



Terms and Conditions for Purchase Orders in Support of Government Contracts

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TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

As used throughout this Order, the following definitions apply unless otherwise specifically stated:

- 1.1 “**Aircraft**” means the helicopter(s) or other aircraft for which Seller’s goods or services are to be used.
- 1.2 “**Buyer**” means Air Methods Corporation and all of its wholly owned subsidiaries, divisions and affiliates, including United Rotorcraft.
- 1.3 “**Buyer’s Customer**” or “**Customer**” means a higher tiered contractor or subcontractor above Buyer, including the Prime Contractor and/or the Government.
- 1.4 “**Buyer’s Purchasing Representative**” means the agent of Buyer listed on the Order with the actual authority to make legally binding commitments on behalf of Buyer.
- 1.5 “**Contract Date**” means the date of delivery as specified in this Order.
- 1.6 “**Contracting Officer**” means any officer or civilian employee of the Government who is properly designated and duly authorized to enter into, administer, or make any determinations or findings with respect to the Prime Contract, including the authorized representative of the Contracting Officer acting within the limits of his/her authority.
- 1.7 “**Days**”, whenever or wherever used, refers only to calendar days.
- 1.8 “**Drawings**” means technical drawings provided or referenced by Buyer in this Order with which Seller’s goods and/or services must comply.
- 1.9 “**FAR**” means the Federal Acquisition Regulations. “**DFARS**” means the Department of Defense FAR Supplement.
- 1.10 “**Goods**”, “**supplies**” or “**items**” means those part numbers, model numbers and/or descriptions set forth on the face sheets of this Order which Seller is required to deliver, and any related effort required by Seller for the completion and/or delivery of such goods, supplies or items.
- 1.11 “**Government**” means the Government of the United States unless otherwise specified.
- 1.12 “**Need Date**” means the date Buyer needs delivery of goods which date is prior to or after the Contract Date.
- 1.13 “**Order**”, “**Purchase Order**” or “**Subcontract**” means this contractual instrument, including changes, supplements, amendments, attachments, or modifications thereto, together with any certifications, exhibits, attachments, or other documents.
- 1.14 “**Prime Contract**” means the Government contract that this Order will support through the provision of goods and/or services.
- 1.15 “**Seller**” means the legal entity to which the Order is issued and which is obligated to perform work for Buyer pursuant to this Order.
- 1.16 “**Services**” means any effort required by this Order to be performed by Seller as set forth on the face sheets of this Order, including, without limitation, installation, repair and maintenance

services. The term “services” shall also include, without limitation, any effort specifically required by this Order such as design, engineering, maintenance, technical, construction, consulting, or professional services.

- 1.17 “**Specifications**” means any and all requirements with which goods, supplies, items, or services must comply, including but not limited to standards described or set forth in this Order, or attached to or incorporated herein by reference.

2. **SHIPPING, BILLING AND PAYMENT PROVISIONS**

- 2.1 **PACKAGING AND PRESERVATION.** Packaging shall be in accordance with Best Commercial Practices. Do not combine material for different receiving locations in the same container.
- 2.2 **MARKING.** Exterior containers must be marked with the following: (a) address, including, Attn: AMC Products Division Buyer [as specified in the applicable PO]; (b) Purchase Order number, (c) part number; (d) Sales Contract number, if any; and (e) any other special markings called for by this Order.
- 2.3 **BILL OF LADING.** The Bill of Lading must reference Purchase Order number, correct ship-to address. When the delivery point is F.O.B. Origin, make NO declaration of value on the Bill of Lading EXCEPT where a declaration of value will result in lower total cost of shipment and then declare such value as will entitle Buyer to the lowest applicable transportation rates. The original copy of the Bill of Lading shall be retained by Seller for one (1) year and provided to Buyer’s Traffic Department if requested.
- 2.4 **ROUTING.** On Orders where Buyer either pays for or reimburses Seller directly for shipping costs, ship in accordance with routing instructions furnished by Buyer. If such instructions are not received, Seller shall secure the least expensive transportation method consistent with good commercial practice for protection and shipment of the goods shipped. Unless otherwise provided on the face of the Order, Seller shall ship all quantities ordered in one shipment. If Seller elects to ship the quantities in more than one shipment, then Seller shall be responsible for all additional shipping costs. Pursuant to the assignment and setoff provisions of these Terms and Conditions, Buyer reserves the right to deduct any charges for additional shipping costs against the amount owed Seller under this or any other Order that Buyer has with Seller.
- 2.5 **PACKING SLIP.** Include with each shipment of goods a packing slip which displays (a) the Purchase Order number; (b) the item nomenclature or description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (c) the quantity of goods. Buyer reserves the right to return any shipment of goods which does not contain the correct information on the accompanying packing slip as required under this clause. All returns will be made to Seller transportation collect.
- 2.6 **TEST REPORT.** Address all Test Reports, when required, to the Materials Control Laboratory at the plant to which the goods are shipped. Test Reports must be in Buyer’s possession at the time the goods are received.
- 2.7 **TITLE.** Except as otherwise specifically provided herein, title to goods, supplies or items delivered to Buyer shall not vest in Buyer and shall remain with Seller until receiving inspection acceptance at Buyer’s facility by Buyer of goods, supplies or items delivered under this Order.
- 2.8 **PAYMENT.** Terms of payment shall be as stated in this Order.
- 2.9 **NEW MATERIAL:** Without in any manner diminishing the effect of the FAR clauses hereof entitled “New Material” and “Government Surplus”, under this Order Seller shall deliver new

parts and material only, and in no event shall Seller deliver surplus parts or material, whether used or unused, remanufactured, refurbished, or remade.

3. CERTIFICATION/COMPLIANCE

- 3.1 SPECIFICATIONS. Seller shall comply with all specifications, drawings, and performance requirements stated in this Order and with all applicable Government specifications wherever and however incorporated, including by reference or otherwise. When applying Government specifications or requirements to this Order, the term “Contractor” shall mean Seller, “Contract” shall mean this Order, and the terms “Government”, “Contracting Officer”, “Procurement Activity”, and similar terms shall mean Buyer and/or Buyer’s Purchasing Representative. Seller shall comply with the most stringent specification in the event of a conflict in specifications. Goods delivered by Seller shall comply with all specifications, drawings, and performance requirements in this Order for as long as such goods are in use.
- 3.2 LAWS. In the performance of this Order, Seller shall comply with all applicable federal, state and local laws, ordinances, rules, and regulations. Seller hereby certifies that the goods and services called for by this Order have been or will be produced in compliance with the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and, insofar as applicable to this Order, the Walsh-Healey Public Contracts Act (41 U.S.C. 6501 et seq.), Service Contract Labor Standards Act (41 U.S.C. 6701 et seq.), Wage Rate Requirements (Construction) (40 U.S.C. 3141 et seq.), and the Contract Work Hours and Safety Standards Act (40 U.S. Code 3701 et seq.), and any amendments thereto, as well as with the provisions of any other federal law with respect to labor relations, minimum wages, and hours of employment, now in effect or hereafter enacted, and with any and all rules and regulations issued under each and every such act to the extent that such goods and services are manufactured or provided in the United States. For goods manufactured outside of the United States, Seller shall comply with all local, provincial and national laws, rules and regulations of the country of manufacture as regards the manufacture of goods for this Order.
- 3.2.1 ANTI-BOYCOTT LAWS: Seller certifies to Buyer that it does not and shall not participate or comply with any boycott (both domestic and international) which is in contravention of a United States Government law or regulation.
- 3.3 RECOVERY. If Seller fails to fully comply with all specifications and laws, as described in Articles 3.1 and 3.2 above, and such failure results in a reduction of Buyer’s contract price or fee or incurrence of costs, damages, fines, penalties, withholdings, or interest assessed to Buyer, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of this Order or any other contract with Seller and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded.
- 3.4 CERTIFICATES. Seller shall furnish to Buyer upon request of Buyer any certificate required to be furnished by any provision of this Order and any certificate required by Buyer’s Prime Contract, any applicable law, ordinance, or regulation with respect to Seller’s compliance with the terms and provisions of this Order or such laws, ordinances or regulations. As used in this paragraph, the word “certificate” shall include any related and/or required plan or course of action or record keeping function.
- 3.5 Q.P.L. Seller certifies that all required Q.P.L. (Qualified Parts List) parts have been manufactured by or procured from approved Q.P.L. sources.
- 3.6 SUBCONTRACTING.
- 3.6.1 This Order has been awarded to Seller based on Seller’s representations that Seller will not be subcontracting all or substantially all of the work required under this Order. Seller shall not Subcontract the furnishing of all or substantially all of goods or services

required by this Order without the prior written approval of Buyer. Failure to comply with this provision may at Buyer's discretion be considered a cause for default under the Termination for Default provision of this Order.

- 3.6.2 In the event Seller receives approval from Buyer to Subcontract a part of its work, including but not limited to instances where Buyer recommends a subcontractor or Buyer requires Seller to use a certain subcontractor or approved sources for special processing, Buyer shall not be a party to any resulting contract between Seller and Seller's subcontractor, and, Buyer shall not be held liable in the event of dispute between the parties to such Subcontract. Seller shall indemnify and hold Buyer harmless from any liabilities resulting from any such Subcontract, except for damages caused directly and solely by Buyer.

4. INSPECTION / REJECTION

- 4.1 **INSPECTION**: Buyer and, if applicable, Buyer's Customer shall have the right to inspect the goods supplied hereunder at any time during the manufacture or fabrication thereof at Seller's facilities or elsewhere. Such inspection may include, without limitation, raw materials, components, work in process, and completed products as well as drawings, specifications, and released data. Final inspection and acceptance shall be after delivery to the delivery point designated by Buyer. If any inspection or test is made by Buyer at Seller's facility or elsewhere, Seller shall provide reasonable facilities and assistance for the inspection personnel. Buyer may reject all goods supplied hereunder which are found to be nonconforming. Goods so rejected may be returned to Seller at Seller's expense. No inspection, examination or test, regardless of extensiveness or type, and no approval given in connection with any such inspection, examination or test, whether by Buyer or the Government and whether under the Order or another Order or Subcontract for the same or similar goods, shall relieve Seller of any obligation to comply fully with all requirements of the Order, including the obligation to produce goods that conform to all requirements of the drawings, specifications and other documents incorporated into the Order. At Buyer's request, Seller shall repair or replace defective goods at Seller's expense. Failure to inspect goods, failure to discover defects in goods or payment for goods shall not constitute acceptance or limit any of Buyer's rights, including without limitation those under the WARRANTY provisions of the Contract. In the event inspection reveals a defect or defects and schedule urgency requires that the defect or defects be corrected by Buyer to support production, all cost of such correction, including without limitation installation and removal, will be charged to Seller; such charges will also include time and material and appropriate indirect and overhead expenses. In each situation of such schedule urgency, Seller shall first be given the opportunity to make timely repair or replacement. If the parties agree that Buyer must make the repair or replacement, the parties will negotiate in good faith the appropriate cost to be reimbursed by Seller. Seller shall maintain an inspection system acceptable to Buyer covering the goods furnished hereunder.

5. WARRANTY

- 5.1 **WARRANTY OF GOODS**: Seller warrants that goods ordered to specifications will conform thereto and to any drawings, samples, or other description furnished or adopted by Buyer, and will be fit and sufficient for the purpose intended; and that all goods are merchantable, of good material and workmanship, and free from defect. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the goods and shall run to Buyer, its successors, assigns, Customers at any tier, and ultimate user and joint users. Notices of any defects or nonconformity shall be given by the Buyer to the Seller within fifteen (15) months from the date of the item's inspection and acceptance. The rights and remedies of the Buyer concerning latent defects shall be five (5) years, and shall not be affected in anyway by any terms and conditions of this Contract, including this clause. Buyer may, at its option, and in addition to other remedies available at law, either (i) return for credit, (ii) require prompt correction or replacement of the defective or nonconforming goods, or (iii) have the

defective goods corrected or replaced at Seller's expense and deduct the cost thereof from any monies due Seller. The return to Seller of any defective or nonconforming goods and delivery to Buyer of any corrected or replaced goods shall be at Seller's expense. In the event that it is determined that such goods were not defective and were in fact conforming (and Buyer concurs), such shipping cost will be at Buyer's expense. Goods required to be corrected or replaced shall be subject to the provision of this paragraph and the paragraph of these Terms and Conditions entitled "Inspection / Rejection" in the same manner and to the same extent as goods originally delivered under this Contract. In addition to correcting or replacing any defective or nonconforming goods, Seller shall also reimburse Buyer for all costs and expenses incurred by Buyer in connection with inspection and discovery of the defects, identifying and correcting the cause of such defects and all other activities reasonably undertaken by Buyer to obtain conforming goods or attempting to obtain from the ultimate user a waiver to permit the defective goods to be used with all or part of the defective conditions. However, the parties agree that Seller's liability for such costs shall be limited to the direct costs of Buyer's quality inspector and the Buyer's (or Buyer's Customer's) costs of removing and reinstalling a defective item, and Seller's liability for such costs shall not exceed \$1,000.00 per occurrence.

- 5.2 **WARRANTY OF SERVICES:** Supplier warrants to Buyer that all Services provided under or in connection with an Order: (i) will be performed in a professional and workmanlike manner and in accordance with current, sound and generally accepted industry standards and practices by appropriately licensed, trained, supervised personnel who are experienced in the appropriate fields; and (ii) will conform to and be in compliance with all applicable Specifications, performance requirements and other requirements contained in the Order (the "Service Warranty"). Supplier agrees that should any of the Services be defectively performed by Supplier, Supplier will re-perform or correct such defective Services at no additional charge. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual reasonable costs, expenses and damages related to or arising from the Services not conforming to the Services Warranty.

6. PROPRIETARY INFORMATION/ INTELLECTUAL PROPERTY

6.1 PROPRIETARY INFORMATION AGREEMENT.

- 6.1.1 "Proprietary Information" means data and/or information that is disclosed between Buyer and Seller in connection with the subject matter of this Order, from a Disclosing Party to a Receiving Party, in oral, visual, written, printed, or electronic form, which includes, but is not limited to drawings, specifications, operation sheets, Customer lists, material and process indices, software, tools, gauges, goods, and financial data. To gain protection under this Agreement as Proprietary Information, such information shall be marked with a restrictive legend, e.g., PROPRIETARY, by the Disclosing Party, if the data and/or information is in written, printed, or electronic form; OR (B) described in a written summary by the Disclosing Party to the Receiving Party within thirty (30) days of an Order OR (C) contained within Buyer's computer-based information systems and accessed by Seller in connection with the subject matter of this Order.
- 6.1.2 The Party receiving ("Receiving Party") Proprietary Information from the other party ("Disclosing Party") agrees to (i) keep confidential and not disclose the Proprietary Information to others without the Disclosing Party's prior written consent; (ii) not copy or reproduce the Proprietary Information without the express written permission of the Disclosing Party, except for such copies or reproductions as may be reasonably required for the Permitted Purposes for internal need-to-know by the Receiving Party; (iii) use the Proprietary Information solely for the Permitted Purposes; (iv) not disclose the Proprietary Information to any person within the Receiving Party's organization unless such person has a need-to-know in accomplishing the Permitted Purposes; and (v) protect and safeguard the Proprietary Information with at least the same degree of care as the Receiving Party exercises in protecting and safeguarding its own Proprietary Information,

but in no event less than the reasonable care customarily exercised by the aircraft industry to preserve Proprietary Information. The terms of this Article 6.1.2 will not apply to any Proprietary Information which:

- I. is in, or comes into, the public domain otherwise than by a breach of this Order;
- II. the Receiving Party can show was in its possession by virtue of being recorded in its files or being in its use prior to receipt from the Disclosing Party;
- III. the Receiving Party receives from a third party which itself had not received the Proprietary Information directly or indirectly from the Disclosing Party; or
- IV. is independently developed by the Receiving Party without using any Proprietary Information of the Disclosing Party, by persons who have not had access to such Proprietary Information.

6.1.3 Upon completion of this Order Seller shall deliver to Buyer, or certify the destruction thereof at Buyer's option, all media and embodiments of Buyer's Proprietary Information (including, but not limited to, printed and electronic copies, documents, software, tools, and goods which may be defective, partially completed, or completed).

6.1.4 Except as authorized in writing by Buyer, Seller shall only use Buyer's Proprietary Information to perform the obligations or exercise its rights under this Order.

6.1.5 Seller warrants and represents that no Proprietary Information will be wrongfully disclosed by Seller to Buyer in connection with this Order. Seller shall notify Buyer of all third party Proprietary Information disclosed by Seller to Buyer. Seller agrees that all third party Proprietary Information disclosed by Seller to Buyer will be treated by Buyer in a manner consistent with Buyer's treatment of Seller's Proprietary Information.

6.2 INTELLECTUAL PROPERTY RIGHTS AND MISCELLANEOUS:

6.2.1 Definitions:

- (1) **Intellectual Property.** Intellectual Property means inventions, discoveries and improvements, know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information, and computer software.
- (2) **Background Intellectual Property.** Background Intellectual Property means Intellectual Property that is (i) in existence prior to the effective date of this Order or (ii) is designed, developed or licensed after the effective date of this Order independently of both the work undertaken or in connection with this Order and the proprietary information and Intellectual Property of the other party to this Order.
- (3) **Foreground Intellectual Property.** Foreground intellectual property means intellectual property conceived, created, acquired, developed, derived from or based on development performed under this Order or information supplied by Buyer, or first actually reduced to practice by Seller in connection with this Order.

6.2.2 All Intellectual Property supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless:

- (1) otherwise required by the U.S. Government Regulations attached hereto,
or
- (2) Buyer has executed a separate agreement restricting the use and disclosure of such Intellectual Property.

- 6.2.3 Foreground Intellectual Property. Unless otherwise expressly agreed in writing to the contrary and subject to Article 6.2.7 below, all Foreground Intellectual Property developed exclusively with Buyer monies (i.e., development was accomplished entirely with monies paid by Buyer to Seller that are not subject to recovery by Buyer under a government contract) and not subject to Article 6.2.4 below is hereby assigned to Buyer and shall be proprietary to Buyer, shall be used by Seller only for purposes of providing Items or Services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such Foreground Intellectual Property shall be promptly provided to Buyer on request or upon completion of this Order. Any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire." The tangible medium storing copies of all reports, memoranda, or other materials in written form, including machine-readable form, prepared by Seller and furnished to Buyer pursuant to this Order shall become the sole property of Buyer.
- 6.2.4 Inventions. Subject to Article 6.2.7 below, any invention constituting Foreground Intellectual Property shall be hereby assigned to Buyer and Buyer shall own all right, title, and interest in such property. Seller shall execute all documents necessary to perfect Buyer's interest in and title thereto, including, without limitation, assigning any and all right, title and interest Seller has in any such invention to Buyer. Seller shall ensure that any third party with whom Seller has subcontracted to deliver Items or Services also executes and assigns any and all rights, titles, and interest in any such invention to Buyer. Seller shall, within two (2) months after conception or first actual reduction to practice of any invention constituting Foreground Intellectual Property and prior to completion of the Order, disclose in writing to Buyer all inventions, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer's invention rights. Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
- 6.2.5 Seller-Owned Intellectual Property. Seller shall retain ownership of all Background Intellectual Property and of any Foreground Intellectual Property not assigned to Buyer pursuant to Article paragraphs 6.2.3 and 6.2.4 (collectively, "Seller-Owned Intellectual Property"). Unless otherwise expressly agreed in writing to the contrary and in addition to U.S. Government's Intellectual Property rights, Seller grants to Buyer an nonexclusive, irrevocable, sublicensable, paid-up, royalty-free worldwide right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of any and all Seller-Owned Intellectual Property in the performance of its Government Contract or higher-tier contract obligations (including obligations of follow-on contract or contracts for subsequent phases of the same program).
- 6.2.6 Buyer-Owned Intellectual Property. Buyer shall retain ownership of all Buyer Intellectual Property provided hereunder and of any Foreground Intellectual Property assigned to Buyer pursuant to Article 6.2.3 above (collectively, "Buyer-Owned Intellectual Property"). Buyer grants to Seller a non-exclusive, royalty-free right during

the term of this Order to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned Intellectual Property solely as necessary for Seller to perform its obligations under this Order. Seller shall not, without Buyer's prior written consent, use Buyer-Owned Intellectual Property or any derivative works of any of the Buyer-Owned Intellectual Property in any manner not authorized under this Order, including, but not limited to, developing, manufacturing, offering for sale or selling any item or service which utilizes or is enabled by Buyer-Owned Intellectual Property.

6.2.7 Nothing in this Article 6.2 shall modify or alter any rights that the U.S. Government may have in any items or services, including technical data or computer software deliverables to the U.S. Government. Applicable Government procurement regulations incorporated into this Order dealing with subcontractors rights in Intellectual Property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

7. ENVIRONMENTAL PROVISIONS

7.1 **HAZARDOUS MATERIALS/CHEMICAL SUBSTANCES:** This provision is applicable to Orders involving delivery of hazardous materials and chemical substances:

- (1) Seller shall, upon delivery of any hazardous material called for hereunder, provide Buyer with a Safety Data Sheet (SDS) as required in 29 CFR 1910.1200, OSHA Hazard Communication Standard.
- (2) Any hazardous material delivered shall be labeled, tagged, or marked in accordance with 29 CFR 1910.1200 and any other relevant statutes or regulations.
- (3) In the case of chemical substances, Seller warrants that the substances have been reported to the Environmental Protection Agency in accordance with the Toxic Substance Control Act (15 USC Section 2601 et seq) and the Resource Conservation and Recovery Act (42 USC Section 6901 et seq), and any other relevant statutes or regulations.

7.2 **ASBESTOS:** No asbestos goods, supplies or items, or goods, supplies, or items containing asbestos may be delivered under this Order unless such is expressly permitted in writing pursuant to drawings and specifications set forth in this Order. In the event asbestos goods, supplies or items, or goods, supplies, or items containing asbestos are delivered as permitted herein, Seller shall: a) identify all asbestos goods, supplies, or items, or goods, supplies, or items containing asbestos; b) each individual Good, supply, or item shall be individually labeled; c) each Good, supply, or item shall be individually packaged in a non-porous sealed container or bag; and d) each container or bag shall be labeled and shall state in permanent marking:

DANGER: CONTAINS ASBESTOS AND/OR ASBESTOS FIBERS. AVOID CREATING DUST. CANCER AND LUNG DISEASE HAZARD.

7.3 **HEXAVALENT CHROMIUM AND CADMIUM:**

7.3.1 The Prime Contract may prohibit the use of Hexavalent Chromium (HC) and Seller, and its subcontractors and suppliers, shall comply with this requirement. No cadmium-plated parts or fasteners, other than electrical connectors, are permitted to be incorporated into any component.

- 7.3.2 If required by the Order, all parts that are to be painted with chemical agent resistant coating (CARC) shall be painted in accordance with MIL- C-53072 with the exception of the application of Hexavalent Chromium based pre-treatments.
- 7.3.3 Buyer will not accept parts utilizing vinyl primers or chemical conversion finishes that contain HC for the. Seller must eliminate the use of the subject vinyl wash primer and/or conversion finishes from its paint process. The process for each material is defined as follows:
- (1) High Hard: abrasive blast, prime and paint per specification (omit the use of vinyl wash primer)
 - (2) Mild Steel: zinc phosphate, prime and paint per specification
 - (3) Aluminum: Alodine 5200 or Alodine 5700, prime and paint per specification (Note: Aluminum parts used for electrical applications, where conductive surface is required for bonds and grounds, may use chemical conversion finish per MIL-DTL-5541, Class 3, only when specifically specified and pre-approved by the Buyer and/or prime contractor. Then prime and paint per specification).
 - (4) Stainless Steel: omit both wash primer and paint, or passivate, prime and paint as specified.
- 7.3.4 All painted parts that do not contain HC in the protective finish must be identified with a letter "T" using red ink, per A-A-208, near the part identification marking specification. Reference: ECO 32758.

8. LIABILITY /INDEMNIFICATION

8.1 INDEMNIFICATION FOR INFRINGEMENT OF PROPRIETARY RIGHTS:

- 8.1.1 As to the goods provided hereunder, Seller shall be liable for and shall indemnify and hold harmless Buyer and each subsequent purchaser or user thereof from any loss or damage of any kind (including all costs and expenses, including attorneys' fees) arising out of any and all infringement claims, suits, or actions, including proceedings under 28 U.S.C. § 1498, alleging that the manufacture, use, or sale of such goods infringes any patent, trademark, copyright, mask work right, or other proprietary right; except, however, that when such alleged infringement arises as a necessary consequence of Seller's compliance with specifications or designs furnished by Buyer, which describe that aspect of the goods on which such alleged infringement is based, then Buyer shall be liable and shall save Seller harmless therefrom, but this exception shall not apply if the subject matter giving rise to the claim for infringement either (i) was derived from or selected by Seller, or (ii) relates to materials or compositions, or processes relating to materials or compositions.
- 8.1.2 The party against whom such infringement claim is made, or such suit or action is commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions of paragraph 8.1.1 hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action if such is commenced against the other party. Insofar as its interests are affected, the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action.

- 8.2 **HOLD HARMLESS - WORKER'S COMPENSATION.** Seller agrees to indemnify and hold harmless Buyer from claims for death or injury to Seller or any of Seller's agents or employees, arising while such agents or employees of Seller are on premises owned or controlled by Buyer, or arising in connection with the performance of this Order. Seller shall maintain Worker's Compensation Insurance and Employees Liability Insurance in the minimum amount of One Million Dollars (\$1,000,000.00) covering all such agents or employees while on Buyer's premises and/or performing this Order.
- 8.3 **HOLD HARMLESS - NEGLIGENCE/VIOLATION OF LAWS OR REGULATIONS.** Seller agrees to indemnify and hold harmless Buyer from claims for damages, injuries, fines, penalties, or assessments arising from any negligent act or omission of Seller, its agents or employees, or any act or omission of Seller, its agents or employees in violation of law or other requirement as described in Paragraph 3.2 above, which acts or omissions are related to performance of this Order or occurred while performing this Order.

9. DELIVERY

- 9.1 **DPAS RATED ORDERS:** If this is a Rated Order for National Defense use (see Purchase Order Notes, "DPAS Order Rating"), then Seller is required to follow all the provisions of the Defense Priorities and Allocations System Regulation, 15 CFR Part 700. Seller is required to place Rated Orders with sub-tier suppliers for items needed to fill this Order.") If the field in Purchase Order Notes states "NA" then the Buyer is not issuing a Rated Order and DPAS does not apply to Seller or its sub-tier suppliers.
- 9.2 **DELIVERY OF GOODS:** Goods that are the subject of this Order shall be delivered according to the delivery schedule set forth in the Order or an attachment hereto. Time is of the essence of this Order, and if delivery of goods or rendering of services is not completed by the time set forth in the delivery schedule, Buyer reserves the right, without liability to Seller or Seller's subcontractors or suppliers, in addition to its other rights and remedies, to terminate this Order by notice, effective when received by Seller, as to goods not yet tendered, and to purchase substitute goods or services elsewhere and charge Seller with any additional costs or loss incurred.
- 9.3 **EARLY DELIVERY.** Early delivery more than five (5) days ahead of schedule must be approved in advance by Buyer.
- 9.4 **DELAYS:** Seller acknowledges and agrees that Buyer will incur significant damages in the event that Seller is late in performing its obligations or delivers non-conforming goods or services under this Order. Seller agrees to reimburse Buyer for any damages suffered by Buyer resulting from or related to Seller's late performance or the delivery of non-conforming goods or services by Seller when and only when Seller's late performance or the delivery of conforming goods is in excess of five (5) days from that stated in the delivery schedule.

10. CHANGES

- 10.1 **CHANGES:** This Subcontract or Order is in support of a Prime Contract with the U.S Government, or in support of a higher-tier subcontract in support of a Prime Contract. Therefore, the rights and obligations of the parties regarding any changes and equitable adjustments shall be in accordance with FAR 52.243-1, which is hereby incorporated by reference herein with the following revisions:
- (1) The term "Contracting Officer" shall mean Buyer.
 - (2) The term "Contractor" shall mean Seller.
 - (3) The term "Contract" shall mean this Order.

- (4) In Subparagraph (e), delete “Disputes clause” and substitute “Disputes Resolution clause of this Order”
- (5) Alternate I of such clause shall apply if the Order is for services only. Alternate II of such clause shall apply if the Order is for both services and goods.

11. FORCE MAJEURE

- 11.1 **EXCUSEABLE DELAYS:** Buyer may delay Seller’s delivery, Buyer’s acceptance, or Buyer’s payment for the goods when such delays are occasioned by causes beyond Buyer’s control. Seller shall hold such goods at Buyer’s direction and shall deliver them when the causes of such delay have been resolved. Buyer shall have no liability to Seller for any such delay and Seller shall have no right of recovery against Buyer. Causes beyond Buyer’s control include but are not limited to: acts of God or the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, strikes, quarantine, freight embargoes, and unusually severe weather. Conversely, Seller shall be excused for such delays and Buyer, if required, may extend the delivery schedule of Seller one day for each day of excusable delay. There shall be no increase in price or economic price adjustment allowed for any such delays on the part of Seller.
- 11.2 **NOTICE:** Any relief provided to Seller for excusable delay is conditioned upon Seller providing Buyer written notice within ten (10) days of the commencement of the event causing such delay. In addition, whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatening to delay the timely performance of this Order, Seller shall immediately give written notice thereof, including all relevant information with respect thereto, to Buyer. Seller agrees to insert the substance of this Provision, including this paragraph, in any lower-tier Subcontract or Purchase Order issued by Seller.

12. GOVERNMENT/BUYER FURNISHED PROPERTY

- 12.1 **GOVERNMENT/BUYER FURNISHED PROPERTY:** Buyer may from time to time furnish property to Seller for performance of this Contract. Any equitable adjustment of this Contract occasioned thereby shall be made pursuant to the clause hereunder entitled “Changes.” Unless otherwise provided in this Contract or agreed to in writing, property of every description including all tools, equipment, and material furnished or made available to Seller, title to which is in Buyer or Buyer’s Customer, and any replacement thereof shall be and remain the property of Buyer or Buyer’s Customer, and Seller shall indemnify and save harmless Buyer and Buyer’s Customer from all liens and claims upon said property arising from any cause. Property other than material shall not be modified without the written consent of the Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as property of Buyer or Buyer’s Customer (by name) and shall be safely stored separately and apart from Seller’s property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller’s possession or control shall be kept in good condition, shall be held at Seller’s risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of this Contract, it shall be subject to inspection and removal by Buyer, and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property and/or prepare it for shipment and ship F.O.B. its plant to Buyer (or a Buyer designated location) in as good condition as originally received by Seller, reasonable wear and tear excepted. Buyer may at any time reimburse Seller for the cost of part or all special tooling and special test equipment paid for by Seller and, upon payment therefore, Buyer shall become the owner, entitled to possession at the completion of this Contract or at such earlier date as the parties may agree.

The offal (scrap) from Buyer furnished property shall be segregated from Seller’s material and placed in a separate area or in a container from a Buyer approved source. Before removal of this

container, when full, the Seller shall request directions from Buyer. The Seller will prepare shipping documents denoting date, contents, weight, and recipient of the offal material. These shipping documents shall be sent directly to the Buyer and a copy shall be retained for Seller's records. At no time will the offal material be removed from Seller's premise without prior approval from the Buyer.

13. TERMINATIONS

13.1 TERMINATION FOR DEFAULT:

- 13.1.1 Buyer may, by written notice, terminate the whole or any part of this Order for default in the following circumstances: (i) If Seller fails to deliver the goods or perform the services within the time periods required by this Order or any extension thereof granted by Buyer in writing; or (ii) If Seller fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms and Seller does not cure such failure to Buyer's reasonable satisfaction within a period of ten (10) days after receipt of notice from Buyer specifying such failure; or (iii) In the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization, or arrangement by Seller for the benefit of its creditors.
- 13.1.2 In the event Buyer terminates this Order in whole or in part as provided in this clause, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar goods; provided, however, that Seller shall continue the performance of this Order to the extent not terminated under the provisions of this clause.
- 13.1.3 Except with respect to defaults of vendors or subcontractors, Seller shall not be liable for any excess costs if the failure to perform this Order arises out of causes beyond the control and without the fault or negligence of Seller as defined in Paragraph 11, "Force Majeure." If the failure to perform is caused by default of a vendor or subcontractor to Seller, and if such default arises out of causes beyond the control of both the Seller and the vendor or subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods to be furnished by the vendor or subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. No cause shall constitute a basis for excusable delay unless Seller has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.
- 13.1.4 If this Order is terminated under this clause, Buyer, in addition to any other rights provided in this Article, may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, (a) any completed goods, and (b) any partially completed goods and materials, parts, components, tools, dies, jigs, fixtures, plans, information, and contract rights (hereinafter called "contract materials"), as Seller has specifically produced or specifically acquired for the performance of such part of this Order as has been terminated; and the Seller upon direction of Buyer shall protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered or rendered to and accepted by Buyer shall be at the Order price. Payment for materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed goods or materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

13.1.5 If, after notice of termination of this Order under this provision it is determined for any reason that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".

13.1.6 As used in Paragraph 13.1 the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier and the term "vendor" and "vendors" mean vendor(s) at any tier.

13.2 TERMINATION FOR CONVENIENCE.

13.2.1 The parties agree that their rights and obligations regarding Buyer's right to terminate this Order for its convenience shall be as described in FAR 52.249-2, Termination for Convenience of the Government (Fixed-Price) (Apr 2012), which is incorporated herein by reference, with the following revisions:

- (1) The terms "the Government" and/or "the Contracting Officer" shall mean the Buyer;
- (2) The term "the Contractor" shall mean the Seller;
- (3) The term "the Contract" shall mean this Order;
- (4) In subparagraph (b)(9), change "120 days" and "120-day" to "60 days";
- (5) In subparagraph (e), change "1 year" and "1-year" to "6 months";
- (6) In subparagraph (j), change "the Disputes Clause" to "the Disputes Resolution clause for this Order".

14. ETHICAL PRACTICES

14.1 Both parties agree not to recruit or induce permanent employees of the other party for employment during the term of this Order or for a period of six (6) months thereafter.

14.2 Neither Seller nor its agents or representatives shall offer or extend gratuities, such as gifts or entertainment, to any of Buyer's employees, or Customer's or employees of Customers, regardless of the purpose or intent.

14.3 Seller shall not use Buyer's name or its equivalent or Buyer's products with its recruiting program or in publicity releases without the specific written approval of the Buyer.

14.4 Buyer does not contract with persons or entities debarred, proposed for debarment, suspended, or ineligible for the award of contracts by any agency of the Government. Seller shall inform Buyer in writing within ten (10) days if any Government agency causes Seller to be debarred, proposed for debarment, suspended, or otherwise ineligible for contract awards with the Government.

15. MISCELLANEOUS

15.1 PARTIAL INVALIDITY: If in any instance any provision of this Order shall be held invalid or unenforceable under any applicable law, it shall be replaced by an enforceable provision to the same or the nearest possible equivalent effect. In the event there is no enforceable provision to the equivalent effect, such provision shall not apply in such instance. In such event, the remaining provisions shall be given effect in accordance with their terms.

- 15.2 WAIVER: Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive or modify any such terms, conditions, or privileges or any other terms, conditions, or privileges, whether of the same or similar type.
- 15.3 ACCEPTANCE: If for any reason Seller shall fail to accept these terms and conditions in writing, Seller's performance, delivery, invoicing Buyer, or acceptance of payment shall be an explicit acceptance of all the terms and conditions herein. Any terms and conditions proposed in Seller's acceptance, whether they add to, modify, vary from or conflict with the terms herein are expressly objected to and shall have no effect unless specifically agreed by Buyer.
- 15.4 APPLICABLE LAW AND FORUM: This Order shall be interpreted in accordance with the plain English meaning of its terms. The common law of federal Government contracts shall be applied where relevant to the unique clauses and legal or regulatory requirements incorporated herein. Otherwise, the construction thereof shall be governed by the laws of the State of Colorado, excepting that State's choice of law statutes. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this Order in the appropriate state or federal court in Colorado, and Seller hereby irrevocably consents to personal jurisdiction in any such court. Seller hereby waives personal service of process with respect to any such action or claim Buyer may bring and agrees to accept process by registered mail, return receipt requested, mailed concurrently with the filing of such action or claim.
- 15.5 CAPTIONS: Captions, as used herein, are for convenience of reference only and shall not be construed to limit, extend or otherwise affect the language of the provisions to which such captions may refer.
- 15.6 CUMULATIVE REMEDIES: The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.
- 15.7 ENTIRE AGREEMENT: This Purchase Order constitutes the entire agreement between the parties thereto and supersedes all prior oral and written agreements, communications and negotiations between the parties with respect to the subject matter hereof.
- 15.8 ORDER OF PRECEDENCE: In the event of any conflict between the provisions of this Order, the Order shall be interpreted in accordance with the following order of precedence:
- (1) Purchase Order Notes
 - (2) These Terms and Conditions
 - (3) Any supplemental Terms and Conditions made part of the Order.
- 15.9 ASSIGNMENT AND SETOFF:
- 15.9.1 Neither performance of this Order nor this Order shall be assigned by Seller in whole or in part without the prior written consent of Buyer. Any prohibited assignment by Seller shall be null and void, shall be deemed a material breach of this Order, and Seller shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations hereunder.
- 15.9.2 Claims for money due or to become due to Seller from Buyer arising out of this Order may not be assigned unless such assignment is made to one assignee only and covers all amounts payable under this Order and not already paid. Any such assignment shall be subject to Buyer's rights in this Order. Buyer shall be under no obligation to pay such assignee unless and until Buyer shall have received written notice of the assignment from

Seller, a certified copy of the instrument of assignment, and suitable documentary evidence of Seller's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder. Seller shall indemnify and hold Buyer harmless from any and all claims by its assignees.

- 15.9.3 In no event shall any documents, relating to work under this Order, marked with Government security classifications such as "Top Secret", "Secret", or Confidential", be furnished to any assignee or to any other person not otherwise authorized to receive the same without the prior written authorization of Buyer.
- 15.9.4 All claims for money due or to become due from Buyer shall be subject to deduction or set off by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
- 15.9.5 Buyer reserves the unilateral right to assign, novate, or transfer this Order.

15.10 **TECHNICAL ASSISTANCE:** In the event Seller requests technical assistance from Buyer, Buyer reserves the right in its sole discretion to charge Seller for such services. Seller shall indemnify and hold Buyer harmless from any and all liability resulting from Buyer's technical assistance.

15.11 **AMENDMENTS REQUIRED BY THE PRIME CONTRACT:** Seller shall accept amendments to this Order as may be reasonably deemed necessary by Buyer in order to comply with the provisions of any Prime Contract or higher-tier subcontract in support of a Prime Contract with the Government that Buyer may execute, including but not limited to any laws and regulations that may be applicable to Seller as a subcontractor to Buyer and any laws or regulations necessary for Buyer to comply with the requirements of its Prime Contract.

16. FLOWDOWN OF FAR AND DFAR SUPPLEMENT CLAUSES

16.1 This Order is issued in support of a United States Government Prime Contract or Subcontract. Therefore the FAR and DFARS clauses listed in AS-129, AMC FAR DFARS FFP Flowdowns (Flowdown Requirements for Firm-Fixed Price Contracts) in effect on the date of the Prime Contract, are incorporated herein by reference, subject to the following revisions:

- (1) The terms "the Government", "the Contracting Officer", "the Purchasing Activity" and similar terms shall mean Buyer; in Buyer's discretion, or as required by law or regulation, Buyer may include participation, determination or action by the Government or a higher tier contractor or subcontractor in the implementation of any particular clause affecting performance of this Order;
- (2) The term "the Contractor" shall mean Seller.
- (3) The term "Contract" shall mean this Order.
- (4) The term "Disputes clause" shall mean "the Disputes Resolution clause of this Order". By accepting this Order and/or commencing with any work hereunder, Seller accepts the obligation to comply with the clauses of this document.

17. ANTI-KICKBACK PROCEDURE

17.1 **DEFINITIONS.**

- 17.1.1 “Kickback” as used in this clause means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Prime Contract or in connection with a Subcontract relating to a Prime Contract.
- 17.1.2 “Person”, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint stock company, or individual.
- 17.1.3 “Prime Contract”, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining goods, materials, equipment, or services of any kind.
- 17.1.4 “Prime Contractor Employee”, as used in this clause, means any officer, partner, employee, or agent of a prime contractor.
- 17.1.5 “Subcontract”, as used in this clause, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining goods, materials, equipment, or services of any kind under a Prime Contract.
- 17.1.6 “Subcontractor”, as used in this clause, means any person, other than the prime contractor, who offers to furnish, or furnishes, any goods, materials, equipment or services of any kind under a Prime Contract or a Subcontract entered into in connection with such Prime Contract and includes any person who offers to furnish or furnishes general goods to the prime contractor or a higher tier subcontractor.
- 17.1.7 “Subcontractor Employee”, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.
- 17.2 The Anti-Kickback Act of 1986 (41 U.S.C. 8701 et seq.) (the “Act”), prohibits any person from:
- (1) providing or attempting to provide or offering to provide any kickback;
 - (2) soliciting, accepting or attempting to accept any kickback; or
 - (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
- 17.3 Seller shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in Paragraph 17.2 above in its own operations and direct business relationships.
- 17.4 When Seller has reasonable grounds to believe that a violation described in Paragraph 17.2 above may have occurred, Seller shall promptly report in writing the possible violation. Such reports shall be made to Buyer and to the inspector general of the Government contracting agency responsible for the Prime Contract, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- 17.5 Seller shall cooperate with any Federal agency investigating a possible violation described in Paragraph 17.2 above.
- 17.6 Regardless of the Subcontract tier at which a kickback was provided, accepted or charged under this Purchase Order in violation of Paragraph 17.2 above, Buyer may:

- 17.6.1 offset the amount of the kickback against any monies owed by the Buyer under this Purchase Order; and/or
- 17.6.2 direct that the Seller withhold from sums owed its subcontractor, the amount of the kickback. Buyer may order that monies withheld under this subparagraph be paid over to Buyer unless Buyer has already offset those monies under Subparagraph 17.6.1 above. In the latter case, Seller shall notify Buyer when the monies are withheld.
- 17.7 Seller agrees to incorporate the substance of this Clause 17, including this Paragraph 17.7, in all Subcontracts.
- 17.8 Seller's Representation, Warranty and Indemnification of Buyer
- 17.8.1 Seller's Representation and Warranty to Buyer:
- Seller represents and warrants to Buyer that neither Seller (including any of its officers, partners, employees or agents) nor any Subcontractor below Seller or Subcontractor employee has:
- (1) provided or attempted to provide or offered to provide any kickback;
 - (2) solicited, accepted, or attempted to accept any kickback; or
 - (3) included, directly or indirectly, the amount of any kickback in the price applicable to this Purchase Order or in the Subcontract price charged by any subcontractor to a higher tier subcontractor.
- 17.8.2 Seller's Indemnification of Buyer: In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including, without limitation, Buyer's costs, attorney's fees, or any fines or penalties assessed against Buyer, resulting from a violation of the Anti-Kickback Act of 1986 by the Seller (including any of its officers, partners, employees, or agents), or by any Subcontractor below Seller or Subcontractor employee.

18. DEFECTIVE COST OR PRICING DATA

- 18.1 **APPEAL**: If an appealable decision is made by a Contracting Officer of the Government relating to cost or pricing data required to be submitted or actually submitted by Seller or a subcontractor of Seller, the Buyer may, at Buyer's sole option, provide Seller the opportunity to appeal such decision in the name of Buyer. In the event Seller fails to do so, such decision shall be binding upon the Seller. Any such appeal brought by Seller in the name of Buyer shall be at the sole expense of Seller. Seller shall be solely responsible for such appeal, including, but not limited to, the presentation of all pleadings, documents, evidence, facts, data and testimony in connection therewith. Further, Seller shall be responsible for providing any and all information requested by Buyer to verify, support, or provide any and all certifications required by the Contract Disputes Act of 1978 (41 U.S.C. 7101 et seq.) to perfect any such appeal. If Seller is given the opportunity to so appeal and elects to do so, 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 Subparagraph 18.1, the term "appeal" shall include any and all proceedings taken by Seller under this Subparagraph before a Board of Contract Appeals and any Federal Court. Seller shall be conclusively bound by any decision of any such Board of Contract Appeal or Federal Court.
- 18.2 **INDEMNIFICATION**: In addition to any other remedies that Buyer may have, Seller shall indemnify, and hold harmless Buyer from and against any loss or damage, including Buyer's costs and attorney's fees, resulting from any and all determinations by the Government and Buyer's

Customer(s) as set forth in Subparagraph 18.1 above or from Seller's failure otherwise to comply with the clauses incorporated by reference in this Order.

19. QUALITY ASSURANCE

- 19.1 Conformance classifications are specified on each line item of this Order. The compliance standards of AS-020, Quality Assurance Requirements, apply to this Order. The requirements for conformance are specified in said document. Seller shall perform all specified conformance requirements and certify such at no additional cost to Buyer. Seller shall, at its own expense, correct all Certification of Conformance discrepancies as constituted in AS-020 and the terms of this Order.
- 19.2 CONFIGURATION CONTROL: Seller shall comply with the requirements set forth in this Order for controlling the configuration of goods, supplies, or items required under this Order.

20. DISPUTES RESOLUTION

- 20.1 NEGOTIATION/MEDIATION: Any disputes or claims arising between the parties regarding this Order shall first be subjected to good faith negotiations between authorized representatives of the parties. Each party agrees that it will provide the other party written notice of any claim or dispute that it has against the other party. Following such notice of claim or dispute, the parties shall negotiate in good faith to resolve the matter. If the parties cannot resolve the dispute by negotiation within thirty (30) days following the written notice of claim, or such other time as agreed by the parties, then either party may notify the other party of its election to process the claim or dispute by arbitration as set forth below. The parties may by mutual agreement refer the claim or dispute for mediation in lieu of arbitration.
- 20.2 ARBITRATION: Following negotiation or mediation as described above, any disputes or claims arising between the parties regarding this Order shall be resolved by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Either party shall file written notice of its demand for arbitration with the AAA and serve same upon the other party in accordance with the Commercial Arbitration Rules within 120 days after final delivery under the Contract. The arbitration shall be held in Colorado and shall be conducted according to the Commercial Arbitration Rules, or other rules as mutually agreed by the parties.
- 20.3 RELATIONSHIP TO GOVERNMENT DISPUTES PROCESS: Notwithstanding the above, any final decision by the Government Contracting Officer having cognizance over the Prime Contract under which this Order is issued, and concerning any matter which would otherwise be subject to arbitration under this clause, shall be binding upon Seller if it is binding upon Buyer, regardless of whether that decision is appealed by Buyer, or, as a sponsored appeal by Seller. Seller shall be likewise bound by the results of any appeal of the Contracting Officer's decision. Upon Seller's request Buyer may, at Buyer's sole option, agree to sponsor as a "pass through" claim an appeal by Seller of a good faith certified claim by Seller which asserts liability by the Government. To the extent Government liability may fairly be implicated, arbitration under this clause shall be stayed during the pendency of any such appeal of a "pass through" claim. However, arbitration of claims or disputes solely between Buyer and Seller shall continue.