

**General Provisions and FAR/
DFARS Flowdown Provisions for
Commercial Items/Services
Under a U.S. Government
Prime Contract**

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SECTION I: GENERAL PROVISIONS

1. Formation of Contract and Terms and Conditions

- (a) This Contract is Field's offer to SELLER. SELLER's signature on the Contract, acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract. SELLER's acceptance of this Contract creates a binding Contract between Field and SELLER, which shall be governed by the provisions of this Contract.
- (b) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (c) Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected to by Field and have no effect unless accepted in writing by Field.

2. Applicable Laws

- (a) This Contract shall be governed by the laws of the state of Oklahoma, excluding its choice of laws rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be

construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contracts Appeals, and quasi-judicial agencies of the federal Government.

- (b) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances of the United States and the country where SELLER will be performing the Contract. The provisions of the *United Nations Convention on Contracts for International Sale of Goods* shall not apply to this Contract.
- (c) In particular, if the Work is to be shipped to, or performed in the United States
 - (1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Field hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
 - (2) SELLER shall provide to Field with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state-approved counterpart.

3. Assignment and Subcontracting

- (a) Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by Field. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if Field is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Field shall have the right to make settlements and adjustments in price with SELLER without notice to the assignee.
- (b) Without Field's written consent, SELLER will not subcontract for the design, development, or procurement of any substantial portion of goods or services under this Contract. This limitation does not apply to SELLER's purchases of standard commercial supplies or raw materials.

4. Changes

- (a) Field may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Field-furnished property; and, if this Contract includes services, (vi) description of services to be performed; (vii) quantity of services (i.e., hours to be worked); (viii) time of performance (e.g., hours of the day, days of the week); and (ix) place of performance. SELLER shall comply immediately with such direction.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Field shall make an equitable adjustment in the Contract price or delivery schedule or both, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to the Field Procurement Representative within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the **Disputes** clause of this Contract. However, nothing contained in this **Changes** clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

5. Commercial Computer Software

- (a) As used in this clause, "restricted computer software" means computer program, computer database, or related documentation that has been developed at private expense and is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted, and so marked when delivered or otherwise furnished.
- (b) Notwithstanding any provisions to the contrary contained in any SELLER's standard commercial license or lease agreement, SELLER agrees that the restricted computer software delivered under this Contract shall provide the following rights to Field and the U.S. Government.
 - (1) The restricted computer software may be:

- (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any government installation to which such computer or computers may be transferred;
- (ii) Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;
- (iii) Reproduced for safekeeping (archives) or backup;
- (iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this Purchase Order or Contract;
- (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this Purchase Order or Contract; and
- (vi) Used, copied for use in, or transferred to a replacement computer.

- (c) Release from liability: The SELLER agrees that the government or Field, and other persons to whom the government or Field may have released or disclosed commercial computer software delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of such commercial computer software that are not marked to indicate that such software are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

6. Communication with Field Customer

- (a) Field shall be solely responsible for all liaison and coordination with the Field customer, including the U.S. Government, as it affects the applicable prime contract, this Contract, and any related contract.
- (b) Unless otherwise directed in writing by the authorized Field Procurement Representative, all documentation requiring submittal to, or action by, the government or the Contracting Officer shall be routed to, or through, the Field Procurement Representative, or as otherwise permitted by this Contract.

7. Confidentiality

- (a) Unless otherwise addressed by a separate Confidentiality Agreement between the parties, Field and SELLER shall each keep confidential and protect from unauthorized use and disclosure for a period of three (3) years after receipt all (a) confidential, proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract (collectively referred to as a "Proprietary Information and Materials").
- (b) Field and SELLER shall each use Proprietary Information and Materials of the other only in connection with this

contract. However, despite any other obligations or restrictions imposed by this article, Field shall have the right to use, disclose and reproduce SELLER's Proprietary Information and Materials, and make derivative works thereof, in connection with this contract. Any such use, disclosure, reproduction or derivative work by Field shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by SELLER shall apply to all materials derived by SELLER or others from Field's Proprietary Information and Materials.

- (c) Upon Field's request at any time, and in any event upon the completion, termination or cancellation of this contract, SELLER shall return to Field all of Field's Proprietary Information and Materials and all materials derived there from (except for one archival copy), unless specifically directed otherwise in writing by Field or a United States of America Government Contracting Officer.
- (d) SELLER may disclose Proprietary Information and Materials of Field to its subcontractors as required in connection with this contract program, provided that each such subcontractor first agrees in writing to substantially the same obligations imposed upon SELLER under this article relating to Proprietary Information and Materials.
- (e) The provisions of this article control in the event of a conflict with any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this contract.

8. Contract Direction

- (a) Only the Field Procurement Representative has authority to amend this Contract. Such amendments must be in writing.
- (b) Field engineering and technical personnel may render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the **Changes** clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Action or direction by any Field customer shall not be deemed to be a change under the **Changes** clause of this Contract and shall not be the basis for equitable adjustment.
- (d) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the Field Procurement Representative.

9. Default

- (a) Field, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make reasonable progress in its performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or a longer period, which Field may authorize in writing) to cure any such failure after receipt of notice from Field. Defaults involving delivery schedule delays shall not be subject to the cure provision.

- (b) Field shall not be liable for any Work not accepted; however, Field may require SELLER to deliver to Field any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. Field and SELLER shall agree on the amount of payment for these other deliverables.
- (c) SELLER shall continue all Work not terminated.
- (d) If after termination under paragraph (a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

10. Definitions

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting (e.g., PO, Purchase Order, or other such designation), including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term "Contract" shall also mean the release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "Field" means ASES, LLC d/b/a Field Aerospace.
- (d) "Field Procurement Representative" means the person authorized by Field's cognizant procurement organization to administer this Contract.
- (e) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (f) "SELLER" means the Party identified on the title page of the Contract, with whom Field is contracting.
- (g) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

11. Disputes

- (a) Any dispute, controversy, or claim arising out of or relating to this Contract or default, termination, or invalidity hereof, shall be settled by arbitration under the rules of the American Arbitration Association, with the following exception:
 - (1) Field may not require independent contractors to utilize arbitration to resolve any claim under Title VII of the 1964 Civil Rights Act or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or take any action to enforce any provision of an existing agreement with an independent contractor that requires the arbitration of such claims.
 - (2) SELLER agrees that it will not enter into or take any action to enforce similar arbitration agreements with respect to any employee or independent contractor performing work related to such contracts. (Effective

June 17, 2010; Applicable to subcontracts in excess of \$1 million)

Note: A certification to above provision is included in the *Certifications Section of this document*.

- (b) The place of the arbitration shall be Oklahoma. The language to be used in the arbitral proceedings shall be English. Judgment of the arbitrators shall be final and non-appealable and may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of the enforcement. Each Party shall bear its own expenses of the arbitration, but the fees and costs of the arbitrators shall be borne equally between the Parties participating in the arbitration.
- (c) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the requesting party with copies of documents relevant to the issues raised by any claim or counter claim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, whose determination shall be conclusive. All discovery shall be completed within thirty (30) days following the appointment of the arbitrators.
- (d) No action at law or in equity may be commenced by Field or SELLER under or arising from this Contract unless it is brought within two years after the accrual of the cause of action upon which the claim is based, regardless of whether Field or SELLER knew or should have known of the accrual of any such cause of action.
- (e) Notwithstanding the foregoing, in the event of a breach or threatened breach by Field or SELLER under the *Confidentiality or Intellectual Property* provisions of this Contract, Field or SELLER may forego arbitration under this provision and seek immediate judicial and equitable remedies, including, but not limited to, injunctive relief or specific performance.
- (f) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the Field Procurement Representative.

12. Excusable Delay

- (a) Subject to (b) and when mutually agreed by the Parties, SELLER shall be excused from, and shall not be liable for, failure of performance due to one or more of the following qualifying events (such list being exclusive):
 - (1) War; warlike operation; insurrection; riot; fire, flood, explosion, accident, governmental act; material control regulations or orders; act of God; act of the public enemy; epidemic; quarantine restriction, and strikes; and if
 - (2) Such event was beyond SELLER's control and not occasioned by its negligence or default. The Contract will be extended for that period of time attributable to such event.
- (b) To be excused from performance under (a) SELLER shall submit, within ten (10) calendar days of the start of the qualifying event, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the control of the SELLER and not due to its negligence or fault and what efforts SELLER will make to

minimize the length of the delay. SELLER shall use its best efforts to cure the qualifying event. SELLER shall submit within ten (10) calendar days of the end of the event a written notice stating the impact to the schedule and evidence justifying the length of the delay. If the delay extends for thirty (30) days or more, this Contract may be terminated by Field without additional cost and Field may elect to return to SELLER for a refund that portion of the work delivered to Field prior to the occurrence of the qualifying event.

- (c) Failure of the U.S. Government to issue any required export license, or withdrawal or termination of a required export license by the U.S. Government, shall relieve Field of its obligations under this Contract, and shall relieve SELLER of its corresponding obligations.

13. Export Control Compliance for Foreign Persons

- (a) SELLER agrees to comply fully with all applicable U.S. export control laws.
- (b) The subject Work of this Contract (together including data, services, and hardware provided hereunder, hereinafter "Controlled Technology") may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. SELLER shall obtain the authority of either an Export License or an applicable License Exception before permitting the export of any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered to SELLER under this Contract. SELLER shall obtain the authority of either an Export License or an applicable License Exception before assigning any foreign persons or foreign sources to perform work under this Contract or before permitting any foreign persons or foreign sources to have access to any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered SELLER under this Contract. "Foreign person" is any person who is not a citizen or national of the United States and includes individuals, foreign corporations, international organizations, and foreign governments. "Foreign source" includes vendors, subcontractors, and suppliers owned and controlled by a foreign person.
- (c) SELLER hereby certifies that all SELLER employees who have access to the Controlled Technology are U.S. citizens, have a valid green card or, have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria have been authorized under export licenses to perform their work hereunder.
- (d) SELLER further certifies that all SELLER employees assigned to work on this Contract are U.S. citizens, U.S. Permanent Residents, non-immigrants authorized to work in the U.S. or non-immigrants who have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).
- (e) SELLER agrees to notify Field if any deliverable Work under this Contract is restricted by export control laws or regulations.
- (f) SELLER shall immediately notify the Field Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. At Field's request, SELLER will

provide Field with all data Field may need to apply for and obtain an Export License or applicable License Exception.

14. Extras

Work shall not be supplied in excess of quantities specified in the Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

15. Furnished Property (Furnished and SELLER-Acquired)

- (a) Field may provide to SELLER property owned by either Field or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract. Title to Furnished Property shall be retained by Field or its customer. SELLER shall clearly mark all Furnished Property to show ownership.
- (b) SELLER-acquired property means property acquired, fabricated or otherwise provided by SELLER as part of performance under a Government-funded Field subcontract and to which the Government or Field has taken or will take title.
- (c) No less than annually and at completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished and SELLER-Acquired Property and shall deliver or make such other disposal as may be directed by Field. SELLER shall notify Field immediately when any property is lost, damaged, destroyed or stolen.
- (e) With respect to property to which the government may take title under this Contract:
 - (1) For this fixed priced Contract, the clause at FAR 52.245-1 Alternate 1 Government Property (AUG 2010) shall apply. Said clause is incorporated by reference, except as used therein "Government" means "Field" except in the phrases "Government-Furnished Property" and "Government Property," and in references to government title to property. "Contracting Officer" means "Field."
 - (2) If SELLER has an approved Government property system, SELLER shall provide approval documentation to Field within 5 days of contract award. SELLER shall provide to Field immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the government of its property control system.

16. Gratuities and Kickbacks

- (a) No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by SELLER to any employee of Field with a view toward securing favorable treatment as a supplier.
- (b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

17. Importer of Record

(Applies only if the Contract involves importation of Work into the United States)

- (a) If elsewhere in the Contract Field is indicated as importer of record, SELLER warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U.S.C. 1673 et seq.).
- (b) If elsewhere in the Contract Field is not indicated as importer of record, then SELLER agrees that:
 - (1) Field will not be a party to the importation of Works, the transactions represented by this Contract will be consummated after importation, and SELLER will neither cause nor permit Field's name to be shown as "Importer of Record" on any customs declaration; and
 - (2) Upon request and where applicable, SELLER will provide to Field a properly executed Customs Form 7501, Customs Entry.

18. Indemnification

Each party shall indemnify the other against all liability that may result from any claim, action, or suit based on any alleged injury to or death of any person or damage to or loss of any property to the extent that it was caused or alleged to have been caused by it in the course of its performance of this Contract. The indemnifying party shall pay all attorneys fees and costs of defense and, if any judgment is rendered against the indemnified party in any such action or actions, the indemnifying party shall satisfy and discharge the judgment without cost or expense to the indemnified party.

19. Independent Contractor Relationship

SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively, without any relation whatsoever to Field, and shall not be entitled to participate in or receive any of Field's employee benefits.

20. Inspection and Acceptance

- (a) Field and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SELLER of its obligations to furnish all Work in accordance with the requirements of this Contract. Field's final inspection and acceptance shall be at destination unless otherwise specified in this Contract.
- (c) SELLER shall not retender rejected Work without disclosing the corrective action taken.

21. Insurance and Liability to Third Parties

- (a) In the event that SELLER, its employees, agents, or subcontractors enter Field's or its customer's premises for any reason in connection with this Contract, SELLER, as

well as its subcontractors and lower-tier subcontractors, shall procure and maintain worker's compensation, comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts, and such other insurance as Field may require, as stated in the contract schedule, and shall comply with all site requirements. Such insurance shall be written through a licensed carrier, with a financial rating of no less than A-, in the respective state of operation and shall meet all legal minimum requirements of same state. SELLER shall indemnify and hold harmless Field, its officers, employees, and agents from any and all losses, costs, claims, causes of action, damages, liabilities, and expenses, including (but not limited to) attorneys' fees, all expenses of litigation and settlement, and court costs, by reason of property damage or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, to the extent that it was caused or alleged to have been caused by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier.

- (b) SELLER shall provide Field thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a Certificate of Insurance showing SELLER's compliance with these requirements. SELLER shall name Field as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Field and is not contributory with any insurance which Field may carry.

22. Intellectual Property Infringement

- (a) SELLER represents that to the best of its knowledge the SELLER's patents, copyrights, trademarks, trade secrets or similar rights relating to the maintenance, sale or use of goods furnished, or relating to, or used in, the work performed, pursuant to this contract do not infringe on any existing patents, copyrights, trade secrets or other intellectual property and proprietary rights of any third party nor has any claim (whether or not embodied in action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against SELLER.
- (b) In the event of a breach of this representation, SELLER shall defend, at SELLER's own responsibility and expense, Field and Field's customer from any suit or claim against Field or Field's customer and SELLER shall indemnify and hold harmless Field and Field's customer from and against any and all claims, liabilities, losses, damages, and expenses provided Field (a) notifies SELLER promptly in writing of such claim; (b) allows SELLER to control the defense of such claims; and (c) reasonably cooperates with SELLER to defend such claim.
- (c) SELLER will have no obligation under this article with regard to any infringement arising from (a) SELLER's compliance with formal drawings or specifications issued by Field or U.S. Government where infringement could not be avoided in complying with such drawings or specifications or (b) use or sale of products in combination with other items when such infringement would not have occurred from the use or sale of those products solely for the purpose for which they were designed or sold by SELLER.

- (d) SELLER will have no obligation under this article with regard to any infringement authorized by the Authorization and Consent clause in clause of the contract, provided SELLER complies with the Authorization and Consent and the Notice and Assistance Regarding Patent and Copyright Infringement clauses in clause.

23. Language and Standards

All reports, correspondence, drawings, notices, markings, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing, all documentation and Work shall use the units of U.S. standard weights and measures.

24. Limitation of Liability

- (a) In no event shall either SELLER or Field be liable to the other for any indirect, incidental or consequential damages arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.
- (b) Each Party shall indemnify and hold harmless the other, its officers, directors, employees and agents, against and from any liability, loss, damage, cost and expense (including attorneys' fees and costs of litigation) arising out of or in connection with any claim or action which any third party may file or threaten to file against either Party or its officers, directors, employees or agents arising out of, or resulting directly from, the negligent acts or omissions or the willful misconduct of it or its employees, directors, officers, representatives, and agents in the course of its performance of its obligations under this Agreement. The indemnification provided herein shall survive the termination of this Agreement.

25. New Materials

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, reconditioned, remanufactured, or of such age as to impair usefulness or safety).

26. Offset Credit and Cooperation

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of Field. SELLER agrees to cooperate with Field in the fulfillment of any foreign offset or countertrade obligations.

27. Packing and Shipment

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice to prevent damage and deterioration during shipping, handling, and storage.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the Field contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

- (c) For Work shipped within the United States, unless otherwise specified, delivery shall be FOB Destination. For Work imported into the United States, unless otherwise specified, delivery shall be DDP Field's facility indicated on the title page of the Contract in accordance with *INCOTERMS 1990*.

28. Payments, Taxes, and Duties

- (a) Unless otherwise provided, terms of payment shall be net forty five (45) days from the latest of the following: (i) Field's receipt of the SELLER's proper invoice; (ii) scheduled delivery date of the Work (SELLER's proper invoice required); or (iii) actual delivery of the Work (SELLER's proper invoice required).
- (b) Payment shall be deemed to have been made as of the date of Field's mailed payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state, and local taxes, as well as duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Prices shall not include any taxes, impositions, charges, or exactions for which Field has furnished a valid exemption certificate or other evidence of exemption.
- (d) All taxes, assessments and similar charges levied with respect to or upon any such products or Work owned by Field while in SELLER's possession or control, and for which no exemption is available, shall be borne by SELLER.
- (e) The prices stated in the Contract are firm, fixed prices in United States dollars.

29. Precedence

Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Purchase Order, release document or schedule (which shall include continuation sheets), as applicable, including any special terms and conditions; (2) any master agreement, such as corporate, sector, or blanket agreements; (3) these General Provisions; and (4) Statement of Work.

30. Priority Rating

If so identified, this Contract is a "rated order," certified for national defense use, and the SELLER shall follow all the requirements of the *Defense Priorities and Allocation System Regulation* (15 C.F.R. Part 700).

31. Quality Control System

Unless this Contract contains other specific quality requirements,

1. SELLER shall provide and maintain a quality control system to an industry-recognized quality standard for the Work covered by this Contract.
2. Records of all quality control inspection work by SELLER shall be kept complete and made available to Field and its customers during the performance of this Contract and for such longer periods as may be specified.

3. Field, customer, and regulatory authorities will have access to all quality management system documentation upon request.
4. The supplier may be required to submit to initial and follow-up audits of their quality management system by Field or regulatory authorities to become, or remain, an approved supplier.
5. For suppliers manufacturing items to Field or customer-provided design data or suppliers providing Aerospace related products/services, the following requirements shall apply, where appropriate:
 - (1) If the supplier determines during production the product (intended for use or delivery to Field) does not conform to requirements, this product shall be identified and controlled. The supplier shall provide timely notification to Field regarding the nonconforming product.
 - (2) If the supplier determines at any time after delivery of product to Field the product does not conform to requirements, the Seller shall notify Field within 24 hours of the nonconforming product.
 - (3) If the supplier determines during inspection the product (intended for use or delivery to Field) does not conform to requirements, this product shall be identified and controlled. The supplier shall hold the product until dispositioned and approved by Field.
 - (4) Supplier shall provide notification to Field of any change in product design, materials, or production processes from those originally specified or quoted.
 - (5) Supplier shall provide notification to Field of changes in product and/or process, changes of suppliers, changes of manufacturing facility location and, where required, obtain Field approval.
 - (6) Supplier shall provide access to Field, Field customers, and all applicable regulatory authorities to applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records.
 - (7) Supplier shall flow down to the supply chain the applicable requirements including customer requirements and key characteristics.
- (f) Where a supplier is designing hardware, Field shall participate in all design review activities and reserves the right to approve preliminary designs prior to proceeding to detailed design and final designs prior to proceeding to fabrication.
- (g) For design, development, or manufacturing work affecting high-value, safety critical systems, Field may require that the supplier be certified to AS9100, ISO 9001, or an FAA certificated quality system under FAR Part 145 or FAR Part 21.
- (h) Field shall participate in any technical interchange meetings where the supplier is presenting information to our customers.

32. Release of Information

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to

this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of Field.

33. Stop Work Order

- (a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Field, or for such longer period of time as the Parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage.
- (b) Within such period, Field shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment, in accordance with the principles of the **Changes** clause, shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

34. Survivability

If this Contract is terminated for default or convenience, SELLER shall not be relieved of those obligations contained in this Contract for the following provisions:

- (a) Applicable Laws
Export Control Compliance Independent Contractor Relationship
Confidentiality
Insurance and Liability to Third Parties
Intellectual Property
Limitation of Liability
Release of Information
Warranty
- (b) Those U.S. Government flowdown provisions that, by their nature, should survive.

35. Termination for Convenience

- (a) For specially performed Work, Field may terminate part or all of this Contract for its convenience by giving written notice to SELLER. Field's only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of Field using generally accepted accounting principles, that have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred that reasonably could have been avoided.
- (b) In no event shall Field be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (c) For other than specially performed Work, Field may terminate part or all of this Contract for its convenience by giving written notice to SELLER and Field's only obligation to SELLER shall be payment of a mutually agreed-upon restocking or service charge.
- (d) SELLER shall continue all Work not terminated.

36. Timely Performance

- (a) Time is of the essence in this Contract. SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by Field, Field may store, at SELLER's expense, or return, shipping charges collect and at SELLER's risk, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall promptly notify Field, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless Field has given prior written consent.

37. Waiver and Approval

- (a) Failure by Field to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of Field thereafter to enforce each and every such provision.
- (b) Field's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of Field in this Contract are in addition to any other rights and remedies provided by law or in equity.

38. Warranty

- (a) In addition to SELLER's standard warranty, SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. All warranties shall survive inspection, test and acceptance of, and payment for, the Work. All warranties shall run to Field and its successors, assigns, and customers. The warranty shall extend for a period of one (1) year after Field's final acceptance unless a different period is set forth elsewhere in this Contract. If any nonconformity of the Work appears within that time, SELLER shall promptly repair, replace, or reperform the Work, at Field's option. Transportation of replacement Work, return of nonconforming Work, and repeat performance of Work shall be at SELLER's expense. Work required to be corrected or replaced shall be subject to this provision and the **Inspection and Acceptance** provision of this Contract in the same manner and to the same extent as Work originally delivered under this Contract. If repair, replacement, or reperformance of Work is not timely, Field may elect to return the nonconforming Work or repair, replace Work, or reprocure the Work at SELLER's expense.
- (b) SELLER further warrants that all software, firmware, and hardware (products) provided by SELLER, having date-dependent functionality containing or calling on a calendar function to process date and time data, will accurately process the date and time data (including, but not limited to, inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transforming such dates and data).

- (1) In the event of a discovery of any date-dependent functionality noncompliance, the discovering party shall notify the other party within five (5) business days. At Field's option, the noncompliant products shall be repaired or replaced by SELLER within ten (10) business days of such notice at no cost to Field. The date-dependent functionality warranty shall run to Field and its successors, assigns, and customers, and shall extend indefinitely after Field's final acceptance.
- (2) Nothing in this provision shall be construed to limit any other rights under this Contract, at law or in equity that Field may have with respect to date-dependent functionality compliance.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

- (b) The requirements of 41 CFR 60-741.5 are incorporated herein by reference and apply to any PO/Subcontract that exceeds \$10,000.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60–741.5(a). This regulation prohibits discrimination against individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

39. Suspect/Counterfeit Items

(a) Seller represents and warrants that Item(s) supplied by Seller are not "Suspect/Counterfeit". Seller's warranty against counterfeit items shall survive any termination or expiration of this Contract, Agreement or Order.

(b) A "Counterfeit" item is an item, or any component thereof, produced, altered or otherwise misrepresented to resemble another item, or any part thereof, without authority or right to do so; including but not limited to, any item that is produced or altered to result in Buyer being misled or defrauded through the presentation to Buyer of such item as original, new, genuine or otherwise from a source other than the actual source of such item. Counterfeit items also include items that have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new or any parts that are designated as suspect by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP).

(c) If Buyer, in its sole discretion, determines that any items or components received from Seller are, or may be, Suspect/Counterfeit ("Suspected Counterfeit Parts"), Buyer shall notify Seller in writing of such determination. Seller agrees that within ten (10) days after Seller's receipt of such notice, Seller shall remit to Buyer all payments previously made to Seller for such Suspected Counterfeit Parts. Alternatively, the Buyer may elect to have the Seller offer a replacement item in lieu of remitting all previous payments associated with Suspect/Counterfeit items.

(d) Seller further agrees that it shall indemnify, defend, and hold harmless Buyer from and against any claims, actions, proceedings, judgments, penalties, fines and/or other losses of any kind arising out of or in connection with any such Suspected Counterfeit Parts. Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of replacement goods after counterfeit parts have been replaced.

(e) Prior to Seller's acquisition of any items, or components thereof, that will be included in any transaction between Seller and Buyer, Seller shall flow down the requirements of this Article to all entities from which it receives such items, or components thereof, and shall be fully liable to Buyer for all such entities' compliance with such requirements.

40. Equal Opportunity

- (a) The requirements of 41 CFR 60-300.5 are incorporated herein by reference and apply to any PO/Subcontract that exceeds \$100,000.

SECTION II: FAR AND DFARS FLOWDOWN PROVISIONS

A. Incorporation of FAR and DFARS Clauses

The Federal Acquisition Regulation (FAR) clauses and Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. The effective date of each clause incorporated herein shall be that in effect as of the effective date of the subcontract or purchase order.

B. Government Subcontract

This Contract is entered into by the Parties in support of a U.S. Government contract.

As used in the FAR clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Contract.
3. "CONTRACTOR" means the SELLER, as defined previously in the "Definitions" provision of this document, acting as the immediate (first-tier) subcontractor to Field.
4. "Prime Contract" means the Contract between Field and the U.S. Government or between Field and its higher-tier contractor who has a contract with the U.S. Government.
5. "Subcontract" means any Contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. Notes

1. Substitute "Field" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "Field Procurement Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO" throughout this clause.
3. Insert "and Field" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or Field" after "Government" throughout this clause.

- 5. Communication and notification required under this clause from or to the CONTRACTOR and to or from the Contracting Officer shall be through Field.
- 6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for Field's government Prime Contract under which this contract is entered.

CONTRACTOR's subcontracting plan is incorporated herein by reference.)

5. The following clauses apply as indicated:

- (a) 52.203-13 Contractor Code of Business Ethics and Conduct (Applicable in subcontracts over \$5,000,000 and a performance period of more than 120 days)
- (b) 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Applicable if funded in whole or in part with Recovery Act funds)
- (c) 52.203-16 Preventing Personal Conflicts of Interest (Applicable if subcontract exceeds \$150,000 AND subcontractor employees will perform acquisition functions closely associated with inherently governmental functions)
- (d) 52.204-2 Security Requirements (Applicable if the Work involves access to classified information; delete paragraph (c) of the clause.)
- (e) 52.204-9 Personal Identity Verification of Contractor personnel (Applicable in subcontracts at all tiers where subcontractor is required to have routine access to a federally-controlled facility and/or federally-controlled information system)
- (f) 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Applicable if this award is 25K or above)
- (g) 52.222-40 Notification of Employee Rights under the National Labor Relations Act (applicable to all subcontracts at all tiers that exceed \$10,000 and will be performed wholly or partially in the US unless exempted by rules, regulations or orders of the Secretary of Labor pursuant to Section 3 of Exec Order 13496.
- (h) 52.223-7 Notice of Radioactive Materials (Applicable to Work containing covered radioactive material. Insert "30" in the blank; See Notes 1 and 2.)
- (i) 52.223-11 Ozone-Depleting Substances (Applicable if Work was manufactured with or contains ozone-depleting substances.)
- (j) 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Applicable to all subcontracts at all tiers that exceed micro-purchase threshold)
- (k) 52.252-22 Clauses Incorporated by Reference (Feb 1998) If contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. The full text may be accessed electronically at this address:

<http://www.acquisition.gov/far>

D. Amendments Required by Prime Contract

CONTRACTOR agrees that upon the request of Field it will negotiate in good faith with Field relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as Field may reasonably deem necessary in order to comply with the provisions of the applicable prime contract or with the provisions of amendments to such prime contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

E. FAR Flowdown Clauses

REFERENCE	TITLE
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1. The following FAR clauses apply to this Contract :

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|---------------|---|
| (a) 52.219-8 | Utilization of Small Business Concerns |
| (b) 52.222-21 | Prohibition of Segregated Facilities |
| (c) 52.222-26 | Equal Opportunity |
| (d) 52.222-50 | Combating Trafficking in Persons |
| (e) 52.225-13 | Restrictions on Certain Foreign Purchases |
| (f) 52.244-6 | Subcontracts for Commercial Items |
| (g) 52.245-1 | Government Property Alternate 1 |
| (h) 52.245-9 | Use and Charges |
| (i) 52.247-64 | Preference for Privately Owned U.S.-Flag Commercial Vessels |

2. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$15,000:

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| (a) 52.222-36 | Affirmative Action for Workers with Disabilities |
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3. The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$100,000:

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| (a) 52.222-35 | Equal Opportunity for Veterans |
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4. The following FAR clause applies to this Contract if the value of this Contract exceeds \$650,000:

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|--------------|---|
| (a) 52.219-9 | Small Business Subcontracting Plan (Applicable if the CONTRACTOR is not a small business; see Note 1 and Note 2, applicable to subparagraph (c) only; the |
|--------------|---|

F. DoD FAR Supplement (DFARS) Flowdown Clauses

Note: If this Contract is placed under a U.S. Government Department of Defense (DoD) contract, the following additional DFARS clauses apply.

REFERENCE	TITLE
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|-----|---|
| 1. | The following DFARS clauses apply to this Contract only if the stipulation in the relevant parenthetical notation applies: |
| (a) | 252.204-7008 Requirements for Contracts Involving Export-Controlled Items-(Applicable if DFAR 252.204-7008 is in Field prime contract and export-controlled items (hardware, software, or technical data) are involved in performance of the subcontract) |
| (b) | 252.211-7007 Reporting of Government Furnished Equipment in the DoD Item Unique Identification (IUID) Registry (Nov 2008) (Applicable if 52.245-1 applies) |
| (c) | 252.219-7003 Small, Small Disadvantaged, and Women-Owned Small Business Sub-Contracting Plan (DoD Contracts) (Applicable if FAR 52.219-9 applies to this Contract.) |
| (d) | 252.223-7001 Hazard Warning Labels (Applicable if Contract requires the delivery of hazardous materials as defined in the clause.) |
| (e) | 252.225-7001 Buy American Act and Balance of Payments Program (Applicable if the Work contains other than domestic components as defined by this clause. Substitute the DFARS clause for FAR clause 52.225-9.) |
| (f) | 252.225-7008 Restriction on Acquisition of Specialty Metals (Applicable if Field award exceeds Simplified Acquisition Level and requires delivery of specialty metals as end items) |
| (g) | 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Applicable if Field award exceeds Simplified Acquisition Level and requires delivery of items @ (2)(i)(ii) of DFAR 225.7003-5)) |
| (h) | 252.225-7012 Preference for Certain Domestic Commodities (Applicable if Field award exceeds Simplified Acquisition Level) |
| (i) | 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (Applicable if Field award exceeds Simplified Acquisition Level and requires delivery of hand tools) |
| (j) | 252.227-7015 Technical Data – Commercial Items (Applicable only if technical data is to be delivered under this Contract. (See Note 3) |

- (k) 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System. (Applicable if Contract is subject to Cost Accounting Standards {CAS}).

G. Certifications and Representations

1. The clauses listed below contain certifications and representations that are material representations of fact upon which Field will rely in making awards to CONTRACTOR. By submitting its written offer, providing oral offers or quotations at the request of Field, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth in each of the clauses listed below. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal, or solicitation (oral or written) issued by Field. CONTRACTOR shall immediately notify Field of any change of status with regard to these certifications and representations.

2. The following clauses of the FAR are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "FIELD" for "Government" and "Contracting Agency" and "FIELD Procurement Representative" for "Contracting Officer" throughout.
 - (a) The following FAR clause applies to this Contract if the value of this Contract exceeds \$5,000,000 and the period of performance is more than 120 days:

52.203-13 Contractor Code of Business Ethics and Conduct

By signing a contract or performing against a contract in which FAR 52.203-13 is applicable:

The contractor hereby certifies that they will comply with all elements of FAR 52.203-13 including timely disclosure, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, and the cognizant Field Procurement Representative whenever, in connection with the award, performance, or closeout of this contract or any subcontract there under, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

 - (1) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
 - (2) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

The contractor also certifies that, within 30 days of signing a contract or performing against a contract in which FAR 52.203-13 is applicable, they will establish a written code of business

ethics and conduct and will make a copy of the code available to each employee engaged in performance of the contract.

(b) FAR 52.209-5, "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters".

3. The following FAR clauses apply to this Contract if Work under the Contract will be performed in the United States or Contractor is recruiting employees in the United States to work on the Contract.

(a) FAR 52.222-22, "Previous Contracts and Compliance Reports"

(b) FAR 52.222-25, "Affirmative Action Compliance"

4. Conflict of Interest

To the best of the Offeror/SELLER's knowledge and belief, there is no actual or potential conflict of interest with respect to the performance of work under this contract or agreement; or, the Offeror/SELLER has notified Field in writing of such a conflict of interest and received written authorization from Field to continue in pursuit of a contract or agreement. If in the performance of a contract or agreement with Field the Offeror/SELLER becomes aware of an actual or potential conflict of interest, the Offeror/SELLER will immediately notify the Procurement Representative responsible for the contract or agreement in question.

5. Disputes

In accordance with the 2010 Department of Defense Appropriations Act, Public Law No. 111-118, Section 8116, SELLER certifies that it will not enter into or take any action to enforce arbitration agreements with any employee or independent contractor performing work related to subcontracts covered by these General Terms, for claims under Title VII of the 1964 Civil Rights Act or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.(Effective June 17, 2010; Applicable to subcontracts in excess of \$1 million)

6. Anti-Corruption Compliance

SELLER agrees that neither it nor any related person shall, in the name of, on behalf of, or for the benefit of Field or any of its officers, directors or employees, offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to anyone while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly to such person for the purposes of: (i) influencing any act or decision; (ii) inducing such person to use his or its influence with a third party thereof to affect or influence any act or decision of such third party, in order to assist the obtaining or retaining of business for or with, or directing business to, Field or (iii) securing any improper advantage.