, nonexclusive, world-wide, royalty-free license to use, sell, or offer for sale, reproduce, prepare derivative works of and distribute its pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials incorporated into the Company's goods and services.
- c. Seller shall indemnify, defend, and hold harmless the Company, its subsidiaries, affiliates, parent, and their customers, successors, assigns, employees, officers, attorneys and agents from and against any and all losses, liabilities, damages, claims, demands, subrogation, suits, actions, proceedings, costs, and expenses, including attorneys' fees and costs of litigation related thereto or incident to establishing the right to indemnification, arising from any action by a third party that is based upon a claim that the Work performed under the Contract infringes, or otherwise violates, the intellectual property rights of any person or entity. Seller will have no obligation under this provision for infringement arising from (i) Seller's compliance with detailed specifications issued by the Company where infringement could not be avoided in complying with such specifications, or (ii) use or sale of Work by the Company in combination with products not delivered by Seller if such infringement would not have occurred from the use or sale of the Work solely for the purpose for which the Work was designed or sold to the Company.
- d. Seller hereby assigns to the Company ownership of all intellectual property rights in inventions, technology, designs, works of authorship, mask works, technical information, computer software, copyrights, business information technical data, documents, drawings, publications, specifications, schedules or the like and other information conceived, created, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller shall disclose directly to the Buyer, or cause its employees to so disclose, promptly and in written detail, all such works of authorship, information, inventions, discoveries and improvements. Seller agrees to maintain and disclose to the Buyer written records of, and otherwise provide the Company with full access to, the subject matter covered by this Clause and that all such subject matter will be deemed information of the Company and subject to the protection provisions of the Company and Seller Proprietary Information clause. Seller agrees to execute, at the Company's request and expense, all documentation necessary to perfect title therein to the Company. Seller agrees to assist the Company, at the Company's request and expense, in every reasonable way, in obtaining, maintaining and enforcing patent and other intellectual property protection on the subject matter covered by this clause. Seller shall take, or cause its employees to take, any and all actions required to effectuate the purpose of this Clause.

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### 24. **CYBERSECURITY.**

- a. Seller shall apply reasonable and appropriate safeguards and operations to protect information provided by Company to Seller against accidental and unlawful destruction, alteration, and unauthorized or improper disclosure or access regardless of whether such information is on Seller's internal systems or a cloud environment.
- b. If included in this Contract, FAR 52.204-21 applies to Federal Contract Information, DFARS 252.204-7012 applies to Covered Defense Information, or NASA FAR Supplement 1852.204-76 applies to NASA Electronic Information, as those terms are defined in the respective clauses.
- c. If Seller becomes aware of any compromise of information used in the performance of this Contract or provided by Company to Seller, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), Seller shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to Company after learning of the Incident. "Compromise" as used in this clause means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. At Seller's expense, Seller shall (i) immediately investigate any Incident, (ii) make all reasonable efforts to secure Sensitive Information and mitigate the impact of the Incident, (iii) provide timely and relevant information to Buyer about the Incident on an ongoing basis, and (iv) cooperate as applicable with Buyer to provide notice to affected third parties.
- d. Failure to report or provide these notices shall be considered a material breach of this Contract. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in this Contract or imposed by local, federal, state or other governmental agencies or departments.

25. **MISSILE DEFENSE AGENCY (MDA) CONTROLLED UNCLASSIFIED INFORMATION.** In the event that Seller performs Work for Company that involves MDA CUI, Seller shall abide by any conditions or restrictions of a Contractor Equivalent Background Check (CEBC) issued by MDA, which shall be deemed to be incorporated in the Contract by reference.

26. **PROHIBITED SUBCONTRACTORS: KASPERSKY, HUAWEI, ZTE.** In accordance with Public Law 115-91 and FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, and Public Law 115-232 and FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, Seller is prohibited from delivering to Company the covered telecommunications equipment as defined in FAR 52.204-25 or covered articles as defined in FAR 52.204-23.

27. **PROTECTION OF PERSONAL INFORMATION. (Applicable Only to Services Involving the Collection and Processing of Personal Information)** To the extent Seller receives or has access to personal information, as defined in the California Consumer Protection Act (the "CCPA"), of or relating to California residents, Seller is prohibited from selling, retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the Contract for the business, or as otherwise permitted by the CCPA, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in this Contract.

28. **INSURANCE.** Seller shall, at its own expense, maintain insurance in accordance with any requirements as specified in the Contract. Seller's obligations for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract. Without in any way limiting the foregoing undertaking, Seller and its Subcontractors at any tier shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth and shall maintain proper Worker's Compensation insurance or a Company-approved self-insurance program covering all employees performing this Contract.

### 29. **EXPORT CONTROL.**

- a. Seller shall comply with U.S. export and import controls laws and regulations, including but not limited to (i) the International Traffic in Arms Regulations ("ITAR") (22 CFR 120 et seq.); (ii) the Export Administration Regulations ("EAR") (15 CFR Part 730-774); (iii) the regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (31 CFR Part 500-598); (iv) the regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") found in 27 CFR Chapter II; (v) all other applicable U.S. Government regulations relating to the importation of goods into the United States (including, but not limited to, the regulations administered by the U.S. Customs and Border Protection ("CBP") at 19 CFR 0 et seq. and other import regulations promulgated by other U.S. agencies which may be enforced by CBP); and (vi) laws and regulations of other countries, (collectively "export control laws and regulations").
- b. Seller shall control the disclosure, export, re-export, transfer and retransfer of, and access to, any hardware, software, controlled technical data, technology, and/or services (collectively referred to as "items") received under this Purchase Order to ensure that any such disclosure, export, re-export, transfer or retransfer is undertaken in accordance with U.S. export control laws and regulations. Seller agrees that no controlled items provided by Buyer in connection with this Purchase Order shall be provided to any person or entity unless the transfer is expressly permitted by a U.S. Government license or other authorization, or is otherwise in accordance with applicable laws and regulations. It shall be the responsibility of Seller to be cognizant of (including by requesting such information from Buyer if needed) the proper jurisdiction and classification under the ITAR and/or EAR of the items provided by Buyer prior to any release to a third party, including foreign affiliates or employees. If a final jurisdiction and classification determination for items provided by the Buyer has not been provided, Seller cannot export or otherwise release the information to a foreign person until a final jurisdiction and classification is approved by Buyer and any applicable export authorizations are obtained. For items subject to the ITAR, this responsibility includes Seller's cognizance of the ITAR controls applicable to any technical data or defense service furnished to Seller by Buyer, including when exported to Seller from the United States in furtherance of Buyer's technical assistance, manufacturing license agreement or other ITAR authorization prescribing ITAR jurisdiction of any defense article which may be produced or manufactured by Seller from such technical data or defense service.



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- c. Seller shall notify Buyer if any deliverable under this Purchase Order, for which the Seller is the design authority, is subject to U.S. export and import controls laws and regulations described in Paragraph 23(a). Before providing Buyer any deliverable subject to the EAR or the ITAR, Seller shall provide in writing to the Buyer's Procurement Representative the export classification of any such item or controlled data, including the export classification of any: (i) dual use goods and technology subject to the EAR, including any embedded ITAR-controlled or EAR 500 or 600 series' item or technology; (ii) defense article, including any technical data, controlled by the ITAR; and (iii) item or technology controlled by the EU List of Dual Use Items or by other applicable national export control lists.
  - d. If Seller is or has been engaged in the U.S. in the business of either exporting, manufacturing or brokering ITAR Items, Seller represents that it is registered and maintains its registration with the Directorate of Defense Trade Controls ("DDTC"), as may be required by 22 C.F.R. 122.1 of the ITAR and that it maintains an effective export/import compliance program in accordance with DDTC guidelines.
  - e. Seller shall immediately notify the Buyer if Seller is, or becomes, listed in the Restricted or Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Government entity or agency. Where Seller is a party to or signatory under a Company export license or export agreement (e.g., Technical Assistance Agreement, Manufacturing License Agreement), Seller shall provide prompt notification to the Buyer in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of any U.S. Export Control Law, or the initiation or existence of a U.S. Government investigation that could affect the Seller's performance under this Contract.
30. **BUSINESS ETHICS AND COMPLIANCE.** Seller agrees that it will not engage in, and shall take steps to reasonably ensure that anyone working on its behalf in connection with performance under this Contract does not engage in activity that would expose the Company to a risk of criminal, civil, or administrative penalties under any applicable laws and regulations, including but not limited to those pertaining to corruption, bribery, antitrust, and trafficking in human persons. Seller agrees that it shall not offer or make any improper payments of money or anything of value to government officials, political parties, candidates for public office, or other persons.
31. **REPRESENTATIONS OF MATERIAL FACTS.** The award of this Contract was in reliance on the facts reflected in certifications and representations made by Seller prior to the award. Those same facts can determine whether the intended end use of Seller's Work is lawful. If, at any time during the performance of this Contract, Seller discovers that any information contained in these certifications and representations is erroneous or is no longer current, Seller must provide immediate written notice of the correction and current information to the Buyer. Seller and its subcontractors at all tiers are also required to notify their respective buyers, up to and including the Company Buyer if any of them at any tier becomes suspended, debarred or otherwise determined ineligible to participate in contracts. This obligation is a material term of this Contract and must be included in all subcontracts at all tiers. The corrected and current facts could lead the Company to divert Seller's Work from the intended use, terminate continued performance, or other business decision. A breach of this obligation is grounds for a default termination.
32. **PROHIBITION OF GRATUITIES.**
- a. Seller warrants that its officers, directors, employees, agents and representatives have not offered or given, and will not offer or give, any gratuities in the form of entertainment, gifts, or otherwise, to any officer or employee of the Company or its Customer with a view toward (i) securing this or any other Contract issued by the Company, (ii) any favorable treatment with respect to the awarding or amending of this or any other Contract issued by the Company or (iii) the making of any determination with respect to Seller's rights or duties under this or any other Contract issued by the Company.
  - b. Seller warrants that it has not made or solicited and will not make or solicit kickbacks as defined in FAR 52.203-7 or the Anti-Kickback Act (41 U.S.C. 51-58).
  - c. For any breach of Seller's warranty under this Clause the Company shall have, in addition to any other rights provided by this Contract, the right to terminate all Contracts with Seller for default, and to recover from Seller the amount of any gratuity paid together with all damages (including the amount of any penalty or fine) that are incurred by the Company as a result of Seller's breach, plus all reasonable costs (including attorney fees) expended by the Company in seeking such recovery.
33. **CONFLICT MINERALS COMPLIANCE.**
- a. Sellers that provide Goods shall provide Goods that are "DRC conflict-free" in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). The term "DRC conflict-free" means (i) that a product does not contain any tantalum, tin, tungsten or gold (3TGs) necessary to the functionality or production of that product that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo (DRC) or an adjoining country; or (ii) such 3TGs were obtained from recycled or scrap sources.
  - b. In accordance with Section 1502 of the Act, Seller shall (i) identify whether such Products contain 3TG; (ii) determine whether any such minerals originated in "covered countries", as defined in the Act; and (iii) perform appropriate due diligence on its supply chain in support of Buyer's obligations under the Act.
  - c. Upon request by the Company, Seller will annually provide timely information about the presence and sourcing of 3TGs used in the products supplied to the Company. The Seller may use the current Conflict-Free Sourcing Initiative's Conflict Minerals Reporting Template (CMRT) which can be found online or complete an annual survey provided by Company or its third-party reporting entity.
34. **RESPONSIBILITY FOR GOODS, TITLE AND RISK OF LOSS. (Applicable if the Work Includes the Delivery of Goods)**
- a. Title to Goods furnished under this Contract shall pass to the Company upon final acceptance by the Company, regardless of when or where the Company takes physical possession, unless the Contract specifically provides for earlier passage of title.

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- b. Unless the Contract specifically provides otherwise, risk of loss of or damage to Goods shall remain with Seller, and shall not pass to the Company, until: (i) delivery of the Goods to a carrier, if transportation is Free on Board (F.O.B.) origin; or, (ii) delivery of the Goods to the Company at the destination specified in the Contract, if transportation is F.O.B. destination. The definition of F.O.B. in the prior sentence shall be governed by the Uniform Commercial Code in effect in domestic shipments from the U.S. but for shipments to Company from outside the US, the INCOTERMS as it may be amended, shall be used for shipping terms. The risk of loss of or damage to Goods that the Company has a right to reject remains with the Seller until final acceptance or until all non-conformances are cured.
- 35. PACKING AND SHIPPING. (Applicable if the Work Includes the Delivery of Goods)**
- a. Seller shall pack Goods in accordance with good commercial practice to prevent damage and deterioration, unless specific packaging requirements are identified in technical data requirements incorporated in the Contract. Seller shall advise the Buyer in advance of shipping if Seller believes that the specified packaging will not prevent damage or deterioration in shipping.
- b. Seller shall include a complete packing list with all shipments.
- c. Packing lists will specify data that will allow receipt to be processed in accordance with Buyer's PO/Contract, including at a minimum: (i) date of shipment; (ii) the PO/Contract number; (iii) PO/Contract line item number and schedule number if applicable; (iv) quantity shipped; (v) item description/nomenclature; (vi) manufacturer lot number/serial numbers(s) if required; (vii) unit of measure; and (viii) the names and addresses of consignor and consignee. Seller shall mark containers and packages with necessary lifting, loading, and handling instructions, and ensure the Contract number is referenced on exterior container labels. Seller shall mark each container in relation to the number of containers in a shipment (e.g., 1 of 3, etc.). Additional data elements may be identified and included in other instruction in the Contract. Failure to adhere to this clause may delay receipt, result in rejection of delivered goods or delay payment of invoices.
- 36. HAZARDOUS MATERIALS. (Applicable if the Work Includes the Delivery of Goods)**
- a. Seller shall package, label, transport and ship hazardous materials or items containing hazardous materials in accordance with all applicable federal, state and local laws and regulations, including but not limited to Title 49 of the Code of Federal Regulations.
- b. Seller, prior to each hazardous material shipment, shall notify the Company Buyer of its nature and shipment data by such means of communication as will allow for proper preparation for acceptance of delivery by the carrier of the material and shall identify same on all shipping documents.
- c. Seller represents that each chemical substance constituting or contained in Work delivered to the Company is included on the current inventory of chemical substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act, as amended.
- d. Seller will provide to the Company with each delivery any Safety Data Sheet applicable to the Work that conforms with, and contains the information required by, the Occupational Safety and Health Act of 1970 and implementing regulations, or a state approved counterpart, as it may be amended.
- 37. WARRANTY. (Applicable if the Work Includes the Delivery of Goods)**
- a. Seller warrants that all Goods furnished under the Contract shall conform to all specifications and requirements of the Contract and shall be free from defects in materials and workmanship. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by the Company, Seller warrants that the Goods shall be free from design and specification defects.
- b. This warranty shall begin after final acceptance by the Company and shall extend for a period of (i) the manufacturer's warranty period or six (6) months, whichever is longer, if Seller is not the manufacturer and has not modified the Goods; or (ii) one (1) year or the manufacturer's warranty period, whichever is longer if Seller is the manufacturer of the Goods or has modified them. The Company shall give written notice of any warranted defect or nonconformance of Goods. The Company, at its option, may require Seller to promptly correct or replace warranted Goods at no expense to the Company. If correction or replacement by Seller is not timely, the Company may, at Seller's expense, return the Goods to Seller, correct or replace the Goods, or have a third party correct or replace the Goods. Seller shall comply with the Company's direction under this provision. If it is later determined that Seller did not breach this warranty, the parties shall equitably adjust the contract price.
- c. This warranty shall survive inspection, test, acceptance of and payment for Goods, and shall run to the Company and its successor, assigns, and customers. If the Contract expires, is completed or is terminated, Seller shall not be relieved of the continuing obligations of this warranty.
- 38. WARRANTY OF SERVICES. (Applicable if the Work Includes the Performance of Services Tasks or Labor Hour/Time and Material Services)**
- a. Seller shall assign personnel who are capable, skilled, qualified, and competent to perform in a manner that is satisfactory to the Company. Notwithstanding inspection and acceptance by the Company, the Seller warrants that it will perform the Work under this Contract with the high degree of professional skill and sound practices and judgment normally exercised by recognized professional firms with respect to services of a similar nature or the degree Seller described in proposals or marketing materials, whichever is higher. If the Seller is required to correct or re-perform nonconforming Work, Seller shall be subject to this Clause to the same extent as work initially performed.
- b. Seller warrants that it is and shall remain free of any obligation or restriction that would interfere or be inconsistent with or present a conflict of interest concerning the Work to be performed by Seller under this Contract.
- c. Seller warrants the services performed shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this contract, and be free from defects in design, materials, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one year or seller's standard warranty period whichever is greater. This warranty shall survive inspection, acceptance and payment, and shall run to the Company and its successor, assigns, and customers. If the Contract expires, is completed or terminated, Seller shall not be relieved of the continuing obligations of this warranty.



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- 39. SELLER'S RESPONSIBILITIES FOR ITS EMPLOYEES. (Applicable if the Work Includes the Performance of Services Tasks or Labor Hour/Time and Material Services)**
- a. Seller shall assign personnel who are capable, skilled, qualified, and competent to perform in a manner that is satisfactory to the Company. All performance by Seller under the Contract is at Seller's risk as to the methods, processes, procedures, and safe conduct of the work, except as otherwise specified.
  - b. Seller is an independent contractor for all purposes. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to the Company. Seller and its agents, representatives, and employees shall not be considered agents, representatives, or employees of the Company.
  - c. Seller shall comply with all directives established by the Company or its customers for access to and activities on premises controlled by the Company or its customers. Seller shall ensure that its employees are adequately trained to comply with security, safety, and environmental requirements when performing services on Company or customer facilities.
  - d. Unescorted access to all Company restricted areas at sites and facilities regulated by the Department of Homeland Security will require a Personnel Surety Background Check. Upon contract award and prior to performance of work in any restricted areas, Seller is required to submit background check applications to a third party vendor, identified by Company, for all Seller's employees requiring restricted area access for work performance. Failure to meet these requirements may result in contract termination. Seller is responsible for the cost of the background check service. The background check will include: a criminal history check, verification and validation of legal authority to work, and verification and validation of identity. Individual Seller applicants with unfavorable results may be denied access to Company sites and facilities.
  - e. The Company may require Seller to remove from its or its customer's premises any employee, agent, or representative of Seller, or any of its subcontractors that the Company reasonably deems incompetent, careless, unsafe, or otherwise objectionable. Seller shall immediately remove such employee, agent, or representative from the Company or its customers' premises. Seller agrees to indemnify, defend, and hold harmless the Company, its subsidiaries, affiliates, parent, and their customers, successors, assigns, employees, officers, attorneys and agents from and against any and all losses, liabilities, damages, claims, demands, subrogations, suits, actions, proceedings, costs, and expenses, including attorneys' fees and costs of litigation related thereto or incident to establishing the right to indemnification, arising from the Company's reasonable exercise of its rights under this provision.
  - f. Seller (i) shall indemnify and hold harmless the Company from all laborers', materialmen's, and mechanics' liens upon the property where services are performed, arising out of the services, labor and materials furnished by Seller or any of its subcontractors under this Contract, and (ii) shall keep said property free and clear of all liens, claims, and encumbrances arising from the performance of this Contract by Seller or its subcontractors.
- 40. ADDENDUM TO CLAUSE 18, PAYMENT. (Applicable to Labor Hour, and Time and Materials Contracts)**
- a. Hourly Rate:
    - (i) The amounts payable are computed by multiplying the appropriate hourly rate, or rates, set forth in the Contract, by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expenses and profit. Fractional parts of an hour shall be payable on a prorated basis. Invoices may be submitted once each month (or at more frequent intervals if approved by the Buyer) to the Buyer or Buyer's designee. The Seller will substantiate invoices by evidence of actual payment, individual daily job timecards, or such other substantiation approved by the Buyer. Promptly after receipt of each substantiated invoice, the Buyer shall, except as otherwise provided in this Contract, and subject to the provisions of subparagraph e. below, make payment thereon as approved by the Buyer.
    - (ii) Unless otherwise specified, the hourly rate or rates set forth in the Contract shall not be varied by virtue of the Seller having performed work on an overtime basis. If no overtime rates are provided in the Contract and the Buyer does not approve overtime work in advance, overtime is not authorized.
  - b. Materials and Subcontracts:
    - (i) The Buyer shall determine allowable costs of direct materials in accordance with Part 31 of the Federal Acquisition Regulations in effect on the date of this Contract. Reasonable and allocable material handling costs may be included in the charge for material, but only to the extent they are excluded from the hourly rate. (Material handling costs are comprised of indirect costs, including, when appropriate, General and Administrative expense, allocated to direct materials in accordance with the Seller's usual accounting practices). The Seller shall support all material costs claimed by submitting paid invoices, storeroom requisitions, or by other substantiation acceptable to the Buyer.
    - (ii) The cost of subcontracts that are authorized by the Buyer shall be reimbursable costs hereunder. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Seller to the subcontractor and shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under subparagraph a.(i) above.
  - c. It is estimated that the total cost to the Buyer for the performance of this Contract will not exceed the ceiling price set forth on the face of the Contract, and the Seller agrees to use best efforts to perform the work specified in the Contract and all obligations under this Contract within such ceiling price. If at any time the Seller has reason to believe that the hourly rate payments and material costs which will accrue in the performance of this Contract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the ceiling price then set forth in the Contract, the Seller shall notify the Buyer to that effect giving his revised estimate of the total price to the Buyer for the performance of this Contract, together with supporting reasons and documentation.

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- d. The Company shall not be obligated to pay the Seller any amount in excess of the ceiling price set forth in the Contract, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Contract, unless and until the Buyer shall have notified the Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this Contract. When and to the extent that the ceiling price set forth in the Contract has been increased, any hours expended and material costs incurred by the Seller in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.
- e. Travel and travel-related expenses ("travel expenses") shall not be paid, except for travel specifically identified in the Contract. Time spent in travel status is not compensated as time worked unless separately negotiated and specified in the Contract. If the Contract authorizes travel, the Company will reimburse Seller for the actual and reasonable travel expenses incurred by Seller as necessary to support the Company's business objectives stated in the Contract, except that for meals and incidental expenses, the Company shall only reimburse based on government per diem rate for the location in which the traveler is staying. Itemized receipts submitted with Seller's invoice must evidence such expenses, or an acceptable explanation is presented for any expense without a receipt. The Company may require Seller to use the Company's Expense Report form. In no event shall the Company reimburse Seller or Seller's employees for the cost of alcoholic beverages, fees for in-hotel movies, personal internet access or other such charges. Airline travel must be economy class unless business class is permitted in accordance with the Company's travel directives; first class air travel is not authorized unless required for reasonable accommodation of an established disability and approved by the Buyer in advance. The Company's travel directives (FIN-D-7.04.16.02, Employee Expense Reporting and Reimbursement, and FIN-D-7.04.16.01, Travel and Expense Report) form are available upon request to the Buyer. The Company reserves the right to make unilateral adjustments to Seller's invoice to reduce it by any unreasonable or unallowable amounts or to correct calculation errors.

### 41. **AUDITS AND RECORDS.**

- a. Upon written request, the Company is entitled to conduct a timely audit of Seller. The audit shall be for the purpose of determining compliance with this Contract, or in response to actions of the U.S. Government or the Company's Customers. The audit may include document review, on-site visits, and employee and subcontractor interviews, and may encompass review of direct and indirect ("corporate") functions. Information and material obtained from the audit will only be used in furtherance of this Contract, but shall be provided to Government personnel without limitation. Without limitation on the scope or frequency of audits, the Company will make reasonable efforts to minimize disruption and cost to Seller. Seller shall include a substantially identical audit provision in all subcontracts in support of this Contract. In the event any such audit shall disclose an overpayment to Seller, Seller shall pay Buyer, within 30 calendar days after receipt of notice from Buyer, the amount of such overpayment together with interest and Seller shall reimburse Buyer for the cost of such audit. The Buyer may agree in writing to extend the time for payment.
- b. Seller will maintain detailed records reflecting Seller's compliance with this Contract for at least 5 years from the date of last delivery or as otherwise specified in this Contract. Upon written request, Seller will provide, and will cause each of its sub-tier sellers to provide, access for Company's auditors, including contracted third parties identified by Buyer, regulatory authorities, Company's customers and the Government, to have access at all reasonable times to facilities, books and other pertinent records and any other information as requested by Company.
- c. Records of all manufacture, testing and inspection by Seller of the materials or goods shall be kept complete, separate and available to Buyer and its Customer during the performance of this Contract and for such longer periods as may be specified in this Contract, but not less than ten years after the last delivery of the materials, goods or services to Buyer.
- d. Company reserves the right to provide Seller's cost or pricing data to its customers including the Government in support of proposals, contracts and audits.

### 42. **GOVERNING LAW.**

- a. Seller warrants that it is familiar with all federal, state and local laws, regulations and other governmental directives that may relate to this Contract and performance under it, and that Seller has complied, and will comply, with such laws, regulations and directives in every respect that may be relevant to this Contract. Seller agrees to indemnify and hold the Company harmless to the full extent of any loss, damage or expense (including reasonable attorneys' fees) which the Company may incur as a result of Seller's violation of any applicable laws.
- b. This Order and the Contract created by its acceptance, will be governed by the provisions of the Uniform Commercial Code (UCC), Article 2, in effect in the state of California on the date of this Contract, except to the extent that the provisions of the UCC are modified or supplemented by the terms set forth elsewhere in this Contract, and will be construed in accordance with the laws of the state of California, exclusive of any conflict of law provisions. Any provision of this Contract that is (i) incorporated in full text or by reference from the FAR, or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR, or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals and quasi-judicial agencies of the federal Government. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- c. Except for permits and/or licenses required by statute or regulation to be obtained by the Company, Seller agrees to obtain and maintain, at its own expense, all permits, licenses and other forms of documentation required by Seller in order to comply with all existing laws, ordinances, and regulations of the United States and of any state, county, township, or municipal subdivision thereof, or other governmental agency, which may be applicable to Seller's performance of the Work. The Company reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

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43. **RIGHTS AND REMEDIES.** The rights and remedies of the Company in the Contract are cumulative and in addition to any other rights and remedies that the Company may have at law or in equity. **IN NO EVENT SHALL THE COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS).**
44. **PUBLICITY.** Seller shall not release any publicity, advertisement, news release, or denial or confirmation of information regarding the Contract or the Work without the prior written approval of the Company's Communications department, which approval shall not be unreasonably withheld.
45. **HEADINGS.** Descriptive headings used in this Contract are for convenience of reference only and shall not be considered in its construction.
46. **PRECEDENCE.** Any inconsistencies in any parts of the Contract shall be resolved by giving precedence in the following descending order: (i) the Contract; (ii) the Company's General Provisions as they may be modified or replaced by any specially negotiated terms and conditions; (iii) Supplemental Terms and Conditions incorporated herein; (iv) Statement of Work; (v) specifications and drawings; (vi) any Quality Notes; and (vii) other referenced documents. All requirements contained in these documents are cumulative if not contradictory.
47. **NONWAIVER AND SEVERABILITY.** The failure of a party to enforce any provision of the Contract shall not constitute a waiver of the provision or prejudice that party's right to enforce that or another provision later. If any provision of the Contract is or becomes void or unenforceable by law, the remaining provisions shall remain valid and enforceable.
48. **CALCULATING TIME.** Except as otherwise expressly stated, all "days" referred to in this Contract shall be calendar days. If the last day of any period falls on a weekend day, federal holiday or other day that the Company is closed, the period shall expire the next working day after such day. To determine Company work schedules, consult the [www.jonesborotool.com](http://www.jonesborotool.com) website under shipping information.
49. **INTEGRATED AGREEMENT.** The Contract constitutes the entire agreement of the parties and supersedes all prior offers, negotiations, agreements, understandings, and arrangements between the parties related to the subject matter of the Contract. The Parties agree that this Contract has been drafted by both.
50. **ASSIGNMENT.** Seller may not assign any of its rights or interest in the Contract or delegate any of its duties or obligations under the Contract without the prior written consent of the Buyer, except as provided in the Contract. Seller may assign its right to money due, or to become due, provided the Buyer is provided a true copy of the instrument of assignment reasonably in advance of the due date for payment of such amounts, the assignment is not subject to further assignment, and the assignment is made subject to setoff or recoupment for any present or future claims of the Company against Seller. The Company may make settlements and adjustments in price with Seller without notice to the assignee.
51. **SURVIVABILITY.** Any and all provisions of this Contract which by their nature or effect are required or intended to be observed, kept, or performed after the expiration or termination of this Contract shall survive the expiration or termination of this Contract and remain binding upon and for the parties' benefit.
52. **QUALITY MANAGEMENT SYSTEM.** All Suppliers agree to adhere to the requirements within section 8.4.3 of AS9100D.

(End)