

**AM GENERAL LLC**Terms and Conditions of Purchase  
For**NON-COMMERCIAL (FAR PART 15) ITEMS****1. ACCEPTANCE - ENTIRE AGREEMENT – MODIFICATION**

Acceptance of this Order shall be limited to the terms and conditions contained herein and incorporated herein by reference. This Order shall be deemed accepted upon the return of the acknowledgement copy of this Order or within a reasonable time thereafter. Buyer rejects any additional or inconsistent terms and conditions offered by Seller at any time, including any such terms and conditions contained in any Seller quotation, specification or other document which may be referenced by Buyer in this Order, and irrespective of Buyer's acceptance of or payment for Seller's Articles. These terms and conditions constitute the entire agreement between the parties and no change or modification of this Order shall be binding upon Buyer unless signed by Buyer's Purchasing Representative.

**2. DEFINITIONS**

The following definitions apply unless otherwise specifically stated:

|                                     |   |  |
|-------------------------------------|---|--|
| "Articles"                          | - | Goods and services to be delivered by Seller to Buyer under this Order.  |
| "Buyer"                             | - | Legal entity issuing this Order, AM General, LLC.  |
| "Buyer's Purchasing Representative" | - | Buyer's authorized representative.   |
| "Seller"                            | - | Legal entity that contracts with the Buyer under this Order.   |
| "Government"                        | - | Government of the United States and its federal agencies, or the Government of a foreign country, or agency thereof, in a direct sale. |
| "Order"                             | - | Purchase Order or Contract for services and/ or supplies of which these terms and conditions are a part.                               |
| "Prime Contract"                    | - | Government contract under which an Order may be issued.  |
| "FAR"                               | - | The Federal Acquisition Regulation.  |
| "PCO"                               | - | Procuring Contracting Officer - Government contracting officer for the Prime Contract or authorized representative.                    |
| "ACO"                               | - | Administrative Contracting Officer.  |
| "DFARS"                             | - | Department of Defense FAR Supplement.  |
| "Days"                              | - | Calendar days.   |

**3. GENERAL**

(A) The terms "contract," "subcontract," "order" or "purchase order" may be used interchangeably herein and, unless solely related to Buyer's Prime Contract with the Government, are applicable to Buyer's subcontract (Order) with Seller and Seller's subcontracts with its suppliers.

(B) Seller is an independent contractor, and the employees, agents, or representatives of Seller are not employees, agents, or representatives of Buyer for any purpose.

#### **4. COMPLIANCE WITH U.S. EXPORT CONTROL LAWS AND REGULATIONS**

(A) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq, the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations (EAR), 15 C.F.R. 730-774, including the requirement for obtaining any export license or agreement, if applicable (together "Export Controls"). Without in any way limiting the foregoing, Seller agrees that it will not transfer any Export Controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without authority of an export license, agreement or applicable exemption or exception.

(B) Seller agrees to notify Buyer of the export classification of any deliverable under this Order under applicable Export Controls.

(C) Buyer shall identify to Seller the export classification of all technical information provided to the Seller.

(D) Seller shall immediately notify Buyer in writing if Seller is or becomes listed on any U.S. Export Control or Sanctions list (including, but not limited to, the Denied Persons List, the Unverified List, the Entity List, the Specially Designated Nationals List, and the Debarred List), or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by the Government.

(E) If Seller is a U.S. Party that is engaged in the business of either exporting or manufacturing (whether exporting or not) Defense Articles or furnishing Defense Services as those terms are defined in the ITAR, Seller represents that it is registered with the Directorate of Defense Trade Controls at the Department of State, as required by the ITAR, and that it maintains an effective export/import compliance program in accordance with the ITAR.

(F) If Seller is a U.S. Party that is not currently engaged in the business of either exporting or manufacturing Defense Articles or furnishing Defense Services, and Buyer provides Seller with technical data controlled by the ITAR, Seller agrees to register with the Directorate of Defense Trade Controls at the Department of State, as required by the ITAR, and maintain an effective export/import compliance program in accordance with the ITAR.

(G) Seller shall provide prompt written notification to Buyer in the event of any violation or potential violation of the Export Controls, or the initiation or existence of a Government investigation that could affect Buyer or the Seller's performance under this Order.

(H) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, suppliers, agents, or subcontractors at any tier in the performance of any of its obligations under this clause.

#### **5. PARTIAL INVALIDITY; WAIVER**

If any provisions of these terms and conditions, or an Order hereunder, is or becomes void or unenforceable, the other provisions shall remain valid and enforceable. Waiver of one provision of these terms and conditions by Buyer shall in no way act as a waiver of any other provision herein, nor shall it be construed as a waiver of that provision in any later instance.

## **6. CHANGES**

(A) Buyer shall have the right at any time, by written direction of Buyer's Purchasing Representative identified as an amendment, modification, or change to this Order, to (i) suspend all or any portion of Seller's work or (ii) to make changes within the general scope of this Order that affect any one or more of the following:

- (1) the drawings, designs, specifications, or quantities of the Articles;
- (2) the statement of work or description of services;
- (3) the method of shipment or packing;
- (4) the time or place of performance, inspection, delivery, or acceptance of the Articles; and
- (5) the amount of Buyer-furnished or customer-furnished property or facilities.

(B) If any such suspension or change causes a change in the cost of, or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both, and this Order shall be modified in writing accordingly. Any claim by Seller for such an adjustment must be made within ten days from the date of receipt of a written direction from Buyer's Purchasing Representative directing such a suspension or change.

(C) Nothing in this clause, including any disagreement with Buyer as to any equitable adjustment, shall excuse Supplier from proceeding with this Order as changed. Any disagreement between the parties arising out of this clause shall be resolved in accordance with the article of this Order entitled "Disputes Under This Order."

(D) If this Order is placed under a Prime Contract, the pricing of any equitable adjustment hereunder, or of any other adjustment under this Order, shall be in accordance with the cost principles enunciated in Part 31 of the Federal Acquisition Regulation in effect on the date of this Order.

(E) No constructive changes: Information, advice, approvals, or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights or obligations and shall not constitute written direction of the Buyer's Purchasing Representative within the meaning of this "Changes" clause.

## **7. CONFIDENTIAL INFORMATION**

All of Buyer's trade secrets, designs, specifications, ideas, concepts, plans, formulas, patterns, devices, technical data, software, drawings, machinery and equipment, processes, procedures, methods, applications, and technologies or any similar items (together "Confidential Information") that are disclosed pursuant to this Order shall remain Buyer's sole and exclusive property. Any Confidential Information that is in writing, on a computer disk, thumb drive, or in any other form capable of being returned shall be returned to Buyer immediately upon request, or termination of the Order, whichever occurs first. If a proprietary information or non-disclosure agreement ("PIA") exists between Buyer and Seller covering the Articles and/or this Order, the terms of such PIA shall govern the use and disclosure of Confidential Information hereunder.

## 8. INTELLECTUAL PROPERTY

For purposes of this Order, the term “Intellectual Property” shall mean patented and unpatented inventions, mask works, copyrighted works, trade secrets, technical data, know-how, and proprietary information.

(A) Buyer shall own any Intellectual Property invented, authored, or developed by Seller in the performance of this Order, and Seller shall (i) execute all documents necessary to perfect Buyer’s title in such Intellectual Property, including, but not limited to, assignments of all right, title, and interest Seller may have in such Intellectual Property; (ii) obligate Seller’s employees and/or contractors involved in the invention or development of such Intellectual Property to execute all documents necessary to perfect Buyer’s title in such Intellectual Property, including, but not limited to, inventor’s declarations and assignments of all right, title, and interest such employees may have in such Intellectual Property; and (iii) obtain for Buyer all such executed documents as set forth in section (ii) above. Buyer hereby grants Seller a nonexclusive, royalty-free, irrevocable, worldwide right and license to use Intellectual Property invented, authored, or developed by Seller in the performance of this Order, and to make, have made, use, sell, offer for sale, or import into the United States (and all other countries in which Seller may have rights in such Intellectual Property) products, processes, services, or inventions incorporating or embodying such Intellectual Property, for the sole purpose of fulfilling Seller’s requirements and responsibilities under this Order. Seller hereby grants Buyer a nonexclusive, royalty-free, irrevocable, worldwide right and license to use Intellectual Property owned, invented, authored, or developed by Seller prior to the date of this Order that relates to the Products delivered or services performed by Seller under this Order, and to make, have made, use, sell, offer for sale, or import into the United States (and all other countries in which Seller may have rights in such Intellectual Property) products, processes, services, or inventions incorporating or embodying such Intellectual Property, for the sole purpose of fulfilling Buyer’s requirements and responsibilities under its contracts relating to this Order.

(B) Seller warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder which are not of Buyer’s design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark or other proprietary rights. Seller shall indemnify and save Buyer and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys’ fees) growing out of claims, suits, or actions alleging such infringement, including proceedings under 28 USC § 1498, which claims, suits, or actions Seller agrees to defend. The Buyer agrees to give the Seller notice of any such suit or action promptly after notice is received by the Buyer and the Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, that the Buyer may, at its own election and expense, at any time supersede the Seller in any such defense, in which event the Seller shall thereby be released from its obligation to defend Buyer under this Article with respect to the particular suit or action involved.

(C) If this Order is placed under a Prime Contract or subcontract thereunder, the indemnification set forth above shall extend to the Government only if and to the extent that the Government is or may be indemnified by Buyer.

(D) Seller may replace or modify infringing Articles with comparable goods acceptable to Buyer of substantially the same form, fit, and function so as to remove the source of infringement (“Substituted Articles”), and shall extend this provision to such Substituted Articles. If the use or sale of any of the Articles or Substituted Articles is enjoined as a result of such claim, suit, or action,

Seller, at no expense to Buyer, shall obtain for Buyer and Buyer's customers the right to use and sell the Articles or Substituted Articles.

## **9. ASSIGNMENT**

This Order, or any interest therein, including any claims for monies due or to become due with respect thereto, may only be assigned upon the written consent of Buyer. Any payment to any assignee of any claim under this Order, in consequence of such consent, shall be subject to set-off, recoupment or other reduction for any claim that Buyer may have against Seller.

## **10. CLEARANCE OF MATERIAL INTENDED FOR PUBLIC RELEASE**

Seller shall not, without prior written consent of the Buyer, make any disclosure, news release or public announcement, denial or confirmation of same, regarding any part of the subject matter of this Order or in any manner advertise or publish the fact that Seller has supplied or contracted to supply to Buyer the Articles except as may be required to perform this Order.

## **11. INSPECTION AND QUALITY**

The article entitled "Inspection of Supplies - Fixed Price," FAR 52.246-2 is hereby incorporated and made a part of this Order to the extent it is not in conflict with other provisions of this Order.

(A) Unless otherwise specified in this Order, Seller is solely responsible to ensure that all Articles furnished to Buyer comply in all respects to the requirements of this Order. Except as otherwise specified, the Seller may use its own facilities or any commercial laboratory acceptable to the Buyer and/or Government.

(B) Seller, at a minimum, shall maintain an Inspection/Quality System that complies with the requirements of Buyer's form "1261-1 Attachment H, Supplier Quality Guidelines." A copy of Form 1261 is available from Buyer's Supply Management Department. Any deviations from these guidelines must be approved in writing by the Buyer. When requested by Buyer, Seller shall furnish written procedures covering Seller's Inspection/Quality System.

(1) Such procedures shall reflect Seller's management principles and policies prescribing the approach to be followed in performance of inspection control and showing the interrelationship between Seller, its Suppliers, Buyer, and the Government. They shall indicate the established practices which signify the basic consideration and methods to be followed. In general, these procedures should reflect the overall controls of the inspection system which, when followed by suitably detailed procedures, will result in delivery of Articles having the required quality.

(2) The procedures will specify the inspection details and characteristics to be examined or tested, gauges and equipment to be used, sampling plans, acceptable quality levels used, methods of recording inspection results, and decisions that can be made.

(C) Seller shall also make and/or permit any inspection and tests required by any Supplementary Quality Assurance Provisions ("SQAP") or Quality Assurance Requirement ("QAR") applicable this Order.

(D) Except as otherwise expressly provided for in this Order, Seller is responsible for the supply and maintenance of all inspection and test equipment necessary to assure that Articles conform to requirements. The maintenance requirement of MIL-I-45607A, or any successor, shall apply to all inspection and test equipment, whether or not owned by the Government. The Calibration System requirements of MIL-STD45662, or any successor, shall apply to all measuring and test equipment used to assure that Articles presented to the Buyer and/or Government for acceptance are in conformance with technical requirements.

(E) Buyer reserves the right for itself and the Government to conduct surveillance and evaluation of items at Seller's producing facility and to have Articles inspected by the Buyer and/or Government at source. Seller agrees to comply with the requirements of the Government and/or Buyer for source inspection.

(F) Seller shall make available for examination results of tests and inspection reports if requested by Buyer and/or Government. Inspection records of the examination and tests performed by Seller shall be kept available to Buyer and/or Government for a period of four (4) years following completion of this Order.

(G) Buyer reserves the right for itself and the Government to conduct inspection and tests of all Articles to the extent practicable at all times and places, including the place of manufacture.

(H) Notwithstanding the provisions of this clause, the Seller is not in any way relieved of the final responsibility to furnish acceptable Articles in accordance with all of the requirements. Specifically, no inspection or evaluation performed by Buyer or Buyer's customer shall in any way relieve the Seller or its suppliers of their obligation to furnish all Articles in strict conformance with the requirements of this Order.

(I) Buyer, at its option, may reject or require corrections to Articles defective in material or workmanship or otherwise not in conformity with the requirements of this Order. Removal of rejected Articles and their replacement or correction shall be at Seller's expense, and shall not be again tendered for acceptance without written disclosure of the former rejection by Seller and written assent by Buyer. If Seller fails to comply promptly, Buyer may terminate this Order for default under the Termination for Default paragraph.

(J) Non-conforming Articles will not be accepted without written approval of the Buyer. Any request for acceptance of non-conforming Articles must be submitted in writing to Buyer's Purchasing Representative; however, such requests will not be approved unless Buyer determines the action to be acceptable. Until such time as the Buyer provides written acceptance, all non-conforming Articles will be considered rejected. Seller's Material Review Board (MRB) actions are not authorized.

(K) At no additional cost to Buyer, Seller shall submit preproduction Article sample(s) to the Buyer for acceptance ("Samples"). The Buyer will notify the Seller in writing as to the acceptance or rejection of the Sample. Such Sample(s) and specified submittals shall be submitted to the Receiving Inspection Department, Buyer, South Bend, Indiana, identified with a special tag that clearly identifies the Sample as the Seller's. In the event that Buyer rejects the Sample, Seller shall be required to submit additional Samples at no additional cost to Buyer until Buyer approves the Sample. Articles produced prior to obtaining Sample approval are at the Seller's risk.

(L) The Samples offered by Seller must be manufactured at the facilities in which that Article is to be produced or, if the Article is not manufactured by the Seller, such Sample must be manufactured at the facilities in which the Article is to be produced for the Order, in either instance

using production tooling. A certification by Seller to this effect must be furnished to Buyer upon request.

(M) While Buyer reserves the right to inspect and reject Articles, failure of Buyer to inspect or reject shall not waive Buyer's right to reject Articles if defects or non-conformity to specifications are discovered at a later date, whether or not such defects or non-conformity are patent or latent, nor shall failure to inspect or reject Articles affect Buyer's right to damages on account of Seller's delivery of defective or non-conforming Articles.

(N) If any failure of Articles on test or in actual service is determined by the Government and/or Buyer to be a result of defective workmanship, design or materials, Buyer is obligated to correct such defective Article by installing new Articles in all Buyer end-items that incorporate Articles. Similarly, if Articles used in production of Buyer end-items do not conform with the drawings and specifications, or are defective in material or workmanship, Buyer may be required to replace such Articles with conforming Articles in all end-items that have been theretofore produced. Seller agrees to indemnify and hold Buyer harmless from all liability or cost arising out of replacement of Articles furnished by Seller including Articles which do not fully comply with the drawings and specifications of the Order, or which are defective in material, workmanship or Seller's design, including costs of safety defect campaigns in accordance with the NHTSA Act of 1966 and other retrofits resulting from defects in Articles.

## **12. PHYSICAL CONFIGURATION AUDIT ("PCA") IF REQUIRED BY PURCHASE ORDER**

Under Buyer's contract with the Government, the Government may require a PCA on certain Articles. If required by Buyer or Government, Seller will perform the following under the PCA provision to assure the reliability and validity of the technical data comprising the production baseline:

(A) Produce the Articles (parts, sub-assemblies, and assemblies, as applicable) using production tooling and processes in strict accordance with the approved technical data in quantities as directed by the Buyer.

(B) Inspect and identify by part number and serial number (if applicable) of each Article, Article sub-assembly and Article assembly for all characteristics listed in the technical data package. Inspection records are to state findings listing actual results of all technical data requirements with content and in such form as may be required by Buyer.

(C) Notify the Buyer of any discrepancies in the technical data noted during manufacture and assembly for correction and resolution of the discrepancies.

(D) Notify the Buyer when PCA Articles will be produced, allowing sufficient time for Buyer to determine if source surveillance is required.

## **13. SPECIFICATIONS**

(A) Unless otherwise specified in this Order, Seller shall comply with all drawings and specifications cited in this Order or made part of this Order by reference. Unless a different issue is specified on the drawings or in the Order, the issue in effect as of the issuance of Government Solicitation or amendment thereof shall apply to any specifications cited in this Order.

(B) Qualified Products

(1) Seller shall be responsible for ascertaining that all Article assemblies used in the manufacture of the Articles to be supplied under this Order and that require product qualification in accordance with a specification are listed on respective qualified products list ("QPL") or have been approved for inclusion on such list. The Seller's inspection records shall specifically list such Articles, the name of Seller and Seller's suppliers (as listed on the QPL or in the approval letter), and number and date of the QPL from which the selection was made or the date of the approval letter when Articles were approved but not yet listed on the QPL. Qualified Articles are those Articles which, in accordance with the specifications containing qualification requirements, have been subjected to examination and tests and have been found to satisfy all requirements of the applicable specification. Qualified Articles lists identify the specification, manufacturer, Article by part or model number or trade name, place of manufacture, and the test report involved.

(2) Specifications which require Articles to be tested and qualified are identified in the Department of Defense Index of Specifications and Standards. Chapter IV, Defense Standardization Manual (M200) is the basic directive concerning the qualified products and qualification procedures. Copies of the Index and the Manual may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20404.

(3) Should such specifications and/or QPL's not be available to the Seller, they may be obtained from or as directed by the Buyer's Supply Management Department.

(C) Painting

Unless otherwise specified in this Order, all Articles that require painting shall be prepared and painted in accordance with MIL-STD-193 or any successor. Painted surfaces shall have complete coverage, be of the required paint film thickness and be free from sags and runs.

(D) Additional Welding Requirements

The following requirements are in addition to those otherwise specified if the Articles require fusion welding:

(1) Fusion welders shall be qualified to the requirements set forth in American Welding Society (AWS) Book D1.1, Section 5, prior to performance of production welding.

(2) Seller shall comply with MIL-STD-1261B (53185) and MIL-W-45205 AMENDMENT NO 3 (9-9-85) or any successors. Seller shall prepare and submit welding procedures for Buyer acceptance within Thirty (30) days after receipt of order.

(3) Copies of these requirements are available from Buyer's Supply Management Department.

(E) Notwithstanding any other provisions of this Order, all Articles provided by Seller shall be free from all defects and imperfections that might affect the serviceability and function of the Article. The workmanship shall be of a quality to assure that the Articles are free from any defects, improper manufacturing or assembly practices that compromise, limit or reduce the Articles' capability or that of the Buyer's end-item into which the Article is incorporated.



(F) Certificate of Compliance

(1) Seller shall execute and submit with each shipment a Certificate of Compliance, AMG Form F933SBR4, for each Article or groups of Articles furnished to Buyer under this Order. The results or records of all tests or inspections, specified herein or otherwise performed by Seller, shall also be maintained in Seller's files for a period of four years after completion of this Order.

(2) Articles furnished which have been approved by request for waiver shall also have a Certificate of Compliance completed and submitted with each shipment.

(3) All such certificates, results or records shall be made available to Buyer and/or the Government for review if requested by Buyer and/or Government.

#### **14. DRAWING CHANGES**

(A) No drawing changes may be made by Seller without Buyer's prior written approval. Seller will provide updated drawings to any new Article configuration with explanation as to how the changes incorporated differ from the previous configuration.

(B) Notwithstanding any other provisions of this Order, if the drawing for an Article contains the words "Source Control Drawings," the Seller must supply the approved Articles manufactured by only those sources listed on the drawing, provided that for all such source controlled Articles, where the drawing also contains or depicts dimensional, functional or other described requirements in addition to the manufacturer's part number, the Seller must furnish components that fully comply with all said requirements.

(C) Where a drawing contains reference to "Approved Source" with manufacturer's part numbers and also contains or depicts dimensional, functional or other described requirements, the Seller must furnish Articles which fully comply with all said requirements, notwithstanding the manufacturer's part number. Where an "Or Equal" component is proposed to be furnished in lieu of the approved Article, the component must comply with the requirements described on the drawing; and if the "or equal" component requires repair parts support, such parts must be completely interchangeable with such parts in the "Approved Source" Article.

(D) An "Or Equal" component means: A component produced or manufactured by or for other than the manufacturer or user whose symbol appears on the component drawing furnished by the Government, but which component is equal to the Article in materials and finishes, performance potential and adaptability for use, and is interchangeable with the Article.

(E) If the Article or any component part thereof to be furnished under this Order is an item or part over which the Buyer does not possess design control, no change shall be made by the Seller or any of its subcontractors in such item or part with respect to Articles delivered under this Order after sample approval by the Buyer, nor shall Seller change suppliers unless prior approval for such change is approved by Buyer.

#### **15. MATERIAL, EQUIPMENT, TOOLS AND FACILITIES**

(A) Unless otherwise stated in this Order, Seller shall supply all material, equipment, tools and facilities required to perform this Order.

(B) Title to all property furnished to the Seller by Buyer or specifically paid for by Buyer, or the cost of which is fully or substantially amortized in the price of the Articles purchased hereunder, and any replacement thereof, shall remain in and with the Buyer with the right of possession in Buyer.

## **16. SUBCONTRACTOR COST OR PRICING**

(A) Should Buyer or the Government determine that any price, including profit or fee, negotiated with Seller in connection with this Order or any modification thereof was set at a higher price than it should have been because the Seller or any of its subcontractors or prospective subcontractors furnished incomplete, inaccurate, or non-exempt cost or pricing data as required by the Truth In Negotiations Act or its implementing regulations or contract clauses, then such price shall be reduced accordingly by Buyer and the Order shall be modified in writing by Buyer to reflect such adjustment.

(B) Submission of cost or pricing data may be requested in situations where submission of such data are not otherwise required if the PCO or Buyer determines, in writing, that such data are necessary for the evaluation of the reasonableness of the price of the contract or subcontract or for an evaluation of cost realism.

(Note: Since this Order is subject to reduction under this clause by reason of defective cost or pricing or other data submitted in connection with certain subcontracts of Seller, it is expected that the Seller may wish to include a clause in each such subcontract requiring the Subcontractor to appropriately indemnify the Seller. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Seller and its subcontractor, provided that no provision shall be included therein giving the Seller or any subcontractor at any tier hereunder any right of appeal under the "Disputes" clause of the Prime Contract or higher-tier subcontract. It is also expected that any subcontractor of Seller subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower-tier subcontractors.)

## **17. DELAY**

Time is of the essence in performing this Order. Should Seller experience or anticipate any delay in performing this Order, whether or not such delay is excusable under any provision hereof, Seller shall immediately notify Buyer of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of the Order's delivery schedule. Seller shall be liable for any direct or consequential damages resulting from a delay.

## **18. MOST FAVORED CUSTOMER PRICING**

Seller warrants and represents that the Articles' price in this Order does not exceed the contract price for the same or similar items or services to any other commercial or non-commercial customer during the past three months and during the term of this Order. Should Seller quote/charge another customer a lower price, Buyer is entitled to a reduction of the Order's price to the lower price.

## **19. BUYER-FURNISHED PROPERTY**

Seller shall not use, reproduce, appropriate or disclose to anyone other than Buyer any material, preproduction samples, tooling, dies, drawings, designs, specifications, software, technical information and other property or data furnished by Buyer nor shall Seller use the same to produce or

manufacture articles other than those required hereunder without prior written authorization from Buyer. Where the Government has received from Buyer the right to authorize such use by Seller, Seller may utilize Buyer's data and information in the manufactured Articles for direct sale to the Government; provided, however, that Seller shall (i) give Buyer prior written notice of each such proposed use; (ii) prominently identify each item being provided by Seller for direct sale to the Government, and (iii) make no claim against Buyer which arises out of use by Seller of such data and information. Title to such Buyer-furnished property shall be and remain in Buyer at all times. Buyer does not guarantee the accuracy of any tooling or the quality or suitability of any material supplied by it. Seller shall bear the risk of loss, damage or destruction, unless such loss, damage or destruction is solely, directly and proximately caused by Buyer's negligence. All Buyer-furnished property, together with spoiled and surplus materials, shall be returned to Buyer at termination or completion of this Order unless Buyer shall direct otherwise in writing. Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies or services by Seller for use in the performance of Buyer's Order, Seller shall insert the substance of this provision in its subcontracts. Seller acknowledges that any such data, designs or other information of Buyer are unique, and that Buyer may enforce its rights under this paragraph by specific performance.

## **20. REMEDIES**

The remedies provided Buyer herein shall be cumulative and in addition to any other remedies provided by law or equity or the terms of this Order. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.

## **21. SETOFF**

Buyer may set off or recoup any amount from Seller, whether or not under this Order, against any amount due Seller hereunder.

## **22. RETENTION AND/OR WITHHOLDING**

Buyer may retain and/or withhold from payment to Seller an amount sufficient to reimburse Buyer for any loss, damage, expense, cost or liability relating to Seller's failure to comply with any requirements of this Order.

## **23. "FORCE MAJEURE" OR EXCUSABLE DELAYS**

The Seller shall not be in default because of its failure to perform this Order under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Seller. Examples of these causes are (1) acts of God or 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 the Seller. "Default" includes failure to make progress in the work so as to endanger performance.

## **24. DISPUTES UNDER THIS ORDER**

(A) The parties agree to attempt to settle any dispute amicably. If the parties do not reach agreement, Seller shall request, in writing, a final decision from Buyer's Purchasing Representative. If Seller does not accept Buyer's decision, within ninety (90) days thereof, Seller agrees to provide Buyer a formal written statement on the subject of the dispute. If thereafter the parties are unable to

resolve their dispute, the dispute shall be adjudicated in a court of competent jurisdiction in the State of Indiana in accordance with the “applicable law” provision of this Order.

(B) Pending final decision of any dispute hereunder, the Seller shall proceed with performance of the Order. If the dispute arises out of a difference in interpretation between the parties as to the performance requirements of the Order, then Seller shall continue performance in accordance with the interpretation of performance as determined by the Buyer.

## **25. DISPUTES UNDER A GOVERNMENT PRIME CONTRACT**

(A) If the Contracting Officer of Buyer’s Prime Contract by a final decision interprets any provision of requirement of Buyer’s Prime Contract (including exhibits, appendices, and attachments thereto and documents referred to therein), and the same or substantially similar provision or requirement is contained in this Order (including exhibits, appendices, and attachments thereto and documents referred to therein), such interpretation shall be binding between Buyer and Seller, provided that Buyer affords Seller the opportunity to appeal such decision in Buyer’s name, and provided further that Seller provides to Buyer any and all information requested by Buyer to justify Buyer’s verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. Section 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. If Seller so appeals, Seller shall, upon Buyer’s written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. As used in this provision, the term “appeal” shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts.

(B) If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer’s customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer’s name and at Seller’s cost against Buyer’s customer.

(C) Any reference to the “Disputes” clause in any applicable FAR or DFARS clause incorporated into this Order shall mean this article “Disputes Under A Government Prime Contract.”

## **26. TERMINATION FOR DEFAULT**

(A) The Buyer may, subject to the terms and conditions of this clause, by written notice of default to the Seller, terminate this Order in whole or in part if the Seller fails to —

- (1) Deliver the Articles within the time specified in this Order or any extension;
- (2) Perform any of the other provisions or meet any of the requirements of this Order;
- (3) Make progress so as to endanger performance of this Order (see following paragraph);

The Buyer's rights to terminate this Order under subdivisions A(2) and A(3) above may be exercised if the Seller does not cure such failure within 10 days (or more if authorized in writing by the Buyer)

after receipt of the notice from the Buyer specifying the failure. No such cure notice or period is required for a termination under subdivision A(1) above.

(B) If the Buyer terminates this Order in whole or in part for default, it may acquire, under the terms and in the manner the Buyer considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to the Buyer for any excess costs for those supplies or services. However, the Seller shall continue the work not terminated.

(C) If this Order is terminated in whole or in part for default, the Buyer may require the Seller to transfer the title and deliver to the Buyer, as directed by the Buyer, any (1) completed Articles, and (2) partially completed Articles and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of the Buyer, the Seller shall also protect and preserve property in its possession in which the Buyer has an interest.

(D) The Buyer shall pay the Order price for completed Articles delivered and accepted. The 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 under this Order" clause. The Buyer may withhold from these amounts any sum the Buyer determines to be necessary to protect the Buyer against loss because of outstanding liens or claims of former lien holders.

(E) The rights and remedies of the Buyer in this clause are in addition to any other rights and remedies provided by law, including the U.C.C. as adopted by the State of Indiana, or in equity, or under this Order.

## **27. TERMINATION FOR CONVENIENCE**

(A) Buyer, by written notice, may terminate this Order at any time, in whole or in part, when it is in Buyer's interest, and such termination shall not constitute a default. In such event, unless Seller shall have defaulted or been in default in performance, Buyer and Seller shall have all rights and obligations accruing both at law or in equity, including Buyer's rights to title and possession of goods paid for. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.

(B) Seller's obligations under the warranty, intellectual property, and proprietary rights provisions of this Order shall survive any termination for convenience.

## **28. TAXES**

Seller's prices shall be exclusive of any Federal, State or Local Sales, Use or Excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of this Order. Seller shall list separately on its invoice any such tax lawfully applicable to any such goods, and payable by Buyer, with respect to which Buyer does not furnish to Seller lawful evidence of exemption. Seller's prices shall not include any taxes on property owned by the Government unless authorized in writing by Buyer. Seller agrees to comply with any reasonable request by Buyer regarding payments under protest, and regarding any refunds, claims, litigation or proceedings with respect to any such taxes and to make appropriate adjustments to afford Buyer the benefit of any refund or reduction in such taxes.

## **29. APPLICABLE LAW**

(A) Seller agrees that (1) this Order shall be construed and the relations between the parties determined in accordance with the Laws of the State of Indiana, U.S.A. as well as, where applicable, the law of federal contracts as enunciated in decisions of administrative boards of contract appeals and the federal courts; (2) the courts of said State shall have jurisdiction in any case or controversy arising hereunder; and (3) service of process upon Seller by registered mail to the address set forth on the face of this Order shall consider valid service for the purpose of any such litigation.

(B) Seller shall produce articles in compliance with all requirements of The Fair Labor Standards Act. Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage or expense, including lost profit, attorney's fees and court costs, for any failure or alleged failure of Seller to comply with the requirements of this Order.

## **30. LABELING REQUIREMENTS**

Label data will include, at a minimum, the Order number, purchase release number, purchase order line number, Buyer part number, and quantity.

## **31. [RESERVED]**

## **32. EVIDENCE OF SATISFACTORY TOOLS**

Invoices and photographs of tools will not be rendered by the Seller until Buyer accepts a satisfactory Article produced by such tools as specifically agreed in this Order. Upon acceptance of a satisfactory Article the Seller shall render all invoices and a scaled photograph for each tool listed on the Order to the Buyer. The reverse side of the photograph shall reference the tool number, nomenclature and Order number. All negatives and prints shall become the property of the Buyer and no reproductions shall be made without the written consent of the Buyer. (A "scaled photograph" is an ordinary photograph which includes a scale ruler, or other measuring device to indicate the approximate size of the tool.)

## **33. DELIVERY/RISK OF LOSS**

Acceleration of delivery is not authorized unless specified in writing by Buyer's Purchasing Representative. Title for the Articles covered by the Order shall pass from Seller to Buyer upon delivery at the designated F.O.B. point. If Articles are received more than five (5) days ahead of schedule, Buyer reserves the right to keep the Articles and make payment as if the delivery was made per the delivery schedule.

## **34. GIFTS AND GRATUITIES**

Buyer will not solicit, and Seller shall not provide, any gifts (other than advertising items of nominal value) or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value, or compensation) of any kind to any employee of Buyer.

Seller shall report in writing any solicitation or suspected solicitation of gifts or gratuities by Buyer's employees to the Executive Director, Supply Management, 105 North Niles Ave., South Bend, Indiana 46634.

### **35. INVOICING, PACKING AND SHIPPING**

- (A) Separate invoices are required for each shipment.
- (B) On date of shipment Seller shall: Mail original and one copy of each invoice to AM GENERAL, P.O. Box 7005, 105 North Niles Ave., South Bend, Indiana 46634-7005.
- (C) Terms of Seller's invoice will be net 30 days, and payment shall be made by check.
- (D) Cash discount period shall commence with the date of actual receipt of invoice or actual receipt of acceptable Articles ordered herein, whichever is later.
- (E) Premium transportation will be paid by Buyer only when specifically authorized by Buyer's Purchasing Representative in writing. Seller shall not insure or declare value of any shipment made F.O.B. shipping point.
- (F) Separate packing lists are required for each Order and must accompany each shipment. The location of the packing slip must be clearly marked on the container.
- (G) The complete Order Number must appear on all documents.
- (H) Single item containers will be identified with Order number, Part Number, and Quantity. When multiple Orders or items are combined in one container, they must be separately packaged inside that container and the packages identified as to Order, Part Number and Quantity.
- (I) Buyer uses standard packs as an integral element of our standardized material system. All items must be suitably packaged and prepared for shipment to withstand normal transportation and stocking functions. Items intended for Buyer's production lines are to be delivered in standard quantities and pack sizes as specified by Buyer in the RFQ or RFP and subsequent release to ship documentation. All containers must be in compliance with Best Commercial Practices and compatible with the Buyer's part plan as indicated on the Vehicle Part Record (VPR).
- (J) Test reports, X-rays, certificates and other supporting documents must accompany each shipment when required by the Order.
- (K) Seller shall not combine shipments destined for different Buyer facilities on the same Bill of Lading or in the same container.
- (L) Articles will be marked in such a manner as to be readily identifiable with the part number reflected on the Order. Kits, assemblies and all Articles consisting of multiple items -- that is, hardware, pins, gaskets, etc. -- must be unit packaged as a complete unit and so identified. If the Article is individually packaged, the package will be so marked. Single Articles too small to be separately identified will be separated into lots and tagged or bagged. Proper markings corresponding to the Order description and part number shall be applied to the tags and/or bags for handling and storage purposes.

### **36. ORDER OF PRECEDENCE**

In the event of any inconsistency among the provisions of this Order, such inconsistency shall be resolved by giving precedence in the foregoing sequence: (A) Order, (B) Special Provisions, (C) Specifications/SOW, (D) Terms and Conditions for Purchase, and (E) General Provisions, or other provisions incorporated by reference.

### **37. STRIKE BANK**

Seller agrees that prior to any labor contract expiration at Seller's manufacturing facility and with Buyer's written approval, Seller shall build ahead of schedule in order to have available a strike bank of at least a thirty (30) day supply of the Article stored in a readily accessible controlled location to prevent a delivery delay resulting from a potential work stoppage at Buyer's facility. Seller agrees to pay for all incidental costs associated with providing this strike bank which shall include but not necessarily be limited to costs associated with accelerated production, storage and any form or premium payment associated with the manufacture of this strike bank inventory.

### **38. COMPLIANCE WITH LAWS**

(A) Seller shall comply with the applicable provisions of all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder, and such compliance shall be a material requirement of this Order.

(B) Seller shall comply with the labeling requirements for Class I and Class II Ozone Depleting Substances as required by Section 611 of the Clean Air Act Amendments of 1990 and the final rules (40 C.F.R. Part 82) implementing the same (collectively, the "Act"). Seller shall accurately label, consistent with the requirements of the Act, any products containing a controlled substance that it is supplying to Buyer. In the event Seller discovers that it has failed to comply with the labeling requirement of the Act, it shall immediately notify Buyer of those products supplied to Buyer which failed to comply with the labeling requirements of the Act.

### **39. INDEMNIFICATION**

(A) In addition to any other indemnification provision of this Order, the Seller shall indemnify and hold harmless Buyer, its members, officers, directors, and employees, from any and all claims, liabilities, losses, damages, costs, and expenses, including attorneys fees

(1) for actual or alleged (a) injury to any person, (b) damage to any property, or (c) violation of any law, ordinance, or regulation, arising from or related to the Seller's performance of work in connection with this Order; or

(2) arising from the commercialization or utilization of any of Seller's technology applied in connection with this Order, including, but not limited to the making, using, selling, or exporting products, processes, or services derived from such technology; or

(3) arising from any assertion by the Government that any cost, price, profit, or fee included in this Order or in Buyer's Prime Contract should be, will be, or has been reduced as a result of, or arising out of facts attributable to, cost or pricing data furnished or required to be furnished by the Seller or one of its subcontractors or prospective subcontractors that were not complete, accurate, or current as required by the Truth in Negotiations Act or any implementing or comparable regulation, including FAR Part 15; or

(4) any civil or criminal penalty or fine incurred by Buyer which is caused to any degree or any extent by the Seller, its employees, agents, representatives, suppliers, or subcontractors.



#### **40. DESIGN CHANGES**

During performance of this Order, Seller shall not make any changes in the design of Articles without advance written notification to and written approval of the Buyer. This requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

#### **41. DUTY TO PROCEED**

Except as expressly authorized in writing by Buyer, no failure of Buyer and the Seller to reach any agreement provided for by the terms of this Order or with respect to any dispute relating to this Order shall excuse the Seller from proceeding diligently with the performance of the work required by this Order.

#### **42. CERTIFICATES**

The Seller shall furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to the Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Article, the word "certificate" shall include any plan or course of action or recordkeeping function.

#### **43. CONSTRUCTION**

The construction of this Order shall be governed by the law specified in the article entitled "Disputes Under This Agreement." The title designations of the numbered articles and provisions to this Order are for convenience only and shall not affect the interpretation or construction of this Order.

#### **44. ENTIRE AGREEMENT**

This Order, including attachments and documents incorporated by reference, constitutes the entire agreement between Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order. No amendment or modification of this Order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller.

#### **45. [RESERVED]**

#### **46. RATED ORDER CONTRACT**

**A GOVERNMENT CONTRACT APPLIES TO THIS ORDER - PRIORITY DO-A4. THIS IS A RATED ORDER CERTIFIED FOR NATIONAL DEFENSE USE, AND YOU ARE REQUIRED TO FOLLOW ALL THE PROVISIONS OF THE DEFENSE PRIORITIES AND ALLOCATION SYSTEM REGULATION (15 CFR 700).**

#### **47. INCORPORATION OF FEDERAL ACQUISITION REGULATION AND SUPPLEMENTS**

(A) The following clauses incorporated by reference shall be those in effect on the effective date of the Government Prime Contract (as amended) with Buyer to which this Order relates. The FAR and Supplements thereto are obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Portions of the FAR are also accessible at <http://www.acquisition.gov/far>.

(B) Any reference in the following clauses to the “Disputes” clause shall mean the Article entitled “Disputes Under A Government Prime Contract” of the Order to which these Terms and Conditions are attached.

(C) Seller shall insert the following provisions in selected lower tier subcontracts, either verbatim or in substance, and by incorporation-by-reference or otherwise as appropriate.

(D) Wherever used, the terms “Contract” and “Contractor” shall mean this Order (or subcontract, P.O., or agreement) and Seller (including Seller as Bidder or Offeror), respectively. The terms “Government,” “Contracting Officer,” and equivalent phrases shall mean Buyer except where further clarified or modified and except that in clauses identified by \* shall have their original meaning as written in the FAR, and when identified by \*\* shall not only have their original meaning as written in the FAR, but also shall mean Buyer. “Subcontractor,” however, shall mean “Seller’s Subcontractor.”

| <b><u>FAR Reference</u></b> | <b><u>FAR Clause Title And Modifications Thereof</u></b>   |
|-----------------------------|--|
| <b>52.203-3</b>             | <b>Gratuities*</b> (The term “agency head” means Buyer). (Apr 1984) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)  |
| <b>52.203-5</b>             | <b>Covenant Against Contingent Fees</b> (Apr 1984) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)   |
| <b>52.203-6</b>             | <b>Restrictions on Subcontractor Sales to the Government.</b> (Sep 2006) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)   |
| <b>52.203-7</b>             | <b>Anti-Kickback Procedures</b> (Oct 2010) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101, except that paragraph (c)(1) of FAR 52.203-7 is not included in this Order. Paragraph (c)(4) is revised by deleting “The Contracting Officer may” and inserting “To the extent the Contracting Officer has effected an offset at the prime contract level or has directed Buyer to withhold any sum from the Seller, Buyer may ....” |
| <b>52.203-10</b>            | <b>Price or Fee Adjustment for Illegal or Improper Activity</b> (Jan 1997) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)   |
| <b>52.203-12</b>            | <b>Limitation on Payments to Influence Certain Federal Transactions*</b> (Oct 2010) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)  |
| <b>52.203-13</b>            | <b>Contractor Code of Business Ethics and Conduct*</b> (Apr 2010) (Applicable if this Order exceeds \$5,000,000 and has a period of performance of more than 120 days.)  |
| <b>52.203-14</b>            | <b>Display of Hotline Poster(s)</b> (Dec 2007) (Applicable if this Order exceeds \$5,000,000, unless performed entirely outside of U.S.). Paragraph (b)(3) includes the following: DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Arlington, VA 22202-4704.  |

- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010)\*** (Applicable if contracts funded in whole or in part with Recovery Act funds.)
- 52.204-2 Security Requirements\*** (Aug 1996) (Excluding any reference to the Changes clause in the prime contract) (Applicable if this order involves access to classified information).
- 52.204-7 Central Contractor Registration** (Apr 2008)
- 52.204-9 Personal Identity Verification of Contractor Personnel** (Jan 2011) (Applicable to all subcontractor employees if this order requires routine physical access to a federally controlled facility and/or routine access to a federally controlled information system.)
- 52.209-5 Certification Regarding Responsibility Matters** (Apr 2010). (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)
- 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment** (Sep 2010) (Applicable if this Order exceeds \$30,000.)
- 52.209-7 Information Regarding Responsibility Matters\*** (Jan 2011).
- 52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters\*** (Jan 2011).
- 52.211-5 Material Requirements** (Aug 2000)
- 52.211-15 Defense Priority and Allocation Requirements** (Apr 2008.) If this Order is a “rated order” as indicated by a DPAS rating elsewhere in this Order, Seller will follow all the provisions of the Defense Priorities and Allocation System Regulations (15 CFR 700).
- 52.214-26 Audit and Records -- Sealed Bidding** (Oct 2010) (Applicable to subcontracts expected to exceed the threshold at 15.403-4(a)(1))
- 52.214-27 Price Reduction for Defective Certified Cost or Pricing Data -- Modifications -- Sealed Bidding** (Oct 2010) (Applicable to subcontracts expected to exceed the threshold at 15.403-4(a)(1) where subcontract was solicited through sealed-bidding procedures)
- 52.214-28 Subcontractor Certified Cost or Pricing Data -- Modifications -- Sealed Bidding** (Oct 2010) (Applicable to subcontracts expected to exceed the threshold at 15.403-4(a)(1))
- 52.215-2 Audit and Records — Negotiation\*** (Oct 2010) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)
- 52.215-10 Price Reduction for Defective Cost or Pricing Data** (Oct 2010) (Applicable to Orders for which it is contemplated cost or pricing data will be required.)

In paragraph (c) the term “Contracting Officer” does not change. Seller shall provide cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed in the FAR.

**52.215-11 Price Reduction and Defective Cost of Pricing Data — Modifications** (Oct 2010) (Applicable to Orders for which it is contemplated cost or pricing data will be required for modifications and the Order includes FAR 52.215-10.)

In paragraph (d), the term “Contracting Officer” does not change. Seller shall provide cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed in the FAR.

**52.215-12 Subcontractor Cost or Pricing Data** (Oct 2010) (Applicable if the Order, when entered into, includes FAR 52.215-10.)

**52.215-13 Subcontractor Cost or Pricing Data — Modifications** (Oct 2010) (Applicable if the Order, when entered into, includes FAR 52.215-11.)

**52.215-14 Integrity of Unit Prices** (Oct 2010) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)

**52.215-15 Pension Adjustments and Asset Reversions** (Oct 2010) (Applicable in solicitations and purchase orders for which it is anticipated that cost or pricing data will be required or for which any pre-award or post-award cost determination will be subject to FAR Part 31.)

**52.215-16 Facilities Cost of Money** (Jun 2003)

**52.215-18 Reversion or Adjustment of Plans for Postretirement Benefit** (Jul 2005) (Applicable in solicitations and purchase orders for which it is anticipated that cost or pricing data will be required or for which any pre-award or post-award cost determination will be subject to FAR Part 31.)

**52.215-19 Notification of Ownership Change** (Oct 1997) (Applicable in solicitations and purchase orders for which it is anticipated that cost or pricing data will be required or for which any pre-award or post-award cost determination will be subject to FAR Part 31.)

**52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data** (Oct 2010) (Applicable to subcontracts expected to exceed \$650,000, when cost or pricing data are required)

**52.215-23 Limitations on Pass-Through Charges** (Oct 2009) (Applicable to cost-reimbursement subcontracts exceeding \$100,000 and cost-reimbursement or fixed-price subcontracts exceeding \$650,000 under Department of Defense prime contracts)

**52.217-2 Cancellation Under Multi-year Contracts** (Oct 1997)

**52.219-8 Utilization of Small Business Concerns** (Jan 2011) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101, unless performed

entirely outside of the U.S.)

- 52.219-9 Small Business Subcontracting Plan (Jan 2011) & Alt II (Oct 2001)**  
(Applicable only if this Order exceeds \$650,000, and Seller is not a Small Business Concern.)
- 52.219-16 Liquidated Damages — Subcontracting Plan (Jan 1999)**
- 52.219-28 Post Award Small Business Program Representation (Apr 2009)**
- 52.222-1 Notice to the Government of Labor Disputes (Feb 1997)**
- 52.222-4 Contract Work Hours and Safety Standards Act — Overtime Compensation (Jul 2005)** (Applicable if this Order exceeds \$150,000 and requires employment of laborers or mechanics. In addition, Buyer may withhold or recover from the Seller any sums the Contracting Officer withholds or recovers from Buyer because of a violation of a provision of this clause by the Seller or Seller's subcontractor.)
- 52.222-19 Child Labor- Cooperation with Authorities and Remedies (Jul 2010)**
- 52.222-20 Walsh-Healey Public Contracts Act (Dec 2010)**
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999)**
- 52.222-25 Affirmative Action Compliance (Apr 1984)** (Applicable if FAR 52.222-26 is applicable)
- 52.222-26 Equal Opportunity.** (Mar 2007) (Subparagraphs (b)(1) through (11) of FAR 52.222-26 only are included in this Order.)
- 52.222-35 Equal Opportunity for Veterans (Sep 2010)** (Applicable if the Order is for \$100,000 or more.)
- 52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010)** (Applicable if this Order exceeds the micro purchase threshold. Paragraph (b)(2) is revised to delete "provided by or through the Contracting Officer" and insert "provided upon request by the Contracting Officer through the Buyer's Purchasing Representative.")
- 52.222-37 Employment Reports on Veterans (Sep 2010)** (Applicable if the clause at 52.222-35 is applicable.)
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)** (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101, unless performed entirely outside of U.S.)
- 52.222-41 Service Contract Act of 1965 (Nov 2007)**
- 52.222-50 Combating Trafficking In Persons (Feb 2009)**
- 52.222-54 Employment Eligibility Verification (Jan 2009)** (Applicable unless work to be

performed entirely outside of U.S., or if period of performance is less than 120 days.)

- 52.222-99 Notification Of Employee Rights Under The National Labor Relations Act** (Jun 2010) (Applicable if subcontract exceeds \$10,000 and will be performed wholly or partially in the United States.)
- 52.223-3 Hazardous Material Identification and Material Safety Data** (Jan 1997)
- 52.223-5 Pollution Prevention and Right-to-Know Information (Aug 2003)**
- 52.223-6 Drug Free Workplace** (May 2001) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)
- 52.223-7 Notice of Radioactive Materials** (Jan 1997)
- 52.223-9 Estimate of Percentage of Recovered Material Content For EPA Designated Items** (May 2008) (Applicable to subcontracts exceeding \$100,000 for EPA-designated items containing recovered material)
- 52.223-11 Ozone-Depleting Substance** (May 2001)
- 52.223-14 Toxic Chemical Release Reporting** (Aug 2003) (Applicable if this order exceeds \$100,000.)
- 52.223-18 Contractor Policy to Ban Text Messaging While Driving** (Sep 2010)
- 52.225-1 Buy American Act – Supplies** (Feb 2009)
- 52.225-8 Duty Free Entry** (Oct 2010) (Applicable to subcontracts involving the importation of duty-free items, or other foreign supplies in excess of \$10,000)
- 52.225-13 Restrictions on Certain Foreign Purchases\*** (Jun 2008)
- 52.227-1 Authorization and Consent** (Dec 2007)
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement\*\*** (Dec 2007)
- 52.227-3 Patent Indemnity\*\*** (Apr 1984)
- 52.227-9 Refund of Royalties** (4/1984) (Applicable if the amount of royalties reported during negotiation of the subcontract exceeds \$250.)
- 52.227-10 Filing of Patent Applications--Classified Subject Matter** (Dec 2007) (Applicable to subcontracts that cover or are likely to cover classified subject matter)
- 52.227-11 Patent Rights--Ownership by the Contractor** (Dec 2007) (Applicable to subcontracts for experimental, developmental, or research work by small business firms or nonprofit organizations)

- 52.227-13 Patent Rights--Ownership by the Government\*** (Dec 2007)
- 52.228-5 Insurance — Work on a Government Installation** (Jan 1997) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101, and requires work on a Government installation.)
- 52.229-3 Federal, State and Local taxes** (Apr 2003) (Applicable if this order exceeds the simplified acquisition threshold in FAR 2.101.)
- 52.229-6 Taxes -- Foreign Fixed-Price Contracts** (Jun 2003) (Applicable if this Order is expected to exceed the simplified acquisition threshold in FAR 2.101 and the Order is to be performed wholly or partly in a foreign country.)
- 52.232-17 Interest** (Oct 2010) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)
- 52.233-3 Protest After Award** (Aug 1996)
- Under Paragraph (f) of this clause, the Buyer may withhold or recover from Seller any sums the Contracting Officer withholds or recovers from Buyer because of an intentional or negligent misstatement, misrepresentation or miscertification of the Seller which results in a bid protest being sustained.
- 52.234-1 Industrial Resources Developed Under Defense Production Act Title III.** (Dec 1994)
- 52.242-15 Stop-Work Order** (Aug 1989) The words “ninety (90) days” are changed to “one hundred (100) days” and the words “thirty (30) days” are changed to “twenty (20) days” wherever they appear.
- 52.244-5 Competition in Subcontracting** (Dec 1996) (Applicable to subcontracts of \$100,000 or more which are non- competitive or are based on time and materials or labor hours)
- 52.244-6 Subcontracts for Commercial Items** (Dec 2010)
- 52.245-1 Government Property** (Aug 2010) (Applicable to all subcontracts that involve government-furnished property)
- 52.245-9 Use and Charges** (Aug 2010)
- 52.246-2 Inspection of Supplies- Fixed Price** (Aug 1996) (Applicable if this order exceeds the simplified acquisition threshold in FAR 2.101.)
- 52.247-63 Preference for U.S. Flag Carriers (Jun 2003)** (Applicable if this order may involve international air transportation.)
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)**
- 52.248-1 Value Engineering** (Oct 2010) (Applicable if this order exceeds the simplified acquisition threshold in FAR 2.101.)

**52.249-2 Termination for Convenience — Fixed-Price.** (May 2004)

Paragraph (c): Change 120 days to 60 days.

Paragraph (d): Plant clearance procedure is omitted.

Paragraph (e): The time for submission of the final termination settlement proposal is changed from “1 year” to “6 months” from the effective date of termination.

Paragraph (l): The time for submission of a proposal for an equitable adjustment after a partial termination is changed from “90 days” to “45 days” from the effective date of termination.

**Cost Accounting Standards (Applicable Unless Otherwise Exempt)**

**52.230-2 Cost Accounting Standards** (Oct 2010)

**52.230-3 Disclosure and Consistency of Cost Accounting Practices** (Oct 2008)  
(Applicable to negotiated contracts)

**52.230-6 Administration of Cost Accounting Standards** (Jun 2010) (Applicable if order exceeds \$650,000 and offeror certifies it is eligible to use modified CAS coverage.)

Seller shall communicate and otherwise deal directly with the PCO to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the PCO respecting Cost Accounting Standards, **FAR 52.230-2**, and Administration Of Cost Accounting Standards, **FAR 52.230-6**, provided that Seller shall not be required to disclose to Buyer such communications containing information that is privileged and confidential to the Seller. In addition to any other remedies provided by law or under this Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as a result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of the Cost Accounting Standards or of FAR 52.230-2, 52.230-3, or 52.230-6. Paragraph (b) is deleted from each of the foregoing clauses.

**DFARS**

**Reference**

**DFARS Clause Title And Modifications Thereof**

**252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies** (Dec 2008) (Applicable to first tier subcontractors only if this Order exceeds the simplified acquisition threshold in FAR Part 2.101. “Government” is not changed in this clause.)

**252.203-7003 Agency, Office of the Inspector General** (Sep 2010)

**252.204-7000 Disclosure of Information** (Dec 1991)

**252.204-7003 Control of Government Personnel Work Product** (Apr 1992)

**252.204-7004 Alternate A, Central Contractor Registration** (Sep 2007)

**252.204-7008 Export-Controlled Items** (Apr 2010)



- 252.208-7000 Intent to Furnish Precious Metals as Government-Furnished Material** (Dec 1991) (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)
- 252.211-7000 Acquisition Streamlining** (Oct 2010) (Applicable if this order exceeds \$1.5 million.)
- 252.211-7003 Item Identification and Valuation** (Aug 2008)
- 252.215-7000 Pricing Adjustments** (Dec 1991)
- 252.215-7002 Cost Estimating System Requirements** (Dec 2006). (Applicable if award of this Order is based on cost or pricing data.)
- 252.219-7003 Small Business Subcontracting Plan (DOD Contracts)** (Oct 2010) (Applicable to Orders for DOD contracts over \$650,000)
- 252.223-7001 Hazard Warning Labels** (Dec 1991)
- 252.225-7000 Buy American Act- Balance of Payments Program Certificate** (Dec 2009)
- 252.225-7001 Buy American Act and the Balance of Payments Program** (Jan 2009)
- 252.225-7002 Qualifying Country Sources as Subcontractors** (Apr 2003)
- 252.225-7004 Report of Intended Performance Outside the United States and Canada — Submission after Award** (Oct 2010)  
(Applicable to first tier subcontracts over \$650,000 if any part of order will be performed outside of U.S. or Canada. Seller shall notify Buyer of report submittal.)
- 252.225-7006 Quarterly Reporting of Actual Contract Performance Outside the United States** (Oct 2010) (Applicable to first tier subcontractors over \$650,000 if any part of order will be performed outside of U.S. or Canada. Seller shall notify Buyer of report submittal.)
- 252.225-7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies** (Sep 2006) (Applicable if this Order is for items that are ITAR-regulated defense articles.)
- 252.225-7008 Restrictions on Acquisition of Specialty Metals** (Jul 2009)
- 252.225-7009 Restrictions on Acquisition of Certain Articles Containing Specialty Metals** (Jan 2011)
- 252.225-7012 Preference for Certain Domestic Commodities** (Jun 2010) Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.
- 252.225-7013 Duty-Free Entry** (Dec 2009)

Paragraph (e) is modified to read “The Buyer will obtain from the Government duty-free entry certificates and afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause.” No change to “Contracting Officer,” “Government,” “prime contractor,” or “prime contract” in paragraphs (c), (d), (i) or (k); except change “Contracting Officer administering the prime contract” and “contract administration office” in paragraph (i) to “Buyer’s Purchasing Representative” and “Contracting Officer” in paragraph (i)(10) to “Government.”

- 252.225-7015 Restrictions on Acquisitions of Hand or Measuring Tools** (Jun 2005)  
(Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101.)
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings** (Dec 2010)
- 252.225-7021 Trade Agreements** (Nov 2009)
- 252.225-7025 Restriction on Acquisition of Forgings** (Dec 2009) (Applicable to subcontracts for forging items or other items that contain forging items)
- 252.225-7033 Waiver of United Kingdom Levies** (Apr 2003)
- 252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States** (Jul 2009)
- 252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States** (Mar 2006)
- 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises And Native Hawaiian Small Business Concerns** (Sep 2004)  
(Applicable if this Order exceeds \$500,000.)
- 252.227-7013 Rights in Technical Data – Noncommercial Items** (March 2011)  
“[T]o the Contractor” is deleted from (b)(1)(vi) and “contract or” and “thereunder” is deleted from (b)(1)(ix). “Buyer or” is added before “Government” in (c) and (i). The second and third occurrences of “Contracting Officer” are changed to “Government” in (e)(4) “And the Government” is added after “parties” in (h)(1). In (h)(2) “sixty (60)” is changed to “fifty (50)” days. No substitutions for “Government” are made.
- 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation** (March 2011)  
“[T]o the Contractor” is deleted from (b)(1)(iii) and “contract or” and “thereunder” is deleted from (b)(1)(vi). “Buyer or” is added before “Government” in (i). The second and third occurrences of “Contracting Officer” have been changed to “Government” in (e)(4). “And the Government” is added after “parties” in (h)(1). In (h)(2) “sixty (60)” is changed to “fifty (50)” days. No substitutions for “Government” are made.

- 252.227-7016 Rights in Bid or Proposal Information\*** (Jan 2011)
- 252.227-7019 Validation of Asserted Restrictions — Computer Software** (Jun 1995)  
 “Buyer’s Purchasing Representative” is substituted for “Contracting Officer” in paragraph (b), otherwise no substitutions are made for “Contracting Officer” or “Government.” In paragraphs (f)(5) and (f)(6) “the prime contract” is substituted for “this contract.”
- 252.227-7025 Limitation On The Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends** (Jan 2011)
- 252.227-7027 Deferred Ordering of Technical Data or Computer Software** (Apr 1988)
- 252-227-7030 Technical Data — Withholding of Payment** (Mar 2000)  
 “Buyer” is substituted for “Contracting Officer” in paragraph (a). In paragraph (b), “or Buyer” is added after “Government.”
- 252.227-7037 Validation of Restrictive Markings on Technical Data** (Sep 1999)  
 In paragraph (b), “Contractor’s” remains in the clause with a lower case “c.” In paragraphs (c) and (d)(l), “hereunder” is inserted after “subcontract.” In paragraphs (f) and (g)(2)(i), change “this contract” to “the prime contract,” and in paragraph (i), change “a contract” to “the prime contract.” No substitutions for “Government” or “Contracting Officer” are made.
- 252.231-7000 Supplemental Cost Principles** (Dec 1991)
- 252.235-7003 Frequency Authorization** (Dec 1991) (Applicable to subcontracts for the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required)
- 252.236-7000 Modification Proposals — Price Breakdown** (Dec 1991)
- 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers** (Jan 2009) (Applicable to subcontracts that involve the acquisition of steel as a construction material)
- 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services** (Dec 1991) (Applicable to subcontracts which require securing telecommunications)
- 252.243-7001 Pricing of Contract Modifications** (Dec 1991)
- 252.246-7003 Notification of Potential Safety Issues** (Jan 2007) (Applicable to subcontracts for parts identified as critical safety items; systems and subsystems, assemblies, and subassemblies integral to a system; and repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)  
 Subcontractor must notify Buyer, the Administrative Contracting Officer, and the Procuring Contracting Officer of nonconformances or deficiencies within

the scope of paragraph (b)

- 252.247-7023**     **Transportation of Supplies by Sea** (May 2002)
- 252.247-7024**     **Notification of Transportation of Supplies by Sea** (Mar 2000)
- 252.225-7003**     **Report of Intended Performance Outside the United States and  
Canada -- Submission with Offer** (Oct 2010)
- 252.244-7000**     **Subcontracts for Commercial Items and Components (DOD Contracts)**  
(Nov 2010)
  
- 252.249-7002**     **Notification of Anticipated Contract Termination or Reduction** (Oct  
2010)

#### **48. CERTIFICATIONS**

The offeror, by signing its offer, hereby certifies compliance with the mandated clauses set forth within FAR 52.204-8, Annual Representations and Certifications (Oct 2010). (See Buyer Attachment A, available under the Buyer corporate website.) Completed Attachment A documents are to be submitted with all offers.