

HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES, LLC

TERMS AND CONDITIONS OF PURCHASE, FIXED-PRICE PURCHASE ORDERS/CONTRACTS (NON-COMMERCIAL ITEMS)

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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.

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

- (a) Buyer may at any time, by written order, and without notice to sureties, if any, make changes within the general scope of this purchase order/contract as follows:
 - (1) If this purchase order/contract is for, or includes a requirement for items, materials or equipment; changes in any one or more of the following:
 - (i) Drawings, designs, or specifications when the items, materials or equipment are to be specially manufactured in accordance with the drawings, designs or specifications of Buyer.
 - (ii) Method of shipment or packing.
 - (iii) Place of delivery.
 - (2) If this purchase order/contract is for, or includes a requirement for services, changes in any one or more of the following:
 - (i) Description of the services to be performed.
 - (ii) Time of performance, such as hours of the day or day of the week.
 - (iii) Place of performance of the services.
- (b) If any such change(s) causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this purchase order/contract, regardless of whether changed by a written order, Buyer shall make an equitable adjustment in the purchase order/contract price, the delivery schedule, or both, and shall modify the purchase order/contract accordingly in writing.
- (c) Seller must assert any right it may have to an adjustment in writing to Buyer and any such written assertion must be received by Buyer within 30 days from the date of receipt of the written order by Seller. However, if Buyer decides that the facts justify it, Buyer may receive and act upon any such claim asserted at any time prior to final payment under this purchase order/contract.
- (d) If Seller's proposal for adjustment includes the cost of property made obsolete or excess as a result of Buyer's written change order, Buyer shall have the right to prescribe the manner of disposition of the property.
- (e) Failure to agree to any adjustment shall be a Dispute under the Disputes clause. However, nothing in this clause shall excuse Seller from proceeding with the purchase order/contract as changed.

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-NA0000622."

- (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

Buyer shall not be obligated to accept any variation in the quantity of any item called for by this purchase order/contract unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to

the extent, if any, specified elsewhere in the purchase order/contract.

8. 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.

9. 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.

10. DISPUTES

(a) Unless otherwise provided in this purchase order/contract, all disputes arising under or relating to this purchase order/contract which are not disposed of by mutual agreement of the parties, shall be resolved under this clause.

(b) "Claim," as used in this clause, means a written demand or written assertion by one of the parties to this purchase order/contract seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of purchase order/contract terms, or other relief arising under or relating to this purchase order/contract. A claim arising under this purchase order/contract, unlike a claim relating to this purchase order/contract, is a claim that can be resolved under a purchase order/contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by Seller seeking the payment of money exceeding \$100,000 is not a claim until certified as required by subparagraph (c)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the submission and certification requirements of this clause if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

(c) (1) A claim by Seller shall be made in writing and submitted to the head of Buyer's Purchasing Organization for a written decision. A claim by Buyer against Seller shall be subject to a written decision by the head of Buyer's Purchasing Organization.

(2) For Seller claims exceeding \$100,000, (or any amount when the parties have agreed to a form of alternative dispute resolution per paragraph (h) below) Seller shall submit with the claim a certification that--

- (i) The claim is made in good faith; and
- (ii) Supporting data are accurate and complete to the best of Seller's knowledge and belief; and
- (iii) The amount requested accurately reflects the purchase order/contract adjustment for which Seller believes Buyer is liable; and
- (iv) A statement by the person certifying the claim that they are duly authorized to certify the claim on behalf of Seller.

(d) The head of Buyer's Purchasing Organization shall, within 60 days, decide the claim or notify Seller of the date by which the decision will be made.

(e) The decision rendered by the head of Buyer's Purchasing Organization shall be final and conclusive and not subject to review or revision by any forum, tribunal or Government agency unless suit is filed as provided in this clause. Within one (1) year after issuance of the decision, or upon the failure to issue such a decision within a reasonable time as provided in (d) above, the claimant party may seek relief on its claim by commencing suit in the State of Missouri. Any such suit 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.

- (f) Buyer shall pay interest on the amount found due and unpaid from (1) the date Buyer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury under the Contract Disputes Act of 1978 (P.L. 95-563), which is applicable to the period during which Buyer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (g) Seller shall proceed diligently with performance of this purchase order/contract, pending final resolution of any request for relief, claim, or action arising under or relating to this purchase order/contract, and shall comply with any decision of the head of Buyer's Purchasing Organization.
- (h) Notwithstanding any other provision of this clause, the parties may, by mutual consent, agree to a form of alternative dispute resolution involving an impartial third party to mediate or arbitrate disputes.

11. 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.

12. RIGHTS AND REMEDIES OF BUYER

The rights and remedies of Buyer set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay of Buyer to exercise any rights or remedies under this purchase order/contract shall not operate as a general waiver thereof.

13. EXCUSABLE DELAYS

- (a) Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Seller and without its fault or negligence such as acts of God or public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Seller shall notify Buyer in writing as soon as is reasonably possible after commencement of any excusable delay, setting forth full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Buyer of cessation of such occurrence.
- (b) Buyer shall not be in default for nonperformance caused by an occurrence beyond the reasonable control of the Buyer and without Buyer's fault or negligence such as acts of God or public enemy, acts of the Government in its sovereign capacity, fires, floods or other natural disaster, epidemics, quarantine restricts, strikes, unusually severe weather, and government shutdowns. Buyer shall notify Seller in writing as soon as is reasonably possible after commencement of any excusable delay, setting forth full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Seller of cessation of such

occurrence.

14. TERMINATION FOR CONVENIENCE

- (a) Buyer may terminate performance of work under this purchase order/contract in whole or, from time to time, in part if Buyer determines that a termination is in Buyer's and Government's interest. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by Buyer, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this purchase order/contract) for materials, services, or facilities, except as necessary to complete the continued portion of the purchase order/contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to Buyer, as directed by Buyer, all right, title, and interest of Seller under the subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by Buyer, transfer title and deliver to Buyer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the purchase order/contract had been completed, would be required to be furnished to Buyer.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this purchase order/contract that is in the possession of Seller and in which Buyer or Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this purchase order/contract, credited to the price or cost of the work, or paid in any other manner directed by Buyer.
- (c) Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this 120-day period.
- (d) After expiration of the plant clearance period as defined in FAR Subpart 45.6, Seller may submit to Buyer a list, certified as to quantity and quality, of termination inventory not previously

- disposed of, excluding items authorized for disposition by Buyer. Seller may request Buyer to remove those items or enter into an agreement for their storage. Within 15 days, Buyer will accept title to those items and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. Seller shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this 1-year period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, Seller and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) below, exclusive of costs shown in subparagraph (g)(3) below, may not exceed the total purchase order/contract price as reduced by (1) the amount of payments previously made and (2) the purchase order/contract price of work not terminated. The purchase order/contract shall be modified, and Seller paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If Seller and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed on under paragraph (f) above:
- (1) The purchase order/contract price for completed supplies or services accepted by Buyer (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of--
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the purchase order/contract if not included in subdivision (i) above; and
 - (iii) A sum, as profit on subdivision (i) above, determined by Buyer under FAR 49.202, in effect on the date of this purchase order/contract, to be fair and reasonable; however, if it appears that Seller would have sustained a loss on the entire purchase order/contract had it been completed, Buyer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (3) The reasonable costs of settlement of the work terminated, including--
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that Buyer expressly assumed the risk of loss, Buyer shall exclude from the amounts payable to Seller under paragraph (g) above, the fair value, as determined by Buyer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (i) The cost principles and procedures of FAR Part 31, in effect on the date of this purchase order/contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) Seller shall have the right to pursue any claim or dispute under the Disputes clause, from any determination made by Buyer under paragraph (e), (g), or (l) of this clause, except that if Seller failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l), and failed to request a time extension, it shall have no such right. If Buyer has made a determination of the amount due under paragraph (e), (g), or (l) Buyer shall pay Seller (1) the amount determined by Buyer if there is no right to pursue a claim or dispute hereunder or if such claim or dispute has not been timely pursued, or (2) the amount finally determined under the "Disputes" clause of this purchase order/contract.
- (k) In arriving at the amount due Seller under this clause, there shall be deducted--
 - (1) All unliquidated advance or other payments to Seller under the terminated portion of this purchase order/contract;
 - (2) Any claim which Buyer has against Seller under this purchase order/contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Seller or sold under the provisions of this clause and not recovered by or credited to Buyer.
- (l) If the termination is partial, Seller may file a proposal with Buyer for an equitable adjustment of the price(s) of the continued portion of the purchase order/contract. Buyer shall make any equitable adjustment agreed upon. Any proposal by Seller for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by Buyer.
- (m) (1) Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Seller for the terminated portion of the purchase order/contract, if Buyer believes the total of these payments will not exceed the amount to which Seller will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under Public Law 92-41 (50 U.S.C. App. 1215(b)(2)). Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid.

Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.

- (n) Unless otherwise provided in this purchase order/contract or by statute, Seller shall maintain all records and documents relating to the terminated portion of this purchase order/contract for 3 years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this purchase order/contract. Seller shall make these records and documents available to Buyer, at Seller's office, at all reasonable times, without any direct charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

15. TERMINATION FOR DEFAULT

- (a) (1) Buyer may, subject to paragraphs (c) and (d) below, by written notice of default to Seller, terminate this purchase order/contract in whole or in part if Seller fails to:
- (i) Deliver the supplies or to perform the services within the time specified in this purchase order/contract or any extension;
 - (ii) Make progress, so as to endanger performance of this purchase order/contract (but see subparagraph (a) (2) below); or
 - (iii) Perform any of the other provisions of this purchase order/contract (but see subparagraph (a) (2) below).
- (2) Buyer's right to terminate this purchase order/contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if Seller does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- (b) If Buyer terminates this purchase order/contract in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, supplies or services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those supplies or services. However, Seller shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, Seller shall not be liable for any excess costs if the failure to perform the purchase order/contract arises from causes beyond the control and without the fault or negligence of Seller. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Seller.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Seller to meet the required delivery schedule.
- (e) If this purchase order/contract is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs,

fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this purchase order/contract. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer or the Government has an interest.

- (f) Buyer shall pay purchase order/contract price for completed supplies delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Buyer.
- (h) The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this purchase order/contract.

16. 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.

Buyer shall incur no liability for failure to return impounded items to Seller and does not assume any liability for loss or damage to items impounded pursuant to this clause regardless of the circumstances under which said loss or damage may have occurred, and whether impounded items are in Buyer's possession or under its control.

Nothing in this clause shall limit Buyer's right to reject S/CI and related paperwork, as non-conforming, to deny payment for such items, to return such items to Seller once NNSA/DOE has released the items, or to assert other remedies provided under this purchase order/contract or by law.

Seller shall include this clause in subcontracts hereunder.

17. WARRANTY

- (a) Seller agrees that the 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 the 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.

18. 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.

19. 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.

20. 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 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.

21. NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL

(Applicable if procurement is \$150,000 or greater and is for advisory and assistance services)

The following terms with regard to Seller's personnel performing under this purchase order/contract shall apply until the earlier of two dates: termination of the affected employee(s) or expiration date of the purchase order/contract.

Seller shall immediately notify Buyer of (1) any actual or potential personal conflict of interest with regard to any of its employees

working on or having access to information regarding this purchase order/contract, or (2) any such conflicts concerning Seller's employees or consultants working on or having access to information regarding this purchase order/contract, when such conflicts have been reported to Seller. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing purchase order/contract work.

Seller shall notify Buyer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event the personal conflict of interest does not become known until after performance on the purchase order/contract begins, Seller shall, immediately notify Buyer of the personal conflict of interest. Seller shall continue performance of purchase order/contract until notified by Buyer of the appropriate action to be taken.

This clause shall flow down to all subcontracts placed hereunder unless otherwise authorized by Buyer.

22. 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:

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.

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.

23. 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, codes and regulations applicable to the performance of the work under this purchase order/contract.

24. 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.

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 <http://www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html>. 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.

25. COUNTERINTELLIGENCE

The Contractor shall take all reasonable precautions in the work under this contract to protect programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats or activities conducted for governmental or industrial purposes.

26. RELEASE OF INFORMATION TO THE PUBLIC

Seller shall not, without the prior written consent of Buyer, make any release of information in any form (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, publicity or promotional material, or on Seller's website.

27. 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.

28. 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.

29. NOTIFICATION OF “L” AND “Q” CLEARED OR “UNCLEARED WITH A BADGE” EMPLOYEE TERMINATIONS

(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.

30. OFCCP VETERANS DISABILITY AFFIRMATIVE ACTION PROGRAM

41 CFR 60-741.5(a) & 41 CFR 60-300.5(a): To the extent employment activities occur in the United States and if otherwise applicable **this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

31. 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.

32. 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 URL: <http://farsite.hill.af.mil/vfdoea.htm>.

(A) Applicable to this purchase order/contract:

- (1) FAR 52.203-15, Whistleblower Protections Under The American Recovery And Reinvestment Act of 2009 (JUN 2010)
- (2) FAR 52.222-21, Prohibition Of Segregated Facilities (FEB 1999)
- (3) FAR 52.222-26, Equal Opportunity (MAR 2007)
- (4) FAR 52.222-50, Combating Trafficking In Persons (FEB 2009)

- (5) FAR 52.225-13, Restrictions On Certain Foreign Purchases (JUN 2008)
- (6) FAR 52.227-10, Filing Of Patent Applications – Classified Subject Matter (DEC 2007)
- (7) FAR 52.242-17, Government Delay Of Work (APR 1984)
- (8) FAR 52.247-64, Preference For Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (When purchase involves ocean transportation)
- (9) DEAR 952.204-71, Sensitive Foreign Nations Controls (MAR 2011)
- (10) DEAR 952.211-71, Priorities And Allocations (APR 2008)
- (11) DEAR 970.5204-2, Laws, Regulations, And DOE Directives (DEC 2000)(Deviation)
- (12) FAR 52.242-15, Stop Work Order (AUG 1989) ALTERNATE I (APR 1984)
- (13) DEAR 952.203-70, Whistleblower Protection For Contractor Employees (DEC 2000)

... **And there are subcontracts for commercial items:**

- (14) FAR 52.244-6, Subcontracts For Commercial Items (DEC 2010) ALTERNATE I (JUN 2010)

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

- (15) FAR 52.237-2, Protection Of Government Buildings, Equipment, And Vegetation (APR 1984)
- (16) DEAR 970.5223-1, Integration Of Environment, Safety, And Health Into Work Planning And Execution (DEC 2000)
- (17) DEAR 970.5223-4, Workplace Substance Abuse Programs At DOE Sites, (DEC 2010)

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

- (18) DEAR 952.204-2, Security (MAR 2011)
- (19) DEAR 952.204-70, Classification/Declassification (SEP 1997)
- (20) DEAR 952.204-73, Facility Clearance (MAR 2011)

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

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

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

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

... **And design, development, or operation of a system of records on individuals is required to accomplish a DOE function:**

- (23) FAR 52.224-1, Privacy Act Notification (APR 1984)
- (24) FAR 52.224-2, Privacy Act (APR 1984)

... **And foreign travel is required in the performance of purchase order/contract:**

- (25) DEAR 952.247-70, Foreign Travel (JUN 2010)

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

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

... **And delivery of hazardous material is required:**

- (27) FAR 52.223-3, Hazardous Material Identification And Material Safety Data (JAN 1997), ALTERNATE I (JUL 1995)

- ... **And technical data/computer software is produced or production/delivery of data is required:**
- (28) DEAR 970.5227-2, Rights In Data – Technology Transfer (DEC 2000) ALTERNATE I (DEC 2000) (Proposed Deviation)
- ... **And Buyer furnishes Government property to Seller in the performance of purchase order/contract, including Seller acquired property to which title vests in the Government under this purchase order/contract:**
- (29) FAR 52.245-1, Government Property (APRIL 2012) ALTERNATE I (APRIL 2012)
- (30) FAR 52.245-9, Use And Charges (APRIL 2012)
- (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 value exceeds \$3,000:**
- (1) FAR 52.222-54, Employment Eligibility Verification (AUG 2013). This clause shall flow down to all subcontracts.
- (2) FAR 52.225-1, Buy American Act--Supplies (MAY 2014)
- (D) 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)
- (E) Applicable if purchase order/contract value exceeds \$15,000:**
- (1) FAR 52.222-36, Affirmative Action For Workers With Disabilities (JUL 2014)
- ... **And supplies that may be imported into the United States in excess of \$15,000 may obtain duty-free entry:**
- (2) FAR 52.225-8, Duty-Free Entry (OCT 2010)
- (F) Applicable if purchase order/contract value exceeds \$100,000:**
- (1) FAR 52.222-35, Equal Opportunity For Veterans (JUL 2014)
- (2) FAR 52.222-37, Employment Reports On Veterans (JUL 2014)
- (3) DEAR 970.5227-5, Notice And Assistance Regarding Patent And Copyright Infringement (AUG 2002)
- ... **And is for research and development:**
- (4) DEAR 970.5227-4, Authorization and Consent (AUG 2002)
- (G) 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 52.219-8, Utilization Of Small Business Concerns (MAY 2014)
- (5) FAR 52.227-1, Authorization And Consent (DEC 2007)
- (6) FAR 52.227-3, Patent Indemnity (APR 1984] (Not applicable if purchase order/contract is solely for Architect Engineering Services as defined at FAR 36.102.)
- (7) FAR 52.246-2, Inspection Of Supplies (Fixed-Price) (AUG 1996) (When purchase order/contract is for supplies.)
- (8) FAR 52.246-4, Inspection Of Services (Fixed-Price) (AUG 1996) (When purchase order/contract is for services.)
- ... **And involves international air transportation of personnel or property:**
- (9) FAR 52.247-63, Preference For U.S.-Flag Air Carriers (JUN 2003)
- ... **And involves laborers and mechanics:**
- (10) FAR 52.222-4, Contract Work Hours And Safety Standards Act--Overtime Compensation (JUL 2005)
- ... **And is for advisory and assistance services:**
- (11) DEAR 952.209-72, Organizational Conflicts Of Interest (AUG 2009), ALTERNATE I
- (H) Applicable if purchase order/contract value exceeds \$500,000:**
- (1) DEAR 952.226-74, Displaced Employee Hiring Preference (JUN 1997)
- (2) DEAR 970.5226-2, Workforce Restructuring Under Section 3161 Of The National Defense Authorization Act For Fiscal Year 1993 (DEC 2000)
- (I) Applicable if purchase order/contract value exceeds \$650,000 (\$1,500,000 for construction) and Seller is not a small business. Seller is required to submit a Subcontracting Plan:**
- (1) FAR 52.219-9, Small Business Subcontracting Plan (JUL 2013)
- (J) 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 52.215-10, Price Reduction For Defective Certified Cost Or Pricing Data (AUG 2011)
- (2) FAR 52.215-12, Subcontractor Certified Cost Or Pricing Data (Oct 2010)
- (3) FAR 52.215-13, Subcontractor Certified Cost Or Pricing Data – Modifications (OCT 2010)
- (4) FAR 52.215-15, Pension Adjustments And Asset Reversions (OCT 2010)
- (K) Applicable if purchase order/contract value exceeds \$5,000,000:**
- ... **And does not involve acquisition of a commercial item:**
- (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)