

**HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES, LLC**  
**TERMS AND CONDITIONS OF PURCHASE,**  
**FIXED-PRICE PURCHASE ORDERS/CONTRACTS**  
**(NON-COMMERCIAL ITEMS – Terms 1602-01-18)**

**Effective: January, 2018**

*(Be advised that Honeywell FM&T is a Management and Operating (M&O) Contractor for the Department of Energy (DOE). As such, the work performed under M&O contracts is directly linked to DOE's mission, is of a long-term and continuing nature, and, among other things, includes special requirements for work direction, safety, security, cost controls, and site management. Any attempt by Suppliers to alter, revise or diminish the terms/conditions and/or regulations stated herein, is an alteration to a government funded contract and may jeopardize Honeywell's ability to do business with your firm now or in the future; exceptions are strongly discouraged.)*

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**1. INTRODUCTION**

- (a) The goods and services covered by this purchase order/contract shall be furnished subject to the terms and conditions set forth herein.
- (b) This purchase order/contract is the complete and exclusive statement of the terms of the agreement between Seller and Buyer.
- (c) No modification of this purchase order/contract (including any addition, deletion, or other modification proposed in Seller's acceptance) shall be binding on Buyer unless agreed to by Buyer in a writing signed by Buyer's Purchasing Department Representative.
- (d) In the clauses contained or referenced in this purchase order/contract, unless otherwise specified, "the contract" shall mean the order, "Contractor" shall mean SELLER, "Contracting Officer" shall mean Buyer, "Government" shall include Buyer to the extent necessary to enable Buyer to administer this order and to perform its obligations under its Government prime contractor lower-tier subcontract, and "subcontract(s)" and "subcontractor(s)" shall mean SELLER's lower-tier subcontract(s) and subcontractor(s), respectively.

**2. DEFINITIONS**

As used throughout this purchase order/contract, the following terms shall have the meaning set forth below:

- (a) "Buyer" means Honeywell Federal Manufacturing & Technologies, LLC, in the performance of its prime contract with The United States of America and includes any duly authorized representative thereof acting within

authorized limits.

- (b) "Commercial Item/Service" or "Commercial Component" means the same as the definitions for these terms at FAR 2.101.
- (c) "Contract" means the same as the definition at FAR 2.101 and specifically includes this purchase order/contract.
- (d) "Contracting Officer" means the same as the definition at FAR 2.101 and specifically includes "Buyer" to the extent necessary to enable Buyer to administer this purchase order/contract and to perform its obligations under its Government prime contract
- (e) "Contractor" means "Buyer" when used in the context of referring to a prime contractor with the U.S. Government in a FAR or DEAR clause/provision incorporated into this purchase order/contract. In all other instances, "Contractor" means "Seller."
- (f) "Counterfeit Item" A counterfeit item is one that has been copied or substituted without legal right or authority or whose material, performance or characteristics have been misrepresented by the supplier or manufacturer.
- (g) "DOE" means U.S. Department of Energy or any duly authorized representative thereof, including the Contracting Officer.
- (h) "DEAR" means Department of Energy Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this purchase order/contract.
- (i) "FAR" means Federal Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this purchase order/contract.
- (j) "Government" means The United States of America, and shall include Buyer to the extent necessary to enable Buyer to administer this purchase order/contract and to perform its obligations under its Government prime contract.
- (k) "Order" means purchase order/contract when used in the context of referring to a contractual relationship between Buyer and Seller.
- (l) "Subcontract(s)" and "Subcontractor(s)" includes this purchase order/contract when used in a FAR or DEAR clause referring to a prime and

subcontractor relationship. Otherwise, it means Seller's lower tier subcontract(s) and subcontractor(s), respectively. The term "subcontract" includes purchase orders and changes, modifications, or amendments to subcontracts and purchase orders.

- (m) "Suspect Item" An item is suspect when inspection or testing indicates that it may not conform to established Government or industry-accepted specifications or national consensus standards or whose documentation, appearance, performance, material or other characteristics may have been misrepresented by the supplier or manufacturer.

### 3. CHANGES

Refer to Section 39 below.

### 4. SHIPPING INSTRUCTIONS AND INSURANCE

- (a) If Buyer is responsible for shipping costs under this purchase order/contract and has authorized shipment on a commercial bill of lading, the commercial shipping documents must be annotated as follows:

"Transportation under this tender is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, according to Cost-Reimbursement Contract Number DE-NA0002839."
- (b) A packing list must accompany each shipment; otherwise, Buyer's count will be accepted as final and conclusive. The packing list must indicate Buyer's purchase order/contract number and the part number or code number. If shipment is made by Seller's supplier, Seller's name must be shown on the packing list in addition to the above information. Seller shall mark Buyer's purchase order/contract number on all packages and consolidate daily shipments. If transportation charges are dependent on released valuation, Seller shall release the shipment at the value resulting in the lowest charges. Bill of lading advice of shipment must be sent as soon as material is forwarded, giving the correct purchase order/contract, part, or requisition number, description of material and full forwarding information. All material must be forwarded in accordance with routing specified on this purchase order/contract or additional instructions issued by Buyer. Seller shall not insure item(s) shipped FOB shipping point.

### 5. TITLE AND RISK OF LOSS

- (a) Title to items or services furnished under this purchase order/contract shall pass to the Government upon acceptance by Buyer,

regardless of when or where Buyer takes physical possession.

- (b) Except as provided under paragraph (c) below, and regardless of the point of inspection or acceptance, risk of loss or damage to items provided under this purchase order/contract shall remain with Seller until, and shall pass to Buyer upon delivery of items to the:
  - (1) Shipping point carrier, if Buyer pays carrier's transportation costs; or
  - (2) Buyer or Buyer's designee at the final delivery destination specified in the purchase order/contract, if Seller pays transportation costs.
- (c) Paragraph (b) above shall not apply to items that so fail to conform to purchase order/contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with Seller until cure or acceptance. Also, Seller shall not be liable for loss of or damage to items caused by the negligence of officers, agents, or employees of Buyer acting within the scope of their employment.

## 6. PRICES AND NEW MATERIAL

Unless otherwise provided in this purchase order/contract, the:

- (a) Prices appearing herein include all packaging and crating.
- (b) Seller warrants that the items furnished under this purchase order/contract are new and are of not such age or so deteriorated as to impair their usefulness or safety. Used items that have been refurbished and warranted as new are considered used.

## 7. VARIATION IN QUANTITY

Refer to Section 39 below.

## 8. QUALITY ASSURANCE/BUYER ACCEPTANCE

- (a) Unless otherwise specified in this purchase order/contract, Seller shall be responsible for all quality assurance measures necessary to ensure that only items and services conforming to the requirements of this purchase order/contract are tendered to Buyer for acceptance. This shall include such testing, in process inspection and

other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by seller's suppliers and incorporated into end items furnished to Buyer are not counterfeit or of suspect quality.

- (b) Notwithstanding Seller's responsibility for all quality assurance measures as described in paragraph (a) above, Buyer has the right to conduct in process inspections, if this purchase order/contract is for services. Seller shall provide all reasonable facilities and assistance for the safe and convenient performance of such inspections without additional charges.
- (c) Buyer reserves the right to inspect and test all items and services that have been tendered for acceptance. Buyer has the right to reject nonconforming items and services with or without disposition instructions from Seller; the right to require their correction, replacement, re-performance; the right to accept nonconforming items or services and reduce the purchase order/contract amount to reflect the reduced value of the nonconformance(s); or the right to terminate this purchase order/contract for cause.

## 9. FEDERAL, STATE AND LOCAL TAXES

Sales taxes, gross receipts taxes, and use taxes may be applicable to this purchase order/contract unless Buyer provides Seller with evidence of exemption from such taxes. No other taxes are applicable and Seller warrants that the purchase order/contract price does not include any amount for taxes of any kind.

## 10. INVOICES, DISCOUNTS, AND PAYMENTS

- (a) Seller shall be paid, upon submission of proper invoice(s), the prices stipulated herein for items and services accepted by Buyer, less any deductions, set-offs or recoupments. Seller shall submit an original invoice (electronic submission preferred) to the billing address specified in the purchase order/contract. Unless otherwise specified in the purchase order/contract billing instructions, each invoice must include the following information:
  - (1) Unique or non-repeating invoice number;
  - (2) Invoice date;
  - (3) Buyer's purchase order/contract number;
  - (4) Purchase order/contract line item number, description of product or service, quantity, unit of measure, unit price, and extended

price for each line item for which payment is being requested;

- (5) Total invoice price;
  - (6) Seller standard payment terms, or;
  - (7) Discount payment terms offered;
  - (8) If applicable, identify shipping number and date of shipment, including bill of lading number and weight if shipped on a Government bill of lading;
  - (9) Seller name;
  - (10) Seller remit payment address;
  - (11) Name, address, and phone number of Seller representative to contact in the event of a defective invoice.
- (b) Unless otherwise specified in the purchase order/contract, Buyer's standard payment terms are "Net 30 days" from the date of invoice receipt. Buyer will, however, consider early payment where discounts for prompt payment are specified either in the terms of the purchase order/contract or stated on Seller's invoice. Early payment to earn discounts is at the sole discretion of Buyer. For purposes of computing the discount earned, payment shall be deemed to have been made on the date appearing on Buyer's payment check or on the date which an electronic funds transfer was made. In connection with any discount offered for early payment, time shall be computed from the latest of the following dates:
- (1) Date of delivery to the carrier when delivery is f.o.b. shipping point;
  - (2) Date of delivery at destination when delivery is f.o.b. destination;
  - (3) Date a correct invoice is received in the office specified in Buyer's purchase order/contract.
- (c) Notwithstanding the requirement of paragraph (a) above for Buyer acceptance as a prerequisite to payment, Buyer may, at its sole discretion, allow payment prior to Buyer inspection or acceptance of items or services where lead-times for shipping, inspections, tests, or other Buyer acceptance activities would unduly delay payments. Seller agrees that payments made prior to inspection or acceptance shall not affect any rights of Buyer including, without limitation, rights under the "Inspection" and/or "Warranty"

provisions of this purchase order/contract.

## 11. DISPUTES

Before the Parties initiate any dispute resolution process other than injunctive relief, the Parties must schedule a mandatory executive resolution conference to be held within 30 days of receipt of the other Party's written request. The conference must be attended by at least one executive from each Party. At the conference, each Party will present its view of the dispute in detail and the executives will enter into good faith negotiations in an attempt to resolve the dispute. If the dispute is not resolved within 15 days of the end of the conference, then either Party may pursue resolution of the dispute consistent with the other terms of this Agreement.

## 12. APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by, and this purchase order/contract shall be interpreted in accordance with Federal law. Any suit arising from or relating to this Agreement must be filed in the District Court for the Western District of Missouri, or, in the event that such court lacks jurisdiction, in the highest level trial court of the State of Missouri having jurisdiction. The parties agree that the determination of any substantive issues of law shall be based upon applicable Federal Law. Each party also agrees that any trial resulting from such suit shall be made to a court and not to a jury. Thus, as a part of the consideration in entering into this purchase order/contract, each party waives any right it may have to a trial by jury for any dispute arising under or related to this purchase order/contract.

## 13. WAIVER, RIGHTS AND REMEDIES

The rights and remedies of the Parties set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay of either Party to exercise any rights or remedies under this purchase order/contract shall not operate as a general waiver thereof, nor will any failure or delay prejudice the right of that Party to take any action in the future to enforce any provision. No waiver shall be effective unless expressly set forth in writing and signed by the Parties.

## 14. EXCUSABLE DELAYS

Refer to Section 39 below.

## 15. STOP WORK ORDER

Refer to Section 39 below.

#### **16. TERMINATION FOR CONVENIENCE**

Refer to Section 39 below.

#### **17. TERMINATION FOR DEFAULT**

Refer to Section 39 below.

#### **18. PATENT INDEMNITY**

Refer to Section 39 below.

#### **19. SUSPECT/COUNTERFEIT ITEMS**

Seller warrants that all items, including subassemblies, components, and parts, tendered to Buyer shall be genuine, new and unused, and conform to the requirements of this purchase order/contract, unless otherwise approved in writing by Buyer prior to delivery. Seller further warrants that all components, parts, materials, and supplies incorporated into Buyer facilities or equipment by Seller during performance of work at Buyer's facilities, shall be genuine, new and unused, and original-equipment-manufacturer items, unless otherwise approved in writing by Buyer as suitable for the intended purpose prior to use. Seller's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied to Buyer, and to certifications, affirmations, information, or documentation related to the authenticity and quality of items supplied or delivered to Buyer under this purchase order/contract.

Seller shall indemnify Buyer, its agents, and assignees for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts furnished or used under this purchase order/contract that are not genuine, original, and new and unused, or otherwise not suitable for the intended purpose. Seller's indemnity includes any financial loss, injury, or property damage resulting directly or indirectly from items furnished or used under this purchase order/contract that are defective, suspect, or counterfeit, or that have been provided under false pretenses, or that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Suspect/counterfeit items furnished under this purchase order/contract will be impounded by Buyer. Seller must promptly replace them, at no cost, with items acceptable to Buyer, and Seller shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit item

characteristics or conditions.

Because falsification of information or documentation may constitute criminal conduct, Buyer will segregate impounded items and related paperwork that are suspected S/CI, pending a determination by National Nuclear Security Administration (NNSA) or Department of Energy (DOE) officials whether the segregated/impounded items should be utilized as evidence.

No liability shall be asserted or enforceable against Buyer, NNSA, or DOE because of impoundment, all such liability being expressly waived by Seller or any person claiming any right or interest under this purchase order/contract, in the impounded items.

#### **20. WARRANTY**

- (a) Seller warrants and implies that items delivered hereunder are merchantable and fit for use for the particular purpose described in this purchase order/contract. Seller further agrees that supplies or services furnished under this purchase order/contract shall be covered by the most favorable warranties Seller gives to any customer for the same or substantially similar supplies or services and that rights and remedies provided by this clause shall extend to the Government and are in addition to and do not limit any rights afforded Buyer by any other clause of this purchase order/contract.
- (b) Seller shall furnish to Buyer copies of the most favorable warranties Seller gives to any customer for the same or substantially similar supplies and services, and such warranties shall be deemed a part of this purchase order/contract.

#### **21. ASSIGNMENT**

This purchase order/contract is assignable by Buyer to the Government or its designee. Neither this purchase order/contract nor any interest therein nor claim thereunder shall be assigned or transferred by Seller except as expressly authorized by Buyer.

#### **22. SUBCONTRACTS**

Seller agrees not to subcontract for any complete or substantially complete items or services required by this purchase order/contract without the prior written approval of Buyer. Seller shall advise Buyer of any manufacturing services requiring special processes (such as welding, plating, coating, painting, soldering, wire wrapping) being subcontracted in order that Buyer may determine whether any

special quality control inspection or approval is required.

### **23. INDEPENDENT CONTRACTOR**

Seller shall act solely as an independent contractor in the performance of this purchase order/contract and nothing herein shall be construed to create, without limitation, a relationship of employment, partnership, agency or joint venture between Buyer and Seller or between Buyer and any of Seller's employees in connection with the work under this purchase order/contract. Neither Party has the right to bind or obligate the other. Supplier agrees not to solicit for employment, either directly or indirectly through a third party, any Honeywell employee during the term of this Contract.

### **24. NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL**

Refer to Section 39 below.

### **25. SELLER USE OF GOVERNMENT-OWNED/BUYER-SUPPLIED EQUIPMENT**

It is Buyer's policy and intent that Government-owned/Buyer-supplied equipment not be used by contractors and that terms of our contracts require them to supply all equipment necessary to perform their required work. It is recognized, however, that exceptional circumstances could result in the necessity for limited use of Government-owned/Buyer-supplied equipment; therefore, when such occasions arise, the following Indemnification and Hold Harmless provision will be applicable to such use:

- (1) Contractor/Seller agrees to hold harmless and indemnify Buyer and the United States Government, their officers, agents and employees for any and all damages whatsoever, including, but not limited to, personal injury and property damage sustained as a result of, or arising out of, performance of any work involving the use of Government-owned/Buyer-supplied equipment.
- (2) Neither Buyer, the United States Government, nor persons acting on their behalf shall be liable for any injury to or death of persons or other living things or damage to or destruction of property or for any other loss, damage, or injury of any kind whatsoever, including costs and expenses incurred, resulting from Contractor/Seller use and operation of Government-owned/Buyer-supplied equipment.

This clause shall flow down to all appropriate subcontracts.

### **26. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS, CODES, RULES, AND REGULATIONS**

Unless otherwise stated in this purchase order/contract, Seller shall, without additional expense to Buyer, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, executive orders, codes, rules and regulations applicable to the performance of the work under this purchase order/contract.

### **27. SELLER RESPONSIBILITY FOR CONTROL OF TECHNICAL DATA**

(Applicable if Buyer-furnished data is provided to Seller)

#### Export Regulations:

Seller agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the jurisdictions in which Seller is established or from which Products may be supplied, will apply to their receipt and use. In no event shall Seller use, transfer, release, import, export, Products in violation of such applicable laws, regulations, orders or requirements. Exports and re-exports to parties who have been denied export privileges or debarred from an export transaction are prohibited. Seller shall not undertake any activities that violate U.S. export policies which seek to control nuclear proliferation, missile technology, chemical and biological weapons, as they relate to nations to support international terrorism. Violations against any U.S. export laws and regulations, including but not limited to the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), Office of Foreign Asset Controls (OFAC), may result in termination by Buyer of this agreement. For information identified as Unclassified Controlled Nuclear Information (UCNI), the access requirements found in 10 CFR, Chapter 10, Part 1017, and Subpart D must be followed.

If Seller intends to export or release the hardware and/or data to Foreign Persons, Seller shall assume the responsibility for obtaining an export license or other approval from the U.S. Department of State. Seller shall first obtain the written consent of Buyer prior to submitting any request for authority to export any such technical data. These clauses are applicable to and shall flow down to all appropriate subcontractors.

Seller shall indemnify Buyer, its agents, and assignees for any financial loss, penalties or fines resulting directly or indirectly from Seller's violation of the U.S. Department of State International Traffic in Arms Regulations (ITAR) 22 CFR 120-130 or the U.S. Department of Commerce Export Administration Regulations (EAR).

**FCPA Regulations:**

Seller represents and warrants that it understands, shall comply with the requirements of the United States Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1 et. Seq (the "Act") and shall communicate requirements of the Act to its directors, employees, any agents, consultants, and other third parties affiliated, retained, or otherwise used by Customer in accordance with the terms of this Agreement. A copy of the Act can be found at:

<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/11/14/fcpa-english.pdf>. Seller and any Sub-contractor, certify that on the date of this Agreement neither they nor any of their officers, directors, employees or agents is, or during the term of this Agreement shall become, an official, agent or employee of any government, governmental agency, or political party or a candidate for any political office. Seller shall promptly notify Honeywell FM&T of the occurrence of any event that would or may result in and exception to the foregoing representation.

Seller or any of its Sub-contractors may not, directly or indirectly, in the name of, on behalf of, or for the benefit of Honeywell FM&T offer, promise, or authorize to pay, or pay any compensation, or give anything of value to, any official, agent, or employee of any government or governmental agency, or to any political party or officer, employee, or agency thereof, or any candidate for political office, or to any customer, end-user of Products, or employee of Honeywell FM&T.

**28. COUNTERINTELLIGENCE**

Refer to Section 39 below.

**29. RELEASE OF INFORMATION TO THE PUBLIC**

Seller shall not, without the prior written consent of Buyer, make any release of information in any form, including but not limited to Buyer's name or marks, other than to Seller's employees and subcontractors which is required for the performance of their work under this purchase order/contract, which identifies or could lead to the identification of Buyer's name or Buyer's product or which uses Buyer's name or Buyer's product in any advertising, marketing

materials, publicity or promotional material, or on Seller's website. Furthermore, Seller will not claim or suggest, implicitly or explicitly, that Buyer's use of its services or deliverables constitutes Buyer's endorsement of its services or deliverables.

**30. CONFIDENTIALITY OF INFORMATION**

- (a) To the extent that the work under this purchase order/contract requires that Seller be given access to confidential or proprietary business or financial information belonging to the Government, Buyer or other companies, Seller shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, including its corporate parent, unless specifically authorized by Buyer in writing. The foregoing obligations, however, shall not apply to information which:
  - (1) At the time of receipt by Seller, is in public domain;
  - (2) Is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller;
  - (3) Seller can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government, Buyer or other companies;
  - (4) Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.
- (b) Seller shall obtain the written agreement, in a form satisfactory to Buyer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information to any person or entity except those persons within Seller's organization directly concerned with the performance of the purchase order/contract.
- (c) Seller agrees, if requested by Buyer, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to Seller under this purchase order/contract, and to supply a copy of such agreement to Buyer.
- (d) Seller agrees that upon request by Buyer it will execute a Buyer-approved agreement with any party whose facilities or information it is given access to or is furnished, restricting use and

disclosure of the information obtained from the facilities. Upon request by Buyer, such an agreement shall also be signed by Seller personnel.

- (e) This clause shall flow down to all appropriate subcontracts.

### **31. OBTAINING SECURITY CLEARANCES**

(Applicable if work requires access to classified information or to areas of restricted access.)

- (a) Seller shall furnish Buyer advance written notice identifying all subcontractor organizations requiring access to the work site, other areas of FM&T's Plant, or other controlled access facilities.
- (b) Should "L" or "Q" security clearances be required for Seller or lower-tier subcontractor personnel, Seller shall furnish Buyer a letter listing name, citizenship, status and craft of each person.
- (c) Due to length of time and expense required to obtain a security clearance, Seller shall apply for clearances only for permanent employees whose continued employment is anticipated during the overall performance term of purchase order/contract.
- (d) Buyer will furnish Seller with required forms to initiate processing of security clearances. Seller is responsible for distribution and return of completed forms to Buyer by applicants.

### **32. NOTIFICATION OF "L" AND "Q" CLEARED OR "UNCLEARED WITH A BADGE" EMPLOYEE TERMINATION**

(Applicable if Seller has "L" or "Q" cleared or "Uncleared With A Badge" employees.)

Seller shall notify Buyer's designated security representative by telephone within eight hours after termination of any "L" or "Q" cleared or "Uncleared With A Badge" seller employee who has been assigned to work under this purchase order/contract. If seller fails to notify Buyer's designated security representative within eight hours, Seller shall be responsible for any damage or injury resulting from or arising out of the actions or omissions of Seller's former employees. Such notice shall be confirmed by facsimile or e-mail to Buyer's Personnel Security Department.

### **33. OFCCP VETERANS DISABILITY AFFIRMATIVE ACTION PROGRAM**

Refer to Section 39 below.

### **34. SETOFF**

Buyer may deduct any amount owing from Supplier to Buyer as a set off against any amount owing to Supplier.

### **35. SEVERABILITY**

If any provision of this Agreement (or portion thereof) is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the Parties agree the court will construe the provision in a manner that renders the provision valid and enforceable to the fullest extent possible under the law of the applicable jurisdiction and that the remaining provisions will remain in full force and effect.

### **36. SURVIVAL**

All provisions of this Agreement which by their nature should apply beyond its term will remain in force after any termination or expiration of this Agreement including, but not limited to, those addressing the following subjects: Prices; Invoices, Discounts, and Payment; Setoff; Warranty; Stop Work Order; Indemnification; Insurance; Confidentiality; Intellectual Property; Relationship Between the Parties/ Independent Contractor; Applicable Law and Forum; Waiver, Rights, and Remedies; Release of Information to the Public; and Survival.

### **37. ENTIRE AGREEMENT**

This Agreement, including those additional terms or conditions incorporated herein by reference and made a part hereof, constitutes the entire agreement between the Parties with respect to the subject matter hereof and will supersede all prior or contemporaneous understandings, proposals, negotiations, communications, commitments or representations, oral or written, between the Parties or their representatives. No modification of this Agreement or waiver or addition to any of its terms and conditions will be binding upon either Party unless made in writing and signed by the Parties' authorized representatives.

### **38. ORDER OF PRECEDENCE**

Unless otherwise specified, for any inconsistency between the purchase order/contract, these terms and conditions, or the specifications and drawings, the inconsistency shall be resolved by giving precedence in the following order:



- (a) The purchase order/contract document, including these terms and conditions of purchase;
- (b) Product drawings/specification/SS prefix documents;
- (c) Design/Production Agency material/process specifications and standards;
- (d) Federal, military, industrial or technical society material/process specifications and standards;
- (e) Product data forms;
- (f) Equipment manufacturer's operating procedures.

**39. FAR AND DEAR CLAUSES/PROVISIONS INCORPORATED BY REFERENCE**

This purchase order/contract incorporates one or more FAR and DEAR provisions/clauses by reference with the same force and effect as if they were given in full text. Such provisions/clauses are identified below and elsewhere in this purchase order/contract by their title, effectivity date, and reference where they appear in the FAR and/or DEAR. The FAR and DEAR may be obtained from the Superintendent of Documents, US Government Printing Office and is available for viewing/downloading at a variety of Internet Sites including the following URLs:

For DEAR clauses: <http://farsite.hill.af.mil/vmdoea.htm>  
 For FAR clauses: <http://farsite.hill.af.mil/vmfara.htm>

**(A) APPLICABLE TO THIS PURCHASE ORDER/CONTRACT:**

- (1) FAR 52.203-16, Preventing Personal Conflicts of Interest (DEC 2011)
- (2) FAR 52.208-8, Required Sources for Helium and Helium Usage Data (APR 2014). Applicable when subcontract involves a major helium requirement. This clause shall flow down to all subcontracts.
- (3) FAR 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (DEC 2014)
- (4) FAR 52.211-16, Variation in Quantity (APR 1984)
- (5) FAR 52.222-4, Contract Work Hours And Safety Standards Act--Overtime Compensation (MAY 2014)
- (6) FAR 52.222-21, Prohibition Of Segregated Facilities (FEB 1999)
- (7) FAR 52.222-26, Equal Opportunity (MAR 2007)
- (8) FAR 52.222-50, Combatting Trafficking in Persons (FEB 2009). The requirements in Paragraph (h) apply only to any portion of the subcontract that is (a) for supplies other than COTS items, acquired outside the United States, or services to be performed outside of the United States; AND (b) has an estimated value that exceeds \$500,000.
- (9) FAR 52.225-13, Restrictions On Certain Foreign Purchases (JUN 2008)

- (10) FAR 52.227-10, Filing Of Patent Applications – Classified Subject Matter (DEC 2007)
- (11) FAR 52.242-15, Stop Work Order (AUG 1989)
- (12) FAR 52.247-64, Preference For Privately Owned U.S.- Flag Commercial Vessels (FEB 2006).
- (13) FAR 52.249-2, Termination for Convenience of the Government (Fixed Price) (Apr 2012)
- (14) FAR 52.249-8, Default (Fixed Price Supply and Service) (Apr 1984)
- (15) FAR 52.249-14, Excusable Delays (APR 1984)
- (16) DEAR 952.203-70, Whistleblower Protection For Contractor Employees (DEC 2000)
- (17) DEAR 952.204-71, Sensitive Foreign Nations Controls (MAR 2011). Required for subcontracts that may involve making unclassified information about nuclear technology available to sensitive foreign nations.
- (18) DEAR 952.211-71, Priorities and Allocations (ATOMIC ENERGY) (APR 2008)
- (19) DEAR 952.247-70 - Foreign Travel (JUN 2010)
- (20) DEAR 970.5204-1, Counterintelligence (DEC 2010), *Paragraph (a) only.*
- (21) DEAR 970.5204-2, Laws, Regulations, And DOE Directives (DEC 2000) (Deviation)
- (22) DEAR 970.5227-1, Rights in Data – Facilities (DEC 2010)
- (23) DEAR 970.5227-6, Patent Indemnity – Subcontracts (DEC 2000)
- (24) DEAR 970.5243-1, Changes (DEC 2000)

**... and there are supplied to be accorded duty-free entry that will be imported into the US or other foreign supplies exceeding \$15,000 that may be imported into the US:**

- (25) FAR 52.225-8, Duty-Free Entry (OCT 2010)

**... And work is to be performed on DOE site:**

- (26) FAR 52.204-9, Personal Identity Verification of Contractor Personnel (JAN 2011). This clause shall flow down to all subcontracts. This clause does not apply for intermittent access to site, only where there is routine physical access required to a federally-controlled information system.
- (27) DEAR 970.5223-1, Integration Of Environment, Safety, And Health Into Work Planning And Execution (DEC 2000). Required if subcontract involves complex or hazardous work on site at a DOE owned or leased facility.
- (28) DEAR 970.5223-4, Workplace Substance Abuse Programs At DOE Sites, (DEC 2010)

**... And Seller or its Subcontractors have access to classified information:**

- (29) DEAR 952.204-2, Security (MAR 2011) Class Deviation (OCT 2013). Required if subcontract involves or is likely to involve classified information or special nuclear material.
- (30) DEAR 952.204-70, Classification/Declassification (SEP 1997)

... **And access to computers owned, leased or operated on behalf of the DOE may be provided:**

- (31) DEAR 952.204-77, Computer Security (AUG 2006)

... **And duplicating or printing services are required:**

- (32) DEAR 970.5208-1, Printing (DEC 2000)

... **And research is involved:**

- (33) DEAR 952.235-71, Research Misconduct (JUL 2005)

... **And technical data/computer software is produced or production/delivery of data is required:**

- (34) DEAR 970.5227-2, Rights In Data – Technology Transfer (DEC 2000) ALTERNATE I (DEC 2000) (NNSA Class Deviation OCT 2011)
- (35) DEAR 970.5227-12, Patent Rights – Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver (AUG 2002) Alternate I (NNSA Class Deviation OCT 2011). Required in any subcontracts that cover or are likely to cover subject matter classified for reasons of security.

... **And purchase order/contract is for experimental, developmental, or research work:**

- (36) FAR 52.227-13, Patent Rights – Ownership by the Government (DEC 2007)

... **And purchase order/contract is for experimental, developmental, or research work to be performed by a domestic small business or nonprofit organization:**

- (37) DEAR 952.227-11, Patent Rights – Retention by the Contractor (short form) (MAR 1995)

... **And real property shall be acquired by purchase with title vesting in the government,**

**lease reimbursable by the DOE, or temporary easement funded entirely by the government under the purchase order/contract:**

- (38) DEAR 952.217-70, Acquisition of Real Property (MAR 2011)

... **and the purchase order/contract is for protective services or other services performed on a DOE-owned site which will affect the continuity of the operation of the facility:**

- (39) DEAR 970.5222-1, Collective Bargaining Agreements—Management and Operating Contracts (DEC 2000)

... **and the purchase order/contract may involve the risk of public liability:**

- (40) DEAR 952.250-70, Nuclear Hazards Indemnity Agreement (JUN 1996). Not required if subcontractor is subject to Nuclear Regulatory Commission Financial Protection Requirements.

... **and the purchase order/subcontract is subject to the Service Contract Labor Standards Statute and is to be performed in whole or in part in the US:**

- (41) FAR 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015)

... **and design, development, or operation of a system of records on individuals is required to accomplish an agency function**

- (42) FAR 52.224-1, Privacy Act Notification (APR 1984)
- (43) FAR 52.224-2, Privacy Act (APR 1984)

**(B) APPLICABLE IF ROYALTIES EXCEEDING \$250 ARE INCLUDED IN THE PRICE OF PURCHASE ORDER/CONTRACT:**

- (1) DEAR 970.5227-8, Refund Of Royalties (AUG 2002)

**(C) APPLICABLE IF PURCHASE ORDER/CONTRACT IS SUBJECT TO THE SERVICE CONTRACT LABOR STANDARDS STATUTE AND IS OVER \$2,500:**

- (1) FAR 52.222-41, Service Contract Labor Standards (MAY 2014)
- (2) FAR 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014)
- (3) FAR 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards -- Price

Adjustment (Multiple Year and Option Contracts) (MAY 2014). Required if multiple year contract or if it exceeds the simplified acquisition threshold.

- (4) FAR 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (MAY 2014). Required if not a multi-year contract or not a contract with options to renew.

**(D) APPLICABLE IF PURCHASE  
ORDER/CONTRACT VALUE EXCEEDS \$3,000:**

- (1) FAR 52.223-18, Encouraging Contractor Policies To Ban Text Messaging While Driving (AUG 2011)
- (2) FAR 52.225-1, Buy American – Supplies (MAY 2014)

... and the purchase order/contract is for **commercial or noncommercial services (except commercial services that are part of the purchase of a COTS item) or construction:**

- (3) FAR 52.222-54, Employment Eligibility Verification (AUG 2013)

**(E) APPLICABLE IF PURCHASE  
ORDER/CONTRACT VALUE EXCEEDS  
\$10,000:**

- (1) FAR 52.222-40, Notification of Employees Rights Under The National Labor Relations Act (DEC 2010)

**(F) APPLICABLE IF PURCHASE  
ORDER/CONTRACT VALUE EXCEEDS  
\$15,000:**

- (1) FAR 52.222-36, Affirmative Action For Workers With Disabilities (JUL 2014)

... And the purchase order/contract is covered by **Section 8(a) of the Small Business Act**

- (2) FAR 52.222-20, Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014)

**(G) APPLICABLE TO PURCHASE  
ORDER/CONTRACTS EQUAL TO OR  
EXCEEDING \$35,000 AND NOT FOR  
ACQUISITION OF A COMMERCIAL ITEM OR  
COMMERCIAL OFF-THE-SHELF ITEMS:**

- (1) FAR 52.209-6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (AUG 2013)

**(H) APPLICABLE IF PURCHASE  
ORDER/CONTRACT VALUE EXCEEDS  
\$100,000:**

- (1) DEAR 970.5227-5, Notice And Assistance Regarding Patent And Copyright Infringement (AUG 2002)

... And is for **research and development:**

- (2) DEAR 970.5227-4, Authorization and Consent (AUG 2002)

**(I) APPLICABLE IF PURCHASE  
ORDER/CONTRACT VALUE EXCEEDS  
\$150,000:**

- (1) FAR 52.203-6, Restrictions On Subcontractor Sales To The Government (SEP 2006)
- (2) FAR 52.203-7, Anti-Kickback Procedures (MAY 2014)
- (3) FAR 52.203-12, Limitation On Payments To Influence Certain Federal Transactions (OCT 2010)
- (4) FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014)
- (5) FAR 52.219-8, Utilization of Small Business Concerns (OCT 2014)
- (6) FAR 52.222-35, Equal Opportunity For Veterans (JUL 2014)
- (7) FAR 52.222-37, Employment Reports On Veterans (JUL 2014)
- (8) FAR 52.227-1, Authorization and Consent (DEC 2007)

... And involves **international air transportation of personnel or property:**

- (9) FAR 52.247-63, Preference For U.S.-Flag Air Carriers (JUN 2003)

... And is for **advisory and assistance services:**

- (10) DEAR 952.209-72, Organizational Conflicts Of Interest (AUG 2009), ALTERNATE I. (b)(1)(i) Period is 'five (5) years'.

... And the first tier purchase order/contract supports operation of the DOE facility and offers significant subcontracting opportunities for energy efficient or environmentally sustainable products or services:

- (11) DEAR 952.223-78, Sustainable Acquisition Program (OCT 2010)
- (12) DEAR 970.5223-7, Sustainable Acquisition Program (OCT 2010)

**(J) APPLICABLE IF PURCHASE**

**ORDER/CONTRACT VALUE EXCEEDS  
\$500,000:**

- (1) FAR 52.204-14, Service Contract Reporting Requirements (OCT 2016)
- (2) DEAR 952.226-74, Displaced Employee Hiring Preference (JUN 1997)
- (3) DEAR 970.5226-2, Workforce Restructuring Under Section 3161 Of The National Defense Authorization Act For Fiscal Year 1993 (DEC 2000).

**(K) APPLICABLE IF PURCHASE**

**ORDER/CONTRACT VALUE IS EXPECTED TO  
EXCEED \$650,000:**

- (1) FAR 52.219-9, Small Business Subcontracting Plan, Alt II, Oct 2001 (Oct 2014)

**(L) APPLICABLE IF PURCHASE**

**ORDER/CONTRACT VALUE IS \$700,000 OR  
GREATER AND A CERTIFICATE OF  
CURRENT COST OR PRICING DATA IS  
REQUIRED IN CONNECTION WITH INITIAL  
AWARD OR ANY SUBSEQUENT  
MODIFICATION OF PURCHASE  
ORDER/CONTRACT:**

- (1) FAR 52.215-2, Audit Records - Negotiation (OCT 2010)
- (2) FAR 52.215-10, Price Reduction For Defective Certified Cost Or Pricing Data (AUG 2011)
- (3) FAR 52.215-12, Subcontractor Certified Cost Or Pricing Data (Oct 2010)
- (4) FAR 52.215-13, Subcontractor Certified Cost Or Pricing Data – Modifications (OCT 2010)
- (5) FAR 52.215-15, Pension Adjustments And Asset Reversions (OCT 2010)
- (6) FAR 52.215-18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005). This clause shall flow down to all subcontracts that anticipate a requirement for certified cost or pricing data or preaward/postaward cost determinations subject to Part 31.
- (7) FAR 52.215-19, Notification of Ownership Changes (OCT 1997). This clause shall flow down to all subcontracts for which it is contemplated that certified cost or pricing data will be required or postaward cost determination will be subject to Subpart 31.2.
- (8) FAR 52.230-2, Cost Accounting Standards (MAY 2014).
- (9) FAR 52.230-6, Administration of Cost Accounting Standards (JUN 2010)

**... and the purchase order/contract is for services:**

- (10) FAR 52.222-17, Nondisplacement of Qualified Worked (MAY 2014). A provision meeting the intent of paragraph (I) is required in subcontracts.

**(M) APPLICABLE IF PURCHASE**

**ORDER/CONTRACT VALUE EXCEEDS  
\$5,000,000:**

- (1) FAR 52.203-14, Display Of Hotline Poster(s) (DEC 2007)

**... And performance period is 120 days or more:**

- (2) FAR 52.203-13, Contractor Code Of Business Ethics And Conduct (APR 2010)