

HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES, LLC

TERMS AND CONDITIONS OF PURCHASE, COST REIMBURSEMENT PURCHASE ORDER/CONTRACT

Effective: 4/2016

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1. INTRODUCTION

- (a) The goods, services, or construction 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" 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.
- (f) "DOE" means U.S. Department of Energy or any duly authorized representative thereof, including the Contracting Officer.
- (g) "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.
- (h) "FAR" means Federal Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this purchase order/contract.
- (i) "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.
- (j) "Order" means purchase order/contract when used in the context of referring to a contractual relationship between Buyer and Seller.
- (k) "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.
- (l) "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.

"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 DE-NA0000622."

3. CHANGES

- (a) Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this purchase order/contract in any one or more of the following:
- (1) Drawings, designs, or specifications when the supplies are to be specially manufactured in accordance with the drawings, designs, or specifications of Buyer.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
 - (4) In addition to the other provisions of this paragraph, if this purchase order/contract is for Services, changes within the general scope of the purchase order/contract may be made 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 causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this purchase order/contract, whether or not changed by the written order, or otherwise affects any other terms and conditions of this purchase order/contract, Buyer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms and shall modify the purchase order/contract accordingly.
- (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.
- (d) 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.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this purchase order/contract and, if this purchase order/contract is incrementally funded, the funds allotted for the performance of this purchase order/contract, shall not be increased or considered to be increased except by specific written modification to the purchase order/contract indicating the new purchase order/contract estimated cost and, if this purchase order/contract is incrementally funded, the new amount allotted to the purchase order/contract. Until this modification is made, Seller shall not be obligated to continue performance or incur costs beyond the notification point established in the Limitation of Cost or Limitation of Funds clause of this purchase order/contract.

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:

- (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. LIMITATION OF COST

(This clause is applicable unless this purchase order/contract is identified as "Incrementally Funded". Incrementally funded purchase orders/contracts are subject to the below Clause entitled "Limitation of Funds".)

- (a) The parties estimate that performance of this purchase order/contract, exclusive of any fee, will not cost Buyer more than the (1) the estimated cost specified in the purchase order/contract or, (2) if this is a cost sharing purchase order/contract, Buyer's share of the estimated cost specified in the purchase order/contract. Seller agrees to use its best efforts to perform the work and all obligations specified under this purchase order/contract within the estimated cost, which, if this is a cost-sharing purchase order/contract, includes both Buyer's and Seller's share of the cost.
- (b) Seller shall notify Buyer in writing whenever Seller has reason to believe that:
- (1) The costs Seller expects to incur under this purchase order/contract in the next 60 days, when added to all costs previously incurred, will exceed 85 percent of the estimated cost specified in the purchase order/contract; or
 - (2) The total cost for the performance of this purchase order/contract, exclusive of any fee, will be either greater or substantially less than previously estimated.
- (c) As a part of the notification, Seller shall provide Buyer a revised estimate of the total costs of performing this purchase order/contract.
- (d) Except as required by other provisions of this purchase order/contract, specifically citing and stated to be an exception to this clause:
- (1) Buyer is not obligated to reimburse Seller for costs incurred in excess of (i) the estimated cost specified in the purchase order/contract or, (ii) if this is a cost-sharing purchase order/contract, the estimated cost to Buyer specified in the purchase order/contract; and
 - (2) Seller is not obligated to continue performance under this purchase order/contract (including actions under the Termination Clause of this purchase order/contract) or

otherwise incur costs in excess of the estimated cost specified in the purchase order/contract, until Buyer (i) notifies Seller in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this purchase order/contract. If this is a cost-sharing purchase order/contract, the increase shall be allocated in accordance with the formula specified in the purchase order/contract.

- (e) No notice, communication, or representation in any form other than specified in subparagraph (d)(2) above, or from any person other than Buyer's Purchasing Representative, shall affect this purchase order/contract's estimated cost to Buyer. In the absence of the specified notice, Buyer is not obligated to reimburse Seller for any costs in excess of the estimated cost or, if this is a cost-sharing purchase order/contract, for any costs in excess of the estimated costs to Buyer specified in the purchase order/contract, whether those costs were incurred during the course of the purchase order/contract or as a result of termination.
- (f) If the estimated cost specified in the purchase order/contract is increased, any costs Seller incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless Buyer issues a termination or other notice directing that the increase is solely to cover termination and other specified expenses.
- (g) Change orders shall not be considered an authorization to exceed the estimated cost to Buyer specified in the purchase order/contract, unless they contain a statement increasing the estimated cost.
- (h) If this purchase order/contract is terminated or the estimated cost is not increased, Buyer and Seller shall negotiate an equitable distribution of all property produced or purchased under the purchase order/contract, based upon the share of costs incurred by each.

6. LIMITATION OF FUNDS

(This clause is applicable only if this purchase order/contract is identified as "Incrementally Funded".)

- (a) The parties estimate that performance of this purchase order/contract will not cost Buyer more than (1) the estimated cost specified in the purchase order/contract or, (2) if this is a cost-sharing purchase order/contract, Buyer's share of the estimated cost specified in the purchase order/contract. Seller agrees to use its best efforts to perform all of the work and obligations under this purchase order/contract within the estimated costs, which, if this is a cost-sharing purchase order/contract, includes both Buyer's and Seller's share of the cost.
- (b) The purchase order/contract specifies the amount presently available for payment by Buyer and allotted to this purchase order/contract, the items covered, Buyer's share of the cost if this is a cost-sharing purchase order/contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that Buyer will allot additional funds incrementally to the purchase order/contract up to the full estimated cost to Buyer specified in the purchase order/contract, exclusive of any fee. Seller agrees to perform, or have performed, work on the purchase order/contract up to the point at which the total amount paid and payable by Buyer under the purchase order/contract approximates but does not exceed the total amount actually allotted by Buyer to the purchase order/contract.
- (c) Seller shall notify Buyer in writing whenever it has reason to believe that the costs it expects to incur under this purchase order/contract in the next 60 days, when added to all costs

previously incurred, will exceed 85 percent of (1) the total amount so far allotted to the purchase order/contract by Buyer or, (2) if this is a cost-sharing purchase order/contract, the amount then allotted to the purchase order/contract by Buyer plus Seller's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the incremental funding period.

- (d) Sixty days before the end of the incremental funding period, Seller shall notify Buyer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the purchase order/contract or for any further period specified or otherwise agreed upon, and when funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the incremental funding period specified in the purchase order/contract or another agreed-upon date, upon Seller's written request Buyer will terminate this purchase order/contract on that date in accordance with the provisions of the Termination clause of this purchase order/contract. If Seller estimates that funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and Buyer may terminate this purchase order/contract on that later date.
- (f) Except as required by other provisions of this purchase order/contract, specifically citing and stated to be an exception to this clause:
 - (1) Buyer is not obligated to reimburse Seller for costs incurred in excess of the total amount allotted by Buyer to this purchase order/contract; and
 - (2) Seller is not obligated to continue performance under this purchase order/contract (including actions under the Termination clause of this purchase order/contract) or otherwise incur costs in excess of (i) the amount then allotted to the purchase order/contract by Buyer or, (ii) if this is a cost-sharing purchase order/contract, the amount then allotted by Buyer to the purchase order/contract plus Seller's corresponding share until Buyer notifies Seller in writing that the amount allotted by Buyer has been increased and specifies an increased amount, which shall then constitute the total amount allotted by Buyer to this purchase order/contract.
- (g) The estimated cost shall be increased to the extent that (1) the amount allotted by Buyer or, (2) if this is a cost-sharing purchase order/contract, the amount then allotted by Buyer to the purchase order/contract plus Seller's corresponding share, exceeds the estimated cost specified in the purchase order/contract. If this is a cost-sharing purchase order/contract, the increase shall be allotted in accordance with the formula specified in the purchase order/contract.
- (h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than Buyer, shall affect the amount allotted by Buyer to this purchase order/contract. In the absence of the specified notice, Buyer is not obligated to reimburse Seller for any costs in excess of the total amount allotted by Buyer to this purchase order/contract, whether incurred during the course of the purchase order/contract or as a result of termination.
- (i) When and to the extent that the amount allotted by Buyer to the purchase order/contract is increased, any costs Seller incurs before the increase that are in excess of (1) the amount previously allotted by Buyer or, (2) if this is a cost-sharing purchase order/contract, the amount previously allotted by Buyer to the purchase order/contract plus Seller's corresponding share, shall be allowable to the same extent as if incurred afterward, unless Buyer issues a termination or other

notice and directs that the increase is solely to cover termination or other specified expenses.

- (j) Change orders shall not be considered an authorization to exceed the incremental funding limit specified in the purchase order/contract, unless they contain a statement increasing the incremental funding limit.
- (k) Nothing in this clause shall affect the right of Buyer to terminate this purchase order/contract. If this purchase order/contract is terminated Buyer and Seller shall negotiate an equitable distribution of all property produced or purchased under the purchase order/contract, based upon the share of costs incurred by each.
- (l) If Buyer does not allot sufficient funds to allow completion of the work, Seller is entitled to a percentage of the fee specified in the purchase order/contract equaling the percentage of completion of the work contemplated by this purchase order/contract.

7. ALLOWABLE COST AND PAYMENT

- (a) Seller Compensation. For the performance of this purchase order/contract, Buyer shall pay to Seller:
 - (1) The cost thereof (hereinafter referred to as "allowable costs") determined by Buyer to be allowable in accordance with:
 - (i) FAR Subpart 31.2 as supplemented by the DEARs in effect on the date of this purchase order/contract; and
 - (ii) Any and all exclusions or limitations set forth in this clause or elsewhere in this purchase order/contract as to the types or amounts of items of cost; and
 - (2) Such fee, if any, as may be provided in the purchase order/contract.
- (b) Invoicing
 - (1) Payments shall be made to Seller when requested as work progresses, but (except for small business concerns) not more frequently than biweekly, in amounts approved by Buyer. When requesting payments, Seller shall submit to Buyer, in such form and reasonable detail as Buyer may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this purchase order/contract.
 - (2) 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:
 - a. Unique or non-repeating invoice number;
 - b. Invoice date;
 - c. Buyer's purchase order/contract number;
 - d. 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;
 - e. Total invoice price;

- f. Seller standard payment terms, or;
- g. Discount payment terms offered;
- h. If applicable, identify shipping number and date of shipment, including bill of lading number and weight if shipped on a Government bill of lading;
- i. Seller name;
- j. Seller remit payment address;
- k. Name, address, and phone number of Seller representative to contact in the event of a defective invoice.

- (3) Promptly after receipt of each invoice or voucher and statement of costs Buyer shall, except as otherwise provided in this purchase order/contract, make payment thereon as approved by Buyer. Payment of fee, if any, shall be made as specified in the purchase order/contract; provided that, after payment of 85 percent of the fee set forth in the purchase order/contract, Buyer may withhold further payment of fee until a reserve is set aside in an amount which Buyer considers necessary to protect its' or DOE's interests. Such reserve, however, shall not exceed 15 percent of the total fee, or \$100,000, whichever is less.

(c) Reimbursing costs.

- (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only--
 - (i) Those recorded costs that, at the time of the request for reimbursement, Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the purchase order/contract;
 - (ii) When Seller is not delinquent in paying costs of purchase order/contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for--
 - (A) Materials issued from Seller's inventory and placed in the production process for use on this purchase order/contract;
 - (B) Direct labor;
 - (C) Direct travel;
 - (D) Other direct in-house costs; and
 - (E) Properly allocable and allowable indirect costs, as shown in records maintained by Seller for purposes of obtaining reimbursement under Government contracts; and
 - (iii) The amount of progress payments that have been paid to Seller's subcontractors under similar cost standards.
- (2) Seller contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that Seller pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until Seller actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall

be excluded from indirect costs for payment purposes until Seller actually makes the payment.

- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (h) below, allowable indirect costs under this purchase order/contract shall be obtained by applying indirect cost rates established in accordance with paragraph (e) below.

- (4) Any statements in specifications or other documents incorporated into this purchase order/contract by reference requiring that a specific service or material to be furnished at Seller's expense or at no cost to Buyer shall be disregarded for purposes of cost reimbursement under this clause.

(d) Small Business Concerns.

A small business concern may be paid more often than biweekly and may invoice and be paid for recorded costs for items or service purchased directly for the purchase order/contract, even though the concern has not yet paid for those items or services.

(e) Final Indirect Cost Rates.

- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR Subpart 42.7 as supplemented by the DEAR in effect for the period covered by the indirect cost rate proposal. Where a Contracting Officer or Government Agency auditor has not been assigned for the purpose of establishing indirect cost rates for the business unit of Seller, such rates shall be established by Buyer in conformity with the FAR and DEAR requirements noted above.

- (2) Seller shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by Buyer or Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating Seller's final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the purchase order/contract(s) and/or subcontract(s) to which the rates apply. The proposed rates shall be based on Seller's actual cost experience for that period. The appropriate Government representative (Buyer if a Government agency has not been assigned to establish indirect cost rates at Seller's business unit per FAR 42.7) and Seller shall establish the final indirect cost rates as promptly as practical after receipt of Seller's proposal.

- (3) Seller and the appropriate Government representative (Buyer where a Government representative has not been assigned per FAR 42.7) shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected purchase order/contract(s) and/or subcontract(s), identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in this purchase order/contract. The understanding is incorporated into this purchase order/contract upon execution.

- (4) Within 120 days after settlement of the final indirect cost rates covering the year in which this purchase order/contract is physically complete (or longer, if approved in writing by Buyer), Seller shall submit a

completion invoice or voucher to reflect the settled amounts and rates.

- (5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause of this purchase order/contract.

(f) Billing rates.

Until final annual indirect cost rates are established for any period, Buyer shall reimburse Seller at billing rates established by the appropriate Government representative (Buyer if a Government representative has not been assigned per FAR 42.7), subject to adjustment when the final rates are established. These billing rates:

- (1) Shall be the anticipated final rates; and
- (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(g) Quick-close-out procedures.

When Seller and Buyer agree, the quick-close-out procedures of FAR Subpart 42.7 may be used.

(h) Audit.

At any time or times before final payment, Buyer may have Seller's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by Buyer not to constitute allowable costs or (2) adjusted for prior overpayment or underpayment.

(i) Final payment.

- (1) Upon approval of a completion invoice or voucher submitted by Seller in accordance with paragraph (e) (4) of this clause, and upon Seller's compliance with all terms of this purchase order/contract, Buyer shall promptly pay any balance of allowable costs and that part of fee (if any) not previously paid.
- (2) Seller shall pay to Buyer any refunds, rebates, credits or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this purchase order/contract, to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Buyer. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer. Before final payment under this purchase order/contract, Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

- (i) An assignment to Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Buyer under this purchase order/contract; and
- (ii) A release discharging Buyer, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this purchase order/contract, except:
- (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

- (B) Claims (including reasonable incidental expenses) based upon liabilities to third parties arising out of the performance of this purchase order/contract; provided, that the claims are not known to Seller on the date of the execution of the release, and Seller gives notice of claims in writing to Buyer within 6 years following the release date or notice of final payment date, whichever is earlier; and
- (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Seller under the patent provisions of this purchase order/contract, excluding, however, any expense arising from Seller indemnification of Buyer against patent liability.

8. STATE AND LOCAL TAXES

- (a) Seller agrees to notify Buyer of any State or local tax, fee, or charge levied or purported to be levied on or collected from Seller with respect to the work under this purchase order/contract; any transaction thereunder; or property in custody or control of Seller and constituting an allowable item of cost if due and payable, but which Seller has reason to believe, or Buyer has advised Seller, is or may be inapplicable or invalid; and Seller further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by Buyer. Any State or local tax, fee, or charge paid with the approval of Buyer or on the basis of advice from Buyer that such tax, fee, or charge is applicable and valid and which would otherwise be an allowable item of cost shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- (b) Seller agrees to take such action as may be required or approved by Buyer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by Buyer to seek recovery of any payments made, including assignment to Buyer or its designee of all rights to an abatement or refund thereof, and granting permission for Buyer or its designee to join with Seller in any proceedings for the recovery thereof or to sue for recovery in the name of Seller. If Buyer directs Seller to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against Seller for a tax, fee, or charge it has refrained from paying in accordance with this clause, the costs and expenses incurred by Seller shall be allowable items of cost as provided in this purchase order/contract, together with the amount of any judgment rendered against Seller.
- (c) Buyer shall save Seller harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of Buyer or its designee.
- (d) Seller agrees to incorporate the substance of this clause, including this paragraph (d), in all cost-type subcontracts under this purchase order/contract.

9. 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, (of 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.

10. 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.

11. 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.

12. EXCUSABLE DELAYS

- (a) Except for defaults of subcontractors at any tier, Seller shall not be in default because of any failure to perform this purchase order/contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are (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. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be deemed to be in default, unless:
 - (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) Buyer ordered Seller in writing to purchase these supplies or services from the other source; and
 - (3) Seller failed to comply reasonably with this order.
- (c) Upon request of Seller, Buyer shall ascertain the facts and extent of the failure. If Buyer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of Buyer under the termination clause of this purchase order/contract.
- (d) 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.

13. TERMINATION

- (a) Buyer may terminate performance of work under this purchase order/contract in whole or, from time to time, in part, if:
 - (1) Buyer determines that a termination is in Buyer's or Government's interest; or
 - (2) Seller defaults in performing this purchase order/contract and fails to cure the default within 10 days (unless extended by Buyer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) Buyer shall terminate by delivering to Seller a Notice of Termination specifying whether termination is for default of Seller or for convenience of Buyer, the extent of termination, and the effective date. If, after termination for default, it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the clause entitled "Excusable Delays," the rights and obligations of the parties will be the same as if the termination was for the convenience of Buyer.
- (c) 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, except as necessary to complete the continued portion of Buyer's purchase order/contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to Buyer or the Government, as directed by Buyer, all right, title, and interest of Seller under the subcontracts terminated, in which case Buyer or the Government 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 cost of which would be reimbursable in whole or in part, under this purchase order/contract; approval or ratification will be final for purposes of this clause.
 - (6) Transfer title (if not already transferred) and, as directed by Buyer, 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, (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, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this purchase order/contract, the cost of which Seller has been or will be reimbursed under this purchase order/contract.
 - (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 which the 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 (6) above; 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.
- (d) 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 the 120-day period.
- (e) 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 the 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.
- (f) 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.
- (g) Subject to paragraph (f) above, Seller and Buyer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The purchase order/contract shall be modified and Seller paid the agreed amount.
- (h) If Seller and Buyer fail to agree in whole in or part on the amount of costs and/or fee to be paid because of the termination of work, Buyer shall determine, on the basis of information available, the amount, if any, due to Seller, and shall pay that amount, which shall include the following:
- (1) All costs reimbursable under this purchase order/contract, not previously paid, for the performance of this purchase order/contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by Buyer; however, Seller shall discontinue these costs as rapidly as practicable.
 - (2) 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 subparagraph (1) above.
 - (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. If the termination is for default, no amounts for the preparation of Seller's termination settlement proposal may be included.
- (4) A portion of the fee payable under the purchase order/contract, determined as follows:
- (i) If the purchase order/contract is terminated for convenience, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the purchase order/contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - (ii) If the purchase order/contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by Buyer is to the total number of articles (or amount of services) of a like kind required by the purchase order/contract.
- (5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above
- (i) The cost principles and procedures in FAR Part 31, as supplemented by DEAR Part 931, 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 clause of this purchase order/contract entitled "Disputes," from any determination made by Buyer under paragraph (f) or (h) above or paragraph (l) below, except that if Seller failed to submit the termination settlement proposal within the time provided in paragraph (f) 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 (f), (h), or (l), Buyer shall pay Seller (1) the amount determined by Buyer if there is no right to pursue a claim or dispute or if such claim or dispute has not been timely pursued, or (2) if such claim or dispute has been pursued, 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 or the Government 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 this clause and not recovered by or credited to Buyer.
- (l) Seller and Buyer must agree to any equitable adjustment in fee for the continued portion of the purchase order/contract when

there is a partial termination. Buyer shall modify the purchase order/contract to reflect the agreement.

- (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 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) The provisions of this clause relating to fee are inapplicable of this purchase order/contract does not include a fee.

14. 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.

15. 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.

16. SUBCONTRACTS

- (a) Subcontracts shall be made in the name of Seller, shall not bind nor purport to bind Buyer, shall not relieve Seller of any obligation under this purchase order/contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this purchase order/contract or as Buyer may prescribe.
- (b) Seller agrees not to alter in any way any make-or-buy or any subcontracting decision contained in its quotation or proposal, or relied on by Buyer during purchase order/contract negotiations and of which Buyer has advised Seller in writing before this purchase order/contract is signed by or on behalf of Seller, without the prior written approval of Buyer.
- (c) Seller shall notify Buyer reasonably in advance of entering into any subcontract if the proposed subcontract --
- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type;
 - (2) Is fixed-price and exceeds either \$25,000 or 5 percent of the total estimated cost of this purchase order/contract;
 - (3) Has experimental, developmental, or research work as one of its purposes; or
 - (4) Provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$25,000 or any items of facilities.
- (d) (1) In the case of a proposed subcontract that is--
- (i) Of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$25,000, including any fee;
 - (ii) Proposed to exceed \$100,000; or
 - (iii) One of a number of subcontracts with a single subcontractor, under this purchase order/contract that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (c) above shall include the information specified in subparagraph (2) below.
- (2) (i) A description of the supplies or services to be

subcontracted.

- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.
- (iv) The proposed subcontract price and Seller's cost or price analysis.
- (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other purchase order/contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this purchase order/contract.
- (vii) A negotiation memorandum reflecting:
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which Seller did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by Seller and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between Seller's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (e) Seller shall obtain Buyer's written consent before placing any subcontract for which advance notification is required under paragraph (c) above. However, Buyer may ratify in writing any such subcontract. Ratification shall constitute the consent of Buyer.
- (f) If Seller has a purchasing system approved by any Government Agency per FAR Subpart 44.3, and the subcontract is within the scope of such approval, Seller may enter into the subcontracts described in subparagraphs (c)(1) and (c)(2) of this clause without the consent of Buyer.
- (g) Unless the consent or approval specifically provides otherwise, neither consent by Buyer to any subcontract nor approval of Seller's purchasing system shall constitute a determination-

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this purchase order/contract; or
- (3) To relieve Seller of any responsibility for performing this purchase order/contract.
- (h) No subcontract placed under this purchase order/contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR paragraph 15.404-4(c)(4)(i).
- (i) Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against Seller by any subcontractor or vendor that, in the opinion of Seller, may result in litigation related in any way to this purchase order/contract, with respect to which Seller may be entitled to reimbursement from Buyer.
- (j) Buyer or the Government reserves the right to review Seller's purchasing system as set forth in FAR Subpart 44.3.

17. 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.

18. 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: the termination of the affected employee(s) or the 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 that 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 this 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.

19. 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.

20. 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 this purchase order/contract.

21. 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 <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 an 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.

22. 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.

23. 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 product in any advertising, publicity or promotional material, or on Seller's website.

24. 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) The clause shall flow down to all appropriate subcontracts.

25. 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.

26. 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.

27. 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.**

28. 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.

29. 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 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) (Applies to solicitations only)
- (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 52.247-64, Preference For Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (When purchase involves ocean transportation)
- (8) DEAR 952.204-71, Sensitive Foreign Nations Controls (MAR 2011)
- (9) DEAR 952.211-71, Priorities And Allocations (APR 2008)
- (10) DEAR 970.5204-2, Laws, Regulations, And DOE Directives (DEC 2000)(Deviation)
- (11) DEAR 970.5245-1, Property (JAN 2013)
- (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)
- (14) 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.

(15) FAR 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (DEC 2014)

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

(16) FAR 52.244-6, Subcontracts For Commercial Items (OCT 2014)

... **And costs incurred are a factor in determining amount payable to Seller under purchase order/contract:**

(17) DEAR 970.5232-3, Accounts, Records, And Inspection (DEC 2010)

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

(18) FAR 52.237-2, Protection Of Government Buildings, Equipment, And Vegetation (APR 1984)
(19) DEAR 970.5223-1, Integration Of Environment, Safety, And Health Into Work Planning And Execution (DEC 2000)
(20) DEAR 970.5223-4, Workplace Substance Abuse Programs At DOE Sites, (DEC 2010)
(21) 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.

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

(22) DEAR 952.204-2, Security (MAR 2011)
(23) DEAR 952.204-70, Classification/Declassification (SEP 1997)
(24) DEAR 952.204-73, Facility Clearance (MAR 2011)

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

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

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

(26) 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:**

(27) FAR 52.224-1, Privacy Act Notification (APR 1984)
(28) FAR 52.224-2, Privacy Act (APR 1984)

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

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

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

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

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

(31) 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:**

(32) 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:**

(33) FAR 52.245-1, Government Property (APRIL 2012) ALTERNATE I (APR 2012)

(34) 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)
(3) FAR 52.223-18, Encouraging Contractor policies To Ban Text Messaging While Driving (AUG 2011). This clause shall flow down to all subcontracts that exceed the micro-purchase threshold.

(D) Applicable if purchase order/contract value exceeds \$10,000:

(1) FAR 52.222-40, Notification of Employee 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 52.215-23, Limitations On Pass-Through Charges (OCT 2009)

- (5) FAR 52.219-8, Utilization Of Small Business Concerns (OCT 2014)
- (6) FAR 52.227-1, Authorization And Consent (DEC 2007),
- (7) 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.)
- (8) FAR 52.246-3, Inspection Of Supplies—Cost — Reimbursement (MAY 2001) (Applies when Buyer's purchase order/contract is for the furnishing of supplies, or for services that involve the furnishing of supplies.)
- (9) FAR 52.246-5, Inspection Of Services—Cost Reimbursement (APR 1984) (Applies when Buyer's purchase order/contract is for the furnishing of services, or for supplies that involve the furnishing of services.)
- (10) FAR 52.203-16, Preventing Personal Conflicts of Interest (DEC 2011). This clause does not apply to subcontracts with self-employed individuals. This clause shall flow down to all subcontracts.
- (11) FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014). This clause shall flow down to all subcontracts that exceed the simplified acquisition threshold.

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

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

... **And involves laborers and mechanics:**

- (13) FAR 52.222-4, Contract Work Hours And Safety Standards Act—Overtime Compensation (MAY 2014)

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

- (14) 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), ALTERNATE II (OCT 2001)

(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)
- (5) 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.

- (6) FAR 52.215-2, Audit Records - Negotiation (OCT 2010). This clause shall flow down to all subcontracts that exceed the simplified acquisition threshold subject to the conditions contained in this clause.
- (7) FAR 52.215-19, Notification of Ownership Changes. 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.

(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)