

**INTERNATIONAL MANUFACTURING TECHNOLOGIES  
MILITARY AND COMMERCIAL SHIPBUILDING AND REPAIR PROGRAMS  
PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

1. **Definitions**

- (a) “**ABS**” means the American Bureau of Shipping.
- (b) “**Buyer**” means International Manufacturing Technologies aka “**IMT**”.
- (c) “**Contract**” means the aggregate combination of the Purchase Order, these terms and conditions referred to as the MILGEN document, the Special Terms and Conditions, the specifications, and any other documents incorporated by reference within the Purchase Order, or any of the items listed above including any release made against the Purchase Order or a master purchasing agreement or other blanket purchasing contract document. Any reference to Seller’s quotation, bid or proposal shall not create any acceptance of any terms, conditions, or instructions contained in such document. From time to time, the Purchase Order may be replaced by a different type of agreement such as a letter agreement, and it shall also become part of the Contract. Any invoice, acknowledgement or other communication issued by Seller in connection with the Contract shall be construed to be for record and accounting purposes only. Any terms and conditions stated in such communication shall not be applicable to the Contract and shall not be considered to be Seller’s exceptions to the Contract.
- (d) “**Contract Price**” means the total amount to be paid in consideration of Seller’s full performance.
- (e) “**Contract Work**” means the products, material, apparatus, equipment, supplies, articles, data, services and/or goods which are the subject of the Contract.
- (f) “**Contracting Officer**” means the person(s) authorized to negotiate, approve, enter into and deliver contracts, and change orders for the U.S. Government.
- (g) “**Customer**” means IMT’s customer, which may be the Government, a commercial entity or another contractor for which the Contract Work will be performed.
- (h) “**Delivery**” means acceptance of the Vessel by the Customer whereby the Customer assumes responsibility for the Vessel and the Guaranty Period commences.
- (i) “**Facilities**” means IMT’s yard or other facilities used by Buyer or its affiliates located in the San Diego, California area or Baja California, Mexico or anywhere else designated in writing by Buyer, including but not limited to, Government military bases, and Customer shipyards.
- (j) “**FAR**” means Federal Acquisition Regulation as contained in Title 48, Code of Federal Regulations, and unless otherwise indicated shall be deemed to include the Department of Defense FAR Supplement (“**DFARS**”) as similarly contained in Title 48, Code of Federal Regulations.
- (k) “**Force Majeure**” shall mean any event or occurrence beyond the reasonable control and without the fault or negligence of either party, which by exercise of due diligence, such party shall not have been able to mitigate, avoid or overcome through commercially reasonable efforts. Such events and occurrences may include, by way of example natural disasters, floods, windstorms, unusually severe weather and other acts of God, fires, explosions, riots, wars, acts of terrorism, sabotage, blockades, embargoes, epidemics, interruption or curtailment of utility services, and acts of the Government or Regulatory Body whose approvals or documents are required under the Contract. Failures or delays caused by a Force Majeure circumstance are neither compensable nor a breach.
- (l) “**Furnished Property**” means property, equipment, tools, devices, apparatus, material, etc., owned, leased, rented, or held in bailment by Buyer or the Customer and provided to Seller for Seller’s benefit. Seller does not gain any title or interest in the Furnished Property; however, Seller assumes the Risk of Loss for the Furnished Property while the Furnished Property is in Seller’s possession.
- (m) “**Government**” means the United States of America, acting through its authorized representative, the Department of the Navy or the U.S. Coast Guard.
- (n) “**Guaranty Period**” means the warranty period, and refers to the period for which Seller guarantees to Buyer, or the Customer, and their successors and assigns, that the Contract Work will conform the Contract, be free from defects in material, workmanship and design, conform to the specifications for the period defined in the Prime Contract after Delivery of the Vessel to the Customer, plus any additional time as required by the Prime Contract and as defined in the Special Terms and Conditions for the applicable program in the “Guaranty Period” Clause. For Contract Work delivered in support of new vessel construction for commercial (non-U.S. Government) Customers, the Guaranty Period is 12 months from the date of the Vessel is delivered to the Customer.
- (o) “**Lien**” means any lien, mechanic’s lien, materialmen’s lien, possessory or other liens, stop notice, bond right, security interest, encumbrance or other right *in personam* or *in rem* of every nature, whether arising by statute, common law, or in admiralty, charges, encumbrances or security interests placed in, created by or through Seller or its Suppliers.
- (p) “**Manufacturing Materials**” means completed Contract Work, partially completed Contract Work, and materials, parts, tools, dies, fixtures, plans, drawings, information and contract rights that Seller has specifically produced or acquired for the Contract.
- (q) “**IMT**” means International Manufacturing Technologies.
- (r) “**OCM**” means Original Component Manufacturer.
- (s) “**OEM**” means Original Equipment Manufacturer.
- (t) “**PIR**” means Problem Identification Report.
- (u) “**Prime Contract**” means the contract between Buyer and the Customer.
- (v) “**Procurement Representative**” means the person authorized by Buyer to negotiate, approve, enter into and deliver Purchase Orders, subcontracts and other engagements, and change orders thereto. Procurement Representatives do not include any production, deck plate supervisors, engineering or technical personnel.
- (w) “**Purchase Order**” means any written instrument from Buyer for Contract Work. The Purchase Order is an integral part of the Contract.

- (x) “**REA**” means Request for Equitable Adjustment.
- (y) “**Regulatory Body**” means any external independent organization (including but not limited to ABS, FCC, FDA, EPA, USCG, Department of Homeland Security, and the Department of State) that regulates compliance of products or certain activities.
- (z) “**Risk of Loss**” is the term used to determine which party should bear the risk of damage or destruction occurring to the Contract Work after the sale has been made, but before the delivery to Buyer has occurred.
- (aa) “**Seller**” means the party identified in the Contract to provide the Contract Work, as well as all of their directors, officers, and employees.
- (bb) “**Supplier**” means any vendor, subcontractor, or entity providing products, goods, services or other items to Seller used in support of the Contract.
- (cc) “**Vessel(s)**” means 1 or more of the ships to be constructed or repaired under the terms of the Prime Contract.

**PLEASE NOTE THAT ALL CLAUSES PRESENTED HEREAFTER APPEAR IN ALPHABETICAL ORDER.**

## **2. Acceptance, Integration, Amendment and Interpretation**

- (a) Any performance by Seller shall constitute complete Contract acceptance. The parties agree that a signed acknowledgement is not a condition precedent to Contract enforceability by either party.
- (b) Any terms proposed in the acceptance of this Contract that add to, vary from, or conflict with the Contract have no effect.
- (c) The Contract integrates, merges and supersedes any prior offers, negotiations and agreements concerning the subject matter, and constitutes the entire agreement between the parties. Seller represents that, in entering the Contract, it does not rely on any previous oral or implied representation, inducement, or understanding of any kind. The Contract shall not be varied, supplemented, qualified or interpreted by any prior course of dealing, usage of trade or course of performance between the parties and shall be interpreted without regard to which party drafted or is deemed to have drafted the Contract.
- (d) The Contract may be amended or modified only by a written instrument executed by each party’s authorized representatives.
- (e) The Contract is governed by and interpreted under the laws of the State of California, excluding California’s conflict or choice of law rules, except that any provision (i.e., FAR/DFARS clause full text or reference or a Government agency clause flow-down) included in the Special Terms and Conditions shall be construed and interpreted according to the federal common law of Government contracts as applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Government. The rights and remedies in the Contract are cumulative with, and in addition to, all other or further rights and remedies provided in law or equity, except as otherwise expressly provided elsewhere in this Contract.
- (f) If any of the provisions are found to be invalid, the remaining provisions shall not be affected, and the Contract shall be interpreted as if not containing such provisions. All headings and numbering are for administrative convenience only and shall not be used to interpret the Contract.

## **3. Assignment; Subcontracting or Delegation**

Seller may not assign, subcontract or delegate any of its rights, interest or performance, in whole or in part, voluntarily or by operation of law, without obtaining Buyer’s prior written consent. Buyer may assign all or a portion of its rights, duties and obligations under the Contract or the Contract itself in whole or in part to any third party, Customer, or successor contractor pursuant to the Prime Contract.

## **4. Changes and Requests for Equitable Adjustment Submissions**

- (a) This clause covers all forms of changes to the Contract, including without limitation, all agreed upon change orders as well as Requests for Equitable Adjustment (“**REAs**”), changes characterized under Government Prime Contracts such as new growth, Condition Found Reports (“**CFRs**”) and Request for Contract Changes (“**RCCs**”). Nothing in this clause shall excuse Seller from proceeding with diligent performance.
- (b) Seller is advised that Buyer is under strict contractual terms with the Customer and Buyer is not allowed to make any change without first securing prior written approval from the Customer. Seller must notify Buyer of changes that Seller makes in its design, manufacturing process or commercial specifications that affect Contract Work, even if such changes do not materially alter the form, fit or function of such Contract Work. Seller shall inform Buyer of such changes not less than 30 days before the applicable delivery date specified in the Purchase Order.
- (c) Only Buyer’s authorized Procurement Representatives have authority to make changes to the Contract Work and make an equitable adjustment in the Contract Price. All amendments must be in writing and signed by the parties.
- (d) Engineering or technical personnel whether employed by Buyer or the Customer, may from time to time render assistance or give technical advice or discuss or exchange information with Seller’s personnel concerning the Contract Work. Such actions, however, shall not be deemed to be a change under this clause and shall not be the basis for any REA. Absolutely no constructive changes, information, advice, approvals or instructions given by any engineering or technical personnel will change this Contract. *Seller assumes all responsibility and risk if it acts upon any direction other than from Buyer’s authorized Procurement Representative.*
- (e) Seller shall submit a detailed written estimate of the impact of the change on the Contract Price, the performance or delivery schedule, and the performance capabilities of the Contract Work within 10 days after receiving a written request from Buyer’s authorized Procurement Representative. The pricing of any equitable adjustment or any other adjustment shall be in accordance with the cost principles in FAR Part 31 when cost analysis is applicable. Seller’s failure to adhere to the time deadlines in asserting its equitable adjustment claim shall cause Seller to waive its ability to make a claim. Buyer may, in its sole discretion, consider any claim regardless of when asserted.
- (f) Buyer will issue a change order in the form of an additional or amended Purchase Order, adding or deleting elements of either the price or the time to complete the Contract Work after the parties reach agreement on the change request. If the parties do not reach agreement or an accord and satisfaction, then Seller shall submit a written REA to Buyer fully stating, with all forms of back-up data, (e.g., specific and clear time records for laborers as to what they were doing, when, for what duration, and at what price, any underlying contracts for additional or different materials, delivery charges, etc.), as to why Seller is entitled to a price and/or time adjustment.

(g) SELLER'S REA SHALL EITHER BE RESOLVED BY THE PARTIES WITHIN 6 MONTHS FROM THE DATE OF ITS SUBMISSION TO BUYER OR IT SHALL BE THE SUBJECT OF THE DISPUTES CLAUSE. IF THE PARTIES HAVE NOT RESOLVED THE REA, THE REA IS TIME BARRED, AND FOREVER RELEASED OR WAIVED. THIS IS A CONTRACTUAL STATUTE OF LIMITATIONS FOR THE PARTIES.

(h) SELLER AGREES IT SHALL NOT FILE AN REA AFTER BUYER HAS ISSUED A LETTER INDICATING THAT THE CONTRACT BETWEEN SELLER AND BUYER IS CLOSED, FINISHED, COMPLETED, TERMINATED OR HAS EXPIRED.

(i) Seller shall certify any REA for Contract Work in support of a Government Prime Contract is made in accordance with the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601 *et seq.* Seller shall indemnify and hold Buyer harmless for any claim or legal action resulting from Buyer's submittal of Seller's REA to the Customer in support of a Government Prime Contract.

#### **5. Compliance with Conflict Mineral Requirements**

(a) Seller certifies that, regardless of whether Seller is publicly traded or not, Seller will notify Buyer in writing if Seller provides any Contract Work containing or using Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**the Rule**"). This written notification shall comply with all SEC Conflict Minerals disclosure requirements defined in the aforementioned Rule.

(b) Seller certifies and warrants that Contract Work that has been or will be delivered to Buyer by Seller under the Contract since January 31, 2013, shall comply with all parts of the Rule.

(c) Seller agrees that, if required by the Rule, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to Buyer for the Contract originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to Buyer pursuant to the Contract, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict Mineral. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.

(d) Seller agrees that it shall require its own subcontractors and Seller (at any tier in the supply chain for a product delivered to Buyer under the Contract) to furnish information to Seller necessary to support Seller's obligations under this Clause.

(e) Seller will maintain records reviewable by Buyer to support its certifications above.

(f) Seller acknowledges that Buyer may utilize and disclose Conflict Minerals information provided by Seller in order to satisfy its disclosure obligations under the Rule.

(g) If Buyer determines that any certification made by Seller under this Clause is inaccurate or incomplete in any respect, then Buyer may terminate the Contract pursuant to the provision of the Contract named "Default; Termination for Cause."

#### **6. Compliance with Ethics**

Seller shall comply with the General Dynamics *Standards of Business Ethics and Conduct*, which can be found at [www.nassco.com](http://www.nassco.com), or alternatively, equivalent business ethics and conduct standards of Seller. In this respect, Seller has an ethical obligation and legal responsibility to warn Buyer of any illegal conduct, or acts of impropriety Seller discovers, or reasonably should have discovered, in the course of performing the Contract Work. Seller shall defend, indemnify and hold Buyer harmless from any and all claims and liabilities resulting from noncompliance.

#### **7. Compliance with Law**

Seller shall fully comply with all applicable local, state, and federal laws, orders, rules, regulations and ordinances. Seller shall procure all licenses and permits and pay all fees and other required charges. Seller shall comply with all applicable guidelines and directives of any local, state, or federal governmental agency. Seller further warrants that all Contract Work complies fully with applicable Occupational Health and Safety legislation, as amended, and the related regulations to the extent applicable. Seller certifies that it has an affirmative action policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap and that it maintains no facilities segregated on the basis of race, color, religion or national origin. Seller certifies that it is in compliance, and shall at all times remain in compliance with all applicable anti-corruption and anti-bribery laws, including without limitation to the U.S. Foreign Corrupt Practices Act of 1977, as amended. Seller and its Suppliers shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans. Seller shall defend, indemnify and hold Buyer harmless from any and all claims and liabilities resulting from noncompliance under this clause.

#### **8. Confidentiality and Third Party Intellectual Property Rights**

Information furnished by Buyer and identified as "IMT Proprietary/Trade Secret Information" or otherwise identified as proprietary or subject to restricted access or dissemination shall, as between Seller and Buyer, be and remain Buyer's intellectual property or Customer's intellectual property, if identified with appropriate restrictive markings. The information shall not be duplicated, used or disclosed except for the purpose and to the extent necessary for Contract performance. Upon Contract completion, all such information shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Absent contrary instructions, Seller shall destroy all IMT proprietary or confidential information within 1 year after termination or completion of the Purchase Order or Contract, and Seller shall provide a written acknowledgement confirming destruction of the information to the Buyer. Seller shall use its best efforts to maintain the confidentiality of this information. Seller may disclose such information only to those third parties who have a need to know such information for Contract performance, provided that third parties are informed of the confidential nature of the same and have agreed in writing to protect such information consistent with Seller's obligations hereunder. These obligations are not imposed upon Seller if: (i) such information is already known to Seller at the time provided to be of a non-proprietary nature, (ii) is lawfully obtained by Seller from another source, (iii) becomes a part of the public domain otherwise than as a result of breach of this Clause; or (iv) is independently developed by Seller without reference to the confidential information provided to Seller under this Contract. Seller further represents that it has read and understood the specifications, and that based on its past experience and superior knowledge, Seller warrants to Buyer and its successors in interest that the manufacture, sale or use of the Contract Work, whether manufactured in accordance with the

specification or otherwise, does not and will not infringe or interfere with any intellectual property rights(s) of any third party, including, without limitation, patent, trademark, copyright, trade secret, industrial design or other proprietary rights. Seller shall defend, indemnify and hold Buyer harmless for any alleged claim of infringement of any third party intellectual property right as set forth in the Indemnity Clause.

In addition:

(a) Seller acknowledges and agrees that the design of the Vessels represents the accumulated experience, knowledge and expertise of IMT, and such design, including any subsequent changes thereto, as contained in the specifications, is the proprietary intellectual property of IMT and that it has substantial commercial value. Therefore, Buyer reserves all rights of ownership in the specifications.

(b) For all Contract Work, Seller shall use only those portions of the specifications as are required to perform hereunder. Seller shall not disclose the specifications, in whole or in part, except as expressly allowed in writing by Buyer and only for performing Contract Work. The specifications shall be disclosed to Seller only as reasonably required for such purposes as are necessary in order to carry out the terms of the Contract Work that Buyer has agreed to perform for the Customer. Seller shall not disclose any portions of the specifications in such a complete form as would enable third parties to construct, or have constructed, a vessel of the same design as the Vessels without: (i) expressly prohibiting the further disclosure thereof; and (ii) expressly prohibiting the use thereof for the purpose of designing, constructing, repairing or having designed, constructed, or repaired, another vessel of the same design as the Vessels. For purposes of this paragraph, "third parties" shall not include the ABS, U.S. Coast Guard, or any other U.S. Regulatory Body or agency. At Buyer's sole discretion, it may require Seller to execute a Non-Disclosure Agreement with additional or more stringent requirements.

(c) Any design or engineering data, in whatever form, relating to the Vessels that is produced by Seller under this Contract shall be considered a "work made for hire". In this regard, Seller agrees to assign, and does hereby assign, all rights, title and interest in and to all such design or engineering data produced under this Contract, including without limitation all intellectual property right in such design or engineering data. Further, whenever requested, Seller shall immediately execute a confirmatory assignment of any particular items of Contract Work in such form as may be satisfactory to Buyer, sign all lawful papers and otherwise perform all acts necessary or appropriate to enable Buyer to obtain and enforce all available legal protections for all such Contract Work. Notwithstanding anything else herein to the contrary, Buyer acknowledges and agrees that Seller may own certain know-how, trade secrets, plans, designs and construction information, processes, manufacturing techniques, discoveries, inventions and ideas, product specifications, machinery, drawings, photographs, computer source codes, equipment, devices, tools and other engineering or technical information that is in existence prior to the date of the Contract between the parties, whether or not protected by law, subject to pending applications or otherwise ("**Pre-Existing Intellectual Property**"). To the extent that such Pre-Existing Intellectual Property is: (i) incorporated into the Contract Work, and (ii) has expressly been identified to Buyer in writing prior to commencement of any services hereunder, then such Pre-Existing Intellectual Property shall remain the property of Seller. In such case, Seller grants to Buyer a royalty-free, non-exclusive, unrestricted, irrevocable, world-wide license to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Pre-Existing Intellectual Property as may be necessary for Buyer to use the Contract Work for the purposes for which such Contract Work was designed and intended, including Buyer's right to provide such Pre-Existing Intellectual Property as embedded in the final deliverables provided by Buyer to the Customer. Seller also grants to Buyer and the Customer a limited use license to design, specifications, and relevant drawings but only for any purpose related to the operation, maintenance, conversion, modification and repair of Vessels. Seller hereby grants to any subsequent purchasers of any of the Vessels the same rights as are granted to Buyer and the original Customer under this Contract.

(d) For Contract Work provided in support of a Government Prime Contract, Seller grants the Government and Buyer the rights delineated in DFARS 252.227-7013 (Rights in Technical Data – Noncommercial Items), DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation) and DFARS 252.227-7015 (Technical Data – Commercial Items ). Applicable Government procurement regulations incorporated in the Special Terms and Conditions, if referenced on the Purchase Order, shall take precedence over any conflicting terms of this Clause (Confidentiality and Third Party Intellectual Property Rights) to the extent that such regulations so require. Buyer's review of any designs submitted by Seller shall not relieve or in any way diminish Seller's obligations and responsibilities under this Contract. If Buyer identifies any non-conformance with Contract requirements in any of Seller's designs, Seller, to the extent Seller agrees with such non-conformance, shall take the required corrective action and resubmit the affected design to Buyer. If the parties are unable to agree as to whether a design conforms to the Contract requirements, either party may treat the matter as a dispute to be resolved as provided in the Disputes Clause.

(e) Seller shall comply with the requirements as administered by the Regulatory Bodies and ABS as set forth in the specifications or Contract. If the specifications specifically require work in less than or even in excess of that required by a Regulatory Body, such specifically required work shall be performed by Seller, at its expense, as Contract Work required by this Contract.

(f) Notwithstanding any obligations of confidentiality set forth in the Contract, including this Clause, Seller understands and agrees that the ABS and any other Regulatory Body are authorized to discuss and disclose to Buyer all submitted drawings, specifications, correspondence, and information of Seller.

## 9. **Counterfeit Electronic Parts Prevention**

*The following clause applies when Seller is providing Contract Work with any Electronic Part.*

(a) **Definitions:**

(1) **Authentic** – shall mean (A) genuine; (B) purchased from the OEM, OCM or through the Authorized Dealers of the OEM or OCM; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

(2) **Authorized Dealer** – A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM's/OCM's products.

(3) **Counterfeit Electronic Part** – An unlawful or unauthorized reproduction, substitution or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified Electronic Part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Electronic Parts represented as new, or the false identification of grade, serial number, lot, number, data code, or performance characteristics. This definition includes end items, components, subcomponents, parts, or assemblies that contain them.

(4) **Electronic Part** – An integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode) or a circuit assembly, and also includes embedded software or firmware.

(5) Non-Franchised Source – Any source that is not authorized by the OEM or OCM to sell its product lines. Non-Franchised Sources may also be referred to as brokers or independent distributors.

(6) Obsolete Electronic Part – Any Electronic Part that is no longer in production by the OCM or OEM or an aftermarket manufacturer that has been provided express written authorization from the current design activity or OCM or OEM.

(7) OCM or OEM– An organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.

(8) Suspect Counterfeit Electronic Part – A Suspect Counterfeit Electronic Part includes any Electronic Parts that Buyer becomes aware, or has reason to suspect, through credible evidence (including, but not limited to, visual inspection or testing) that provides reasonable doubt about whether the Electronic Part is Authentic. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, the entire lot of parts will be considered to be suspect counterfeit.

(b) Terms and Conditions:

(1) Seller represents and warrants that only new and Authentic materials are used in Contract Work delivered to Buyer and that the Contract Work delivered contains no Counterfeit Electronic Parts. No material, part, or component other than a new and Authentic part is to be used unless approved in advance in writing by the Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Electronic Parts, Seller shall only purchase Authentic parts/components directly from the OEMs, OCMs or through Authorized Dealers of the OEM/OCM. Seller represents and warrants that all parts/components delivered under this Contract are traceable back to the OEM/OCM. Seller must maintain and make available to Buyer, at Buyer's request, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Buyer. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. The Procurement Representative's approval of Seller's request(s) does not relieve Seller's responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.

(2) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and the Procurement Representative's approval before parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's Authorized Dealers. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request.

(3) Seller must maintain an acceptable Counterfeit Electronic Part detection and avoidance system that complies with DFARS 252.246-7007 (Contractor Counterfeit Electronic Part Detection and Avoidance System) and SAE standard AS5553, *Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition*.

(4) If it is determined that Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts were delivered to Buyer by Seller, the Suspect Counterfeit Electronic Parts or Counterfeit Electronic Parts will not be returned to Seller or the supplier. Buyer reserves the right to quarantine any and all Suspect Counterfeit Electronic Parts it receives and to notify the Government Industry Data Exchange Program ("GIDEP") and other relevant government agencies. Seller shall promptly reimburse Buyer for the full cost of the Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts and Seller assumes responsibility and liability for all costs associated with the delivery of Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts. The remedies in this Clause shall apply regardless of whether the warranty period or Guaranty Period has ended, and are in addition to any remedies available at law or in equity.

(5) If the procurement of materials under this Contract is pursuant to, or in support of, a contract, subcontract, or task order for delivery of goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with this Contract may be punishable, as a federal felony, by up to 5 years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.

(6) Seller shall flow the requirements of this Clause ("Counterfeit Electronic Parts Prevention") to its Suppliers at any tier who render performance or supplies to be used in support of this Contract, even if Seller itself or its Suppliers are (i) exempt from Cost Accounting Standards; (ii) are a small business; or (iii) offer commercial items for Electronic Parts or assemblies containing Electronic Parts.

(7) Seller agrees to provide records, including traceability records, to Buyer to substantiate Seller's compliance upon Buyer's request. Seller agrees to cooperate in good faith in the event Buyer or Buyer's customers have a need to audit Seller's compliance.

Seller agrees to maintain all necessary records related to Seller's compliance with this Clause for a minimum of 10 years after the Contract Work has been delivered.

#### **10. Default; Termination for Cause**

(a) In advance of Seller's actual default, if in Buyer's opinion Seller is falling behind in its performance or is likely to breach the Contract, Buyer may request written adequate assurances from Seller that it remains able to perform the Contract. If Seller is unable or unwilling to provide appropriate assurances within a reasonable period of time, which in no event shall be less than 3 business days, as requested, and then Buyer may proceed with termination for default immediately, provided however that such termination shall be without opportunity to cure.

(b) With written notice to Seller, containing a reasonable time to cure, which in no event shall be less than 3 business days, solely determined by Buyer, Buyer may terminate all or any part of the Contract: (i) if Seller fails to perform the Contract Work or deliver the Contract Work within the time specified by the Contract or any written extension; (ii) if Seller fails to perform any other material provision of the Contract; (iii) if Seller fails to make progress so as to endanger performance of the Contract; or (iv) Seller's right to conduct business is suspended, Seller becomes insolvent, or becomes subject to the appointment of a receiver or becomes subject to an assignment, reorganization or arrangement for the benefit of its creditors.

(c) In the event Buyer terminates the Contract in whole or in part as provided above, Buyer may procure goods or services similar to the Contract Work specified herein, and Seller shall be liable to Buyer for any excess costs for such similar procurement. If the Contract is terminated only in part, Seller shall continue the performance to the extent not terminated.

(d) If Buyer terminates all or any part of the Contract. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Contract Work, (2) partially completed Contract Work, and (3) Manufacturing Materials. Upon direction of Buyer, Seller shall also protect and preserve property in possession of Seller in which Buyer has an interest.

(i) Buyer shall pay the price specified in the Contract for completed Contract Work. Buyer shall pay a proportionate share of the Contract Price for partially completed Contract Work. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at Seller's direct costs. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or the Customer against loss because of outstanding Liens or claims of former Lien holders.

(ii) Additionally, for Contract Work in support of a Government Prime Contract, the following shall apply. If, after termination of the Contract for default, it is determined that Seller was not in default, or that the default was excusable, such notice of default shall be deemed to have been issued pursuant to FAR 52.249-2 (Termination for Convenience of the Government (Fixed Price)) incorporated herein and the Setoffs/Back-charges Clause and the rights and obligations of the parties hereto shall, in such event, be governed by said clause.

(e) The rights and remedies of Buyer under this Default Clause are in addition to any other rights and remedies provided by law or under the Contract.

## **11. Deliveries of Contract Work**

(a) Deliveries are to be made both in quantities and on dates specified in the Contract.

(b) Buyer may refuse delivery or return Contract Work at Seller's expense when Contract Work is delivered more than 30 days in advance of the specified delivery date without the Procurement Representative's prior written consent. The Risk of Loss remains with the Seller for Contract Work delivered more than 30 days in advance of delivery date, or in amounts that are not in compliance with the Contract, unless approved otherwise by the Procurement Representative.

(c) Buyer will not pay for, or return to Seller, any Contract Work that is delivered in excess of the quantity specified unless prior written consent and acceptance is given by the Procurement Representative.

(d) Seller is advised that IMT is a C-TPAT (Customs-Trade Partnership Against Terrorism) certified company. If Seller deliveries are full (sealed) containers from countries outside the U.S., Seller is requested to execute a IMT Supplier 'Supply Chain Security Terms and Conditions' document and conform to U.S. C-TPAT security procedures in order to facilitate expedited U.S. Customs processing. Bulk type deliveries in open containers are excluded.

## **12. Disputes**

(a) Unless there are exigent circumstances and/or the imminent disclosure of information required to be protected pursuant to the Confidentiality Clause of the Contract is evident, any dispute between Buyer and Seller arising out of the Contract shall be resolved by means of the following procedure.

(b) The parties will attempt in good faith to settle any dispute arising under or related to the Contract. The parties will attempt to resolve the dispute at the lowest practicable level for a reasonable period of time, but in no event longer than 6 months. If the representatives cannot resolve the dispute, they will refer the matter to appropriate levels of their respective management teams.

(c) Any dispute arising solely in connection with or arising out of the Contract not resolved in accordance with paragraph (b), above, and after the parties have exhausted the informal dispute resolution process, shall be finally settled by litigation in the U.S. District Court for the Southern District of California. THE PARTIES HEREBY CONSENT TO SUCH EXCLUSIVE JURISDICTION AND VENUE FOR ANY DISPUTES. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO A TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THE CONTRACT. THE PARTIES FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY. The parties may also agree to arbitrate if they so desire. In resolving any dispute under the Contract, each party shall bear its own attorneys' fees and costs and expenses, without regard to any law or statute to the contrary.

(d) Seller shall bring any and all disputes under or related to the Contract within 2 years after the cause of action for such dispute arises.

(e) The following additional terms apply for disputes under the Contract that arise out of or under a Government Prime Contract.

(i) Seller shall provide Buyer with a fully supported written claim, properly certified as prescribed by FAR 33.207, within 60 days after the claim accrues;

(ii) Seller shall cooperate with Buyer in prosecuting Seller's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and

(iii) Seller shall pay its proportional costs in pursuing the claim.

(iv) If Seller fails to provide Buyer with a written claim for any dispute within the timeframe specified herein, Seller is deemed to have waived the claim.

(v) Buyer's entire liability to Seller with respect to any matter prosecuted under the disputes provisions in the Prime Contract shall be limited to the recovery obtained against the Customer for Seller's claims, exclusive of Buyer's related markups.

(vi) Buyer may, upon Seller's request and in Buyer's sole discretion, submit the claim or request for equitable adjustment to the Contracting Officer. If Seller is affected by the resulting decision or Buyer elects to appeal, Seller shall pay Seller's proportion of the appeal costs to Buyer.

(vii) If Buyer elects not to appeal the decision, Buyer shall notify Seller of that decision within 90 days. If Seller submits a timely request to Buyer to appeal such decision, Buyer will file and sponsor Seller's appeal at Seller's sole cost, if Buyer may do so in good faith.

(viii) Buyer has the right to review, prior to submission, any pleadings or other papers Seller may file in such appeal. Seller agrees to delete any admissions or statements in the pleadings or papers to which Buyer objects. If Buyer appeals such decision, whether or not at Seller's request, any decision regarding such appeal shall be binding on Buyer and Seller as it relates to the Contract.

- (ix) Decisions made by a Contracting Officer which relate to the Contract, are also binding on Seller.
- (x) The choice of law specified in the Contract will not apply to disputes or appeals prosecuted under the Prime Contract. Pending final resolution of any decision, appeal or judgment of any proceedings related to the Contract, Seller shall proceed diligently with the performance of the Contract unless otherwise directed by Buyer in writing.

### **13. Export Control Compliance and Cooperation Applicable to Contract Work**

- (a) Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the U.S. pertaining to the export of any hardware, software, technical data, technology or defense service, provided by, through or with the cooperation of the Buyer in the performance of this Purchase Order, whether in the U.S. or abroad. Applicable U.S. export control laws and regulations include but are not limited to the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794 and 22 C.F.R. §§120-130 International Traffic in Arms Regulations ("ITAR") administered by the U.S. Department of State (available at <http://pmddtc.state.gov/>); the Export Administration Act, 50 U.S.C. App. 2401-2420 and 15 C.F.R. §§ 730-774 Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce (available at <http://www.bis.doc.gov/>); and the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC") Regulations, 31 C.F.R. Part 500-598 (available at <http://www.ecfr.gov>). All aforementioned laws and regulations are herein referred to as "US Export Control Laws".
- (b) If Seller is in the business of manufacturing, exporting, re-exporting and/or brokering U.S. Munitions List ("USML") items, Seller represents that it maintains registration with the U.S. Department of State, Directorate of Defense Trade Controls as may be required by ITAR Parts 122.1 and/or 129.3, respectively.
- (c) Seller shall obtain, and provide copies to Buyer of, all required export or re-export licenses, agreements or applicable license exemptions or exceptions required for Seller to use foreign classification or survey providers and to lawfully export or re-export any hardware, software, technical data, technology or, defense services.
- (d) For technical data or defense services controlled by ITAR, Seller shall include Buyer and the foreign person or entity as signatories to Seller's Technical Assistance Agreement ("TAA") if under that TAA, Seller desires Buyer to export technical data or furnish defense services directly to the foreign persons. For other ITAR or EAR authorizations, Seller shall include buyer on any such licenses if Seller desires Buyer to export technical data or technology directly to the foreign persons.
- (e) Seller agrees that neither it nor any of its subsidiaries, affiliates or its Suppliers will directly or indirectly export, re-export, transfer, or release, or cause to be exported or re-exported, Buyer's hardware, software, technical data, technology or defense services in violation of the U.S. Export Control Laws or provisions and limitations of any applicable agreements, licenses, exemptions or exceptions.
- (f) All hardware, software, technical data, technology or defense services which Seller will provide to Buyer and which are controlled by U.S. Export Control Laws and/or regulations of the country of origin shall be appropriately labeled by Seller to prevent unauthorized disclosure.
- (g) Seller may not subcontract a scope of work involving transfer of hardware, software, technical data, technology or defense services unless and until the export compliance provisions of this Clause (Export Control Compliance and Cooperation Applicable to Contract Work) have been provided in writing to the Supplier(s).
- (h) Unless the Purchase Order is for goods to be supplied on a "build to print" basis by Seller, Seller shall provide Buyer, upon request, with either (i) the USML category of such hardware, software, technical data or defense services that is controlled by the ITAR, or (ii) the Export Control Classification Number ("ECCN") of such hardware, software, or technology that is subject to, or controlled by the EAR, including those items designated as "EAR99"; and shall also provide the Harmonized Tariff Schedule number ("HTS"), when applicable, for each item of hardware or software, regardless of any export regulatory designation.
- (i) Upon completion of its performance under the Purchase Order, Seller and its Suppliers shall destroy or return to Buyer all of Buyer's hardware, software, technical data or technology, which is controlled under the U.S. Export Control Laws.
- (j) Seller shall notify Buyer immediately if Seller is denied an export license, or has a license or agreement revoked, or other adverse action related to export compliance relating to this Contract, Seller shall notify Buyer immediately upon being listed in any export-related Restricted, Denied or Blocked Persons List, Debarred Parties List, U.S. Federal Register General Order, 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.
- (k) Seller shall notify Buyer of any material change in Seller's organization including a change name or address, acquisition or divestment of any subsidiary, or any sub-licensee, or merger with, or acquisition by another entity, whether U.S. or foreign, within 15 days of the event.
- (l) Seller shall request of Buyer, 5 days in advance, in writing, any required access to the Facilities by any and all of Seller's employees, sub-licensee, its Suppliers or other agents, at any tier, and shall include in any such request, the name and citizenship/nationality, (or in the case of dual or third country citizenship/nationality, the countries of citizenship/nationality), of each such person. For the purposes of the Contract, the term "national" refers to an individual's place of birth, all citizenships and all lawful permanent residencies of any country. The request shall be in the form of a Visitor Acquisition Letter ("VAL") in accordance with the Security and Access requirements on Buyer's website.

### **14. Force Majeure**

Either party shall provide written notice to the other party of a Force Majeure event no later than 15 days after such first party has reason to know of the existence of the Force Majeure event and include any estimated impact on performance or delivery schedule. The party claiming a Force Majeure shall provide updates every 3 days to report the status when such event continues for a period that exceeds 3 days from the start of the impact. The parties will meet and confer in good faith with respect to termination or equitable adjustment of the Contract in the event a Force Majeure continues for 180 consecutive days or more.

### **15. Furnished Property**

- (a) Buyer may provide Furnished Property to Seller for the Contract. Title to Furnished Property remains with the original owner of the Furnished Property. THERE IS NO WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS,



CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE FURNISHED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

(b) Seller shall be strictly accountable for any Furnished Property that comes into the control of Seller, including, but not limited to, any material removed from any Vessel, oils or fuels. Unless already so marked by Buyer, Seller shall clearly mark all Furnished Property to identify the proper ownership and, upon request, shall furnish Buyer with a list of all Furnished Property in its possession. The Furnished Property shall be used only for the Contract and held at Seller's sole risk and insured at Seller's sole risk and insured at Seller's sole expense in an amount equal to its replacement cost, with loss payable to Buyer. Buyer may inspect and/or remove any Furnished Property at any time at no charge to Buyer, and Buyer shall have reasonable access to Seller's premises for such purpose. Seller shall return such Furnished Property upon Buyer's demand, and return expenses paid as specified on the face of the Purchase Order.

(c) Seller shall protect, preserve and maintain records of all such property in conformance with the requirements of FAR Subpart 45.5 when the Contract Work is in support of a Government Prime Contract.

#### **16. Gratuities and Kickbacks**

Seller is prohibited from offering any gratuities (in the form of entertainment, gifts or otherwise) or kickbacks to Buyer or its employees or agents with a view toward securing favorable treatment under the Contract or for future business opportunities. Seller shall ensure that the substance of this clause is flowed down to its own contractors and vendors. Seller also agrees that it shall promptly report to Buyer's General Counsel any solicitation request for a kickback. Seller's breach of this clause shall be considered a material breach of the Contract and of all other contracts between the parties.

#### **17. Guaranty**

(a) All workmanship of Seller, its Suppliers pursuant to the Contract shall be of good commercial quality performed in accordance with applicable standards for good shipbuilding practice, and all equipment, material, and supplies incorporated into the Contract Work shall be new, suitable and of good commercial quality for the manner intended, with no more than normal production repair of any minor manufacturing deficiencies.

(b) If at any time during the Guaranty Period the Contract Work fails to comply with the Contract or any weakness, deficiency, failure, breaking down, or deterioration in material or workmanship not caused by Buyer, the Customer, or by ordinary wear and tear ("**Guaranty Deficiency**") in the Contract Work shall appear or be discovered, Seller shall repair or replace all material and equipment necessary to correct such Guaranty Deficiency at its sole expense and it shall be liable for any incidental travel and/or transportation costs which may be incurred. Furthermore, for Contract Work supplied in support of new construction Seller shall proactively repair or replace without direction from Buyer, all material and equipment in other ships of the same class except those whose Guaranty Period has expired, that have the same weakness, deficiency, failure, break down, or deterioration in material or workmanship.

(c) Prior to the expiration of the Guaranty Period, including any extension, should Buyer reasonably determine that any Guaranty Deficiency requires emergency correction outside the Vessel's normal maintenance schedule, whether or not such Guaranty Deficiency requires the Vessel to be dry-docked, Seller shall pay the actual costs of correcting the Guaranty Deficiency reasonably incurred by Buyer. Any disagreement as to whether a Guaranty Deficiency requires an emergency correction is subject to the Disputes clause. The Guaranty Period shall be extended day for day for any period in which a Vessel is out of service during the Guaranty Period solely related to the correction or repair of a Guaranty Deficiency. Seller guarantees such material and equipment repairs or replacements for a further period of 12 months for Contract Work related to new construction or 90 days for Contract Work related solely to repair services on an existing Vessel, from the date of completion of such repairs or replacements or to the end of the Guaranty Period, whichever is later.

(d) Seller's Guaranty, and Buyer's Guaranty rights against Seller, shall be separately assignable to the Customer, as the case may be.

#### **18. Indemnity**

Seller shall defend, indemnify, save and hold Buyer, its parent company, affiliated companies, directors, officers, agents and employees, free and harmless from and against all claims, demands, causes of action, damages and liabilities of any nature, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees) for (i) death or injury to any person or persons (including, but not limited to, agents and employees of Seller and its Suppliers and damages characterized as special, direct, consequential, loss of consortium, or future earnings); (ii) damage or loss of any property (including, but not limited to, loss of use, lost profits, or diminution in value) arising directly or indirectly out of or in connection with Seller's performance of the Contract, (iii) claims by Seller, Seller's employees or its Suppliers and their employees for wages, benefits and other compensation; and by claims by governmental agencies or others for taxes or contributions allegedly due by reason of Seller or its Suppliers performing the Contract Work; (iv) acts or omissions under the Contract; and (v) infringement of any third party intellectual property rights, in all including, without limitation, claims, demands, actions, damages and liabilities based in whole or in part on the negligence or other theory of liability of Seller or its Suppliers, and excluding only claims and liabilities based on Buyer's sole negligence or willful misconduct. Buyer has the sole right to designate the attorney or law firm that will defend and represent it in regard to any suit, claim, or action that is subject to an indemnity provision in the Contract. This provision survives termination of the Contract and is not subject to the Limitation on Liability Clause. Buyer may assign its right to be indemnified hereunder.

#### **19. Independent Contractor**

Seller is an independent contractor. Seller shall have complete control over the performance of the Contract Work herein and may, at its own expense, employ such workers as Seller deems necessary to perform the Contract Work. Seller ensures that (i) its Suppliers perform to standards no less than those specified in the Contract and specifications; (ii) IMT and Customer representatives have reasonable access to any Supplier site and they will be afforded such opportunity to inspect all Supplier work to the same extent as if Seller was doing the work; and (iii) its Suppliers shall warrant their work to the same level and time period consistent with the Guaranty in the Contract. Seller assumes full and sole responsibility for the payment of all compensation and expenses, benefits, and for all state and federal income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings. Seller shall defend, indemnify and hold Buyer harmless from Seller's non-compliance with the Affordable Care Act, if the Act applies to Seller. Seller shall be solely responsible for any failure by Seller to (i) provide accurate, proper, or timely payment of wages (as that term is defined in California Labor Code Section 200) to any worker(s) it provides to Buyer, or (ii) secure valid workers' compensation coverage for any workers it provides to Buyer. Seller shall defend, indemnify and hold IMT harmless for all losses, costs, expenses (including actual attorneys' fees), penalties and interest, as a result of its failure to do so. This indemnification shall extend to claims occurring after the applicable Purchase Order is terminated as well as while it is in force.

## 20. Inspection and Acceptance

- (a) The Contract Work (which term throughout this Inspection and Acceptance Clause includes, without limitation, raw materials, components, intermediate assemblies, data, manufacturing processes, services, and quality systems) shall be subject to inspection and testing by Buyer, the Customer, or Regulatory Bodies having jurisdiction over the Vessels or the Contract Work at all places and reasonable times, including, but not limited to, Seller's and its Suppliers' facilities. Buyer and Seller shall provide each other with timely advance notification of all visits and requests for visits by Regulatory Bodies. After notification and Buyer's acceptance of specific scheduled inspections or tests, if Seller is not ready to perform the inspections or tests at the designated time(s), then Seller shall reimburse Buyer for its costs incurred for labor and travel to attend the inspections or tests.
- (b) The Customer may, from time to time, designate certain Contract Work for source inspection. Upon such designation, Seller shall furnish advance notification of the time (i) when Seller's inspection or tests will be performed in accordance with the terms and conditions of the Contract and (ii) when the Contract Work will be ready for source inspection. The period and method of the advance notification, and the Customer representative to whom it shall be furnished, shall be specified by the Customer, but shall not require more than 2 workdays of advance notification if the Customer representative is in residence in Seller's plant, nor more than 7 workdays in other instances.
- (c) Approval by the Customer and/or Buyer as required under the Contract and applicable specifications shall not relieve Seller of its obligation to comply with the specifications and with all other requirements of the Contract, nor shall it impose upon the Customer or Buyer any liability it would not have had in the absence of such approval.
- (d) Acceptance of delivery of the Contract Work does not alone constitute acceptance of performance under the Contract. The inspection or testing of any portion of the Contract Work does not relieve Seller from its responsibility to correct defects or non-conformities which may be discovered in Contract Work not inspected or tested or which is discovered during the Guaranty Period. If the Contract Work is not ready at the time specified by Seller for inspection or testing, Buyer may deduct from the Contract Price the additional costs to Buyer of inspection or testing. Buyer may further deduct from the Contract Price any reasonable costs to Buyer of inspection or testing when prior rejection makes re-inspection or re-test necessary.
- (e) Seller shall provide and maintain an inspection system and documentation in accordance with Seller's mandatory document control and records retention procedures (i.e., records of all inspection work by Seller shall be kept complete and available to the designated Quality Assurance Representative during the performance of Contract Work).
- (f) Final acceptance or rejection of Contract Work shall be made as promptly as practicable, but no later than 60 days after Delivery of Contract Work to the delivery point or upon completion of performance and inspection of the Contract Work as applicable. If any inspection or testing is performed on Seller's (or its Suppliers) premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of inspectors in the performance of their duties. The failure to inspect and accept or reject the Contract Work shall neither relieve Seller from responsibility for performing the Contract Work, nor impose liability on Buyer. Seller shall be solely responsible for any reduction in value of samples used in any inspection or test.
- (g) Buyer may reject nonconforming Contract Work. Seller shall have a reasonable opportunity to examine the Contract Work before it is rejected. Contract Work, which has been rejected, shall not be re-tendered for acceptance until the defect or nonconformity is corrected.
- (h) The Contract Work shall be accepted when, upon final inspection and testing, it is found to conform to the Contract. If at any time prior to such acceptance, the Contract Work is found to be defective in material or workmanship, or otherwise does not conform to the Contract, Seller shall correct or replace such defective Contract Work at Seller's expense. This right specifically extends to, without limitation, any period after acceptance of the Contract Work and prior to commencement of the Guaranty Period. Any and all such defects shall be corrected and made good within the stated notice by Buyer to Seller. In this respect, Seller agrees and acknowledges that there will be instances where immediate corrections are going to be mandated during sea trials. If any such defect is discovered between the Vessel's acceptance trials and Delivery of the Vessel to the Customer, any and all such defects shall be corrected and made good as soon as practical, as determined by Buyer in its sole discretion, after notice thereof by Buyer to Seller.
- (i) Final acceptance of the Vessel by the Customer shall be conclusive except for Seller's warranty and Guaranty obligations during the Guaranty Period and except with respect to latent defects, fraud or gross mistakes amounting to fraud. In such cases, Buyer, in addition to any other rights and remedies provided by law, or under other provisions of the Contract, shall have the right in its sole discretion to require Seller (i) at no increase in the Contract Price, to repair or replace the defective or nonconforming Contract Work at the original point of delivery, or at Seller's plant, or at the location of the Vessel at Buyer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between Seller and Buyer; provided, that Buyer may require a reduction in Contract Price if Seller fails to meet such delivery schedule, or (ii) within a reasonable time after receipt by Seller of notice of defects or nonconformance, to repay such portion of the Contract as is equitable under the circumstances if Buyer elects not to require correction or replacement. When Contract Work is returned to Seller, Seller shall bear the transportation cost from the original point of delivery to Seller's plant and return to the original point when that point is not Seller's plant. If Seller fails to perform or act as required in (i) or (ii) above and does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, Buyer shall have the right to replace or repair such Contract Work and charge to Seller the cost occasioned Buyer thereby.
- (j) If Seller fails to promptly replace or correct rejected Contract Work, Buyer may either (i) correct such Contract Work on Seller's account, (ii) equitably reduce the Contract Price to reflect the reduced value of any defective Contract Work accepted by Buyer that cannot be corrected by re-performance, repair or replacement, or (iii) terminate for default as provided in the Default Clause. Seller authorizes Buyer, its affiliates, agents and its Suppliers, and the Customer and the Customer's subcontractors, to repair, reconstruct or rebuild the Contract Work using Seller's applicable intellectual property without payment of any royalty or other compensation to Seller.

## 21. Insurance

Unless otherwise stated in the Contract, and without prejudice to Buyer's rights and Seller's indemnity obligations under Indemnity Section of the Contract, Seller shall keep and maintain in effect, at its sole cost and expense, the following policies of insurance:

- (a) Commercial General Liability insurance with coverage to include broad form property damage, personal injury, premises, completed operations, and products and contractual liability for the liability assumed under the Contract and independent contractors; and with a minimum bodily injury and property damage combined single limit of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

- (b) When Seller, its employees, agents and subcontractors (including delivery persons) enter any facility owned, leased or operated by Buyer, then Seller shall maintain:
- (i) Commercial Automobile Liability insurance with coverage to include owned, hired and non-owned vehicles; with a minimum bodily injury and property damage combined single limit of \$2,000,000 per occurrence.
  - (ii) Workers' Compensation and Longshore and Harbor Workers' Compensation Act insurance with minimum limits of liability conforming to the statutory requirements of the state where the work is to be performed and the United States of America, respectively.
  - (iii) Employer's Liability insurance with minimum limits of \$1,000,000.
- (c) If Seller's employees, subcontractors or suppliers are assigned aboard a Vessel for any reason, Seller shall maintain Maritime Employer's Liability (Jones Act) coverage with minimum limits of liability of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
- (d) If Seller's employees, subcontractors or suppliers are required under the Contract to perform any work related to any U.S. Government contract outside of the United States, Seller shall maintain Defense Base Act coverage with minimum limits conforming to the statutory requirements of the United States.
- (e) Each such policy shall be underwritten by an insurance company with minimum A.M. Best ratings of "A-, VII" or equivalent and shall provide that it is primary insurance to and noncontributing with any other insurance carried by Buyer. The policies referred to above in paragraphs (a) and (b)(i) shall name Buyer as an "additional insured". The policies referred to above in paragraphs (b)(ii), (b)(iii), (c) and (d) shall contain a waiver of subrogation in favor of Buyer.
- (f) Certificates evidencing Seller's compliance with these insurance requirements shall be delivered to Buyer upon issuance of the Contract and renewals thereof sent to Buyer upon expiration of the respective policy terms. Seller, its insurance broker or insurer shall be obligated to immediately notify Buyer in writing of any cancellation of required coverage or any material change therein.
- (g) Notices and certificates regarding insurance policies shall be provided in writing to National Steel and Shipbuilding Company, Attention: Risk Manager, P.O. Box 85278, San Diego CA 92186-5278.
- (h) The insurance coverage limits stated above are minimum insurance coverage requirements, not limits of Seller's liability. Notwithstanding the above-required insurance policies, Seller shall be obligated for the full and total amount of any damage, injury, expense or loss.

## **22. Invoices**

- (a) Seller shall submit invoices as follows: (i) Contract Work must be detailed for each date/item worked, and price for Contract Work; (ii) Seller's invoice number and the Purchase Order number, and line item number, must be included; and (iii) if the invoice reflects any progress or milestone payments, the invoice must comply with the Buyer's "Special Provisions for Progress Payments" or "Provisions for Milestone Payments." The invoice shall contain itemized prices, discounts, order number, transportation description and name of carrier. The invoice shall separately list all U.S., state and local taxes, duties, tariffs and similar fees imposed by any government that have been paid by Seller. Invoices incorrectly or incompletely executed will be returned for correction or completion.
- (b) The cash discount period, notwithstanding anything to the contrary on any packing list or invoice, will commence on the date Buyer receives the Contract Work in conformance with the packing list and a complete and correct invoice.
- (c) Invoices must be submitted no earlier than the day of shipment. To be timely, all invoices must be received within 90 days after completion of the Contract Work. Invoices received later than 90 days after completion of the Contract Work are rejected and void and Seller hereby waives the right to payment of these invoices.
- (d) The following terms apply in the event that the Contract is in furtherance of a cost reimbursement contract. Seller is provided notice that Buyer will not have the cost of the Contract reimbursed under the Prime Contract until Buyer has been paid. If Seller fails to provide an invoice in a timely manner, Buyer's cost for Contract Work incurred hereunder may be declared unallowable by the Government with subsequent refusal by the Government to reimburse Buyer or the Customer, as may be applicable. Seller is required, as a specific deliverable under the Contract to invoice for Contract Work ordered herein within 30 days of the completion of the Contract Work.
- (e) Progress payments will apply if provided for on the face of the Purchase Order. Determination of the percentage of completion of the Contract Work shall be made by Buyer and the Customer, as applicable; and their decision shall be final and not subject to dispute by Seller. Seller shall submit invoices for such progress payments in a form acceptable to Buyer, including such substantiation of costs incurred or progress made, or both, as Buyer may require. Such progress payments as are justified by suitable invoices and substantiation will be made within 10 days of Buyer's receipt of progress payments for the same period as progress covered in Seller's invoices. Title to all work in process, materials, equipment or other property covered by progress payments shall vest in the Customer if Buyer's contract or the Prime Contract states. This provision shall not be construed as affecting any acceptance or in any way relieving Seller of its obligations of strict and timely performance, warranties or any other obligations hereunder.

## **23. Liens with Right to Offset**

- (a) At the time Seller requests any payment under the Contract, Buyer may require Seller to furnish evidence reasonably satisfactory to Buyer that no Liens of any kind have been acquired or may reasonably be expected to be acquired against the Vessel, Contract Work or Furnished Property. To the extent that the Contract is subject to a payment schedule, Buyer may from time to time issue Seller progress payments and receive simultaneously with the same a waiver and/or release of any Lien rights and/or applications for certification of progress payments and/or funds received to a particular date-certain. The standard progress payment releases and waivers are in conformance with California's Civil Code Section 3262, to the extent applicable to the type of work being performed, and samples can be found at [www.nassco.com](http://www.nassco.com), under the heading "Supplier Information and Transportation Guide" and the sub-heading "Supplier Releases." At the conclusion of the Contract, Buyer will not release final payment without a fully executed "Unconditional Waiver and Release upon Final Payment" from Seller and a release of all Liens from any of its Suppliers. Seller's waiver and release will be in substantially the same form as required by California Civil Code Section 3262."

(b) Seller is required to promptly notify Buyer if a Lien of any kind is perfected against, or if there is any attachment upon, the Contract Work or Vessel. If such Lien does not arise out of acts or omissions of Buyer, Seller shall, not later than 20 days thereafter, secure the discharge or release of such Lien provided, however, that Seller may contest such Lien or the claim upon which it is based, and shall within the time herein provided secure the discharge or release of such Lien by court order, and if required, shall file such bond or security as the court may require.

(c) If release or discharge is not available under the law, Seller shall immediately take such steps as shall prevent such claimed Lien from delaying the Contract Work and shall indemnify and save harmless Buyer from all costs, charges and damages by reason of such claimed Lien or claims or in any way attributable thereto.

(d) Notwithstanding the foregoing, and except with respect to matters being or proposed to be contested in good faith by Seller, Buyer or the Customer may secure the discharge or release of such Lien in which Seller shall reimburse Buyer or the Customer for the costs of securing such discharge or release (which cost shall include any reasonable expenses, including reasonable attorneys' fees, incurred in connection therewith) by deducting such sum from any payments due or to become due to Seller under the Contract. In the event such cost is in excess of the amount of any such reimbursement by deductions, Seller shall pay the amount of such excess upon demand.

(e) Notwithstanding the foregoing, Buyer may without securing the discharge or release of such Lien as provided in the paragraph directly above, may nevertheless withhold from any payments due or to become due to Seller, unless and until such claimed Lien is released or discharged, a sum equal to the amount reasonably determined by Buyer and/or the Customer to be required to secure the release or discharge of such Lien which amount may include the reasonably estimated amount of all expenses, including reasonable attorneys' fees, which might be incurred in connection therewith.

#### **24. Limitation on Liability**

**EXCEPT FOR THE RIGHTS AND OBLIGATIONS SET FORTH IN THE INDEMNIFICATION CLAUSE AND GUARANTY CLAUSE, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR: (i) PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES ARISING UNDER, OR RELATING TO, THE CONTRACT; OR (ii) INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DELAY OR TIME RELATED DAMAGES, LOSS OF INCOME, LOST PROFITS OR LOSS OF ANTICIPATED PROFITS, LOST BUSINESS, LOSS OF BUSINESS REPUTATION, OR LOSS OF BUSINESS OPPORTUNITIES, UNREALIZED SAVINGS, ANY AND ALL ATTORNEYS' FEES AND COSTS) ARISING UNDER, OR RELATING TO THE CONTRACT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND REGARDLESS OF WHETHER A PARTY WAS ADVISED OF, KNEW OF, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGES.**

#### **25. New Materials and Authorized Sources**

(a) Seller represents and warrants to Buyer and its Customers that the Contract Work is new (not used or reconditioned) and not of such an age or so deteriorated as to impair their usefulness or safety. If Seller intends to provide used or reconditioned Contract Work, Seller shall notify Buyer in writing and obtain advanced written authorization from Buyer to provide such used or reconditioned Contract Work.

(b) Seller shall only purchase Contract Work: (i) directly from the OCM or OEM; or (ii) from a distributor or other source that purchases directly from the OCM or OEM and is authorized, franchised or certified by the OCM or OEM. Seller shall notify Buyer in writing and obtain advanced written consent from Buyer to use such Contract Work if Seller plans to purchase from sources that are not authorized, franchised or certified sources.

#### **26. No Advertising or use of Buyer's Trademarks**

Seller and its Suppliers are prohibited from advertising or publishing any information about the Contract or their Contract Work in support of the Contract, and are prohibited from using Buyer's trademarks or trade names without Buyer's prior written consent. Seller shall include this clause in all lower-tier subcontracts or orders placed in support of the Contract.

#### **27. Notices**

Required notices shall be in writing and shall be deemed effective when served personally; delivered by courier service (with proof of delivery); deposited in the U.S. Mail, certified first class postage prepaid, with return receipt requested;; or electronic transmission email, with proof of delivery addressed as follows: To Seller: To the person and at the address as indicated on face of the Purchase Order, and To Buyer: International Manufacturing Technologies, Inc., P.O. Box 4320, Calexico, CA 92232-4320, Attn: Buyer's Representative (as specified on the face of the Purchase Order), or addressed to either party at such other address(es) as such party may later specify in writing.

#### **28. Order of Precedence**

Any inconsistency between any provisions of the Contract shall be resolved with the following descending order of precedence.

- (a) the provisions on the face of the Purchase Order;
- (b) these General Terms and Conditions;
- (c) Supplemental General Purchase Order Terms and Conditions applicable to Contract Work performed onsite at IMT or Customer Facilities or when access is granted to IMT's or Customer's Facilities;
- (d) the Special Terms and Conditions, if any; unless the FARS, DFARS or specific Prime Contract clauses are required to take precedence by federal law;
- (e) the specifications, and within the specifications, specifications shall prevail over drawings;
- (f) other documents incorporated by reference into the Contract; and
- (g) procurement related certifications or supplier qualification statements signed by Seller and provided to Buyer.

## 29. Organizational Conflict of Interest

Seller represents that its Contract execution and performance does not and will not conflict with or breach any contractual, fiduciary or other duty or obligation to which Seller is bound. Seller further represents that it will not accept work which would create for Buyer or Seller an actual or apparent Organizational Conflict of Interest (“OCI”) as such term is defined in FAR Subpart 9.5 when Seller is providing Contract Work in support of a Government Prime Contract. Seller shall immediately provide notice to Buyer in the event that it discovers any actual or potential personal or business OCI concerns related to or arising out of the Contract or any Purchase Orders.

## 30. Packing and Shipment

Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage, unless otherwise specified and meet the following requirements:

- (a) Contract Work shall be suitably packaged to secure the lowest transportation costs and to ensure against damage from transportation or weather and in accordance with the requirements of common carriers.
- (b) The Contract Work must be reasonably and adequately preserved and protected for storage at the Facilities, and for handling and protection during the shipbuilding process and after final installation.
- (c) The Purchase Order number, Purchase Order line item number and IMT material code number must be plainly marked on all packages, bills of lading and invoices.
- (d) Packing lists shall accompany each shipment listing all material included in the shipment. Buyer’s count or weight shall be final and conclusive for shipments not accompanied by packing lists.
- (e) IMT’s preferred packaging methods and standards can be referenced on the Internet at <http://www.nassco.com/purchasing/logistics-routing-guide.html>.
- (f) If shipment is from outside the U.S., pallets must be pest free, and preferably use heat (not chemically) treated bark free wood.
- (g) If Seller ships via ocean in sealed LCL (Less-Than Container Load), FCL (Full Container Load), or break-bulk shipments arriving at U.S. seaports from non-U.S. countries, then Seller must provide IMT Logistics Department with U.S. Customs 10+2 importation data using the Importer Security Filing-Form 10 in accordance with the instructions available on the internet at:

[www.cbp.gov/border-security/ports-entry/cargo-security/importer-security-filing-102](http://www.cbp.gov/border-security/ports-entry/cargo-security/importer-security-filing-102)

- (h) The 10+2 information must be sent to the IMT Logistics Department 3-4 days prior to vessel departure from port of origin. In addition, updates and corrections must also be provided to the IMT Logistics Department at least 3 business days prior to the vessel arriving in a U.S. destination port. Expediting costs to free-up shipments with late or missing 10+2 documentation will be charged to Seller at Buyers option.
- (i) Packages must be marked with the material shelf life.

## 31. Payment, Taxes and Duties

- (a) Unless otherwise provided on the face of the Purchase Order, payment shall be net 30 days from the latest of the following: (i) Buyer’s receipt of a proper invoice; (ii) scheduled delivery of the Contract Work; or (iii) actual delivery of the Contract Work. Buyer shall have a right of set-off against payments due for amounts claimed under the Contract or any other contract between the parties. Payment shall be deemed to have been made as of the date of mailing payment or electronic funds transfer.
- (b) Unless otherwise specified, prices include all applicable U.S., state and local taxes, duties, tariffs, and similar fees imposed by any government. Credits resulting or arising from the Contract, including, but not limited to, trade credits, export credits, or the refund of duties, taxes or fees, belong to Buyer. Seller shall provide all information necessary to permit Buyer to receive these credits.
- (c) Payment shall not be construed as acceptance of the Contract Work or waiver of any term or condition of the Contract.

## 32. Pricing

- (a) All pricing shall be firm fixed pricing and Seller shall be wholly responsible for providing the Contract Work at the agreed upon price unless otherwise specified in the Contract.
- (b) Seller agrees that for all changes, replacement part procurement, and spare parts procurements, the profit proposed shall be consistent with that included in the Contract Price pursuant to the Purchase Order issued prior to any such changes and subject to Buyer’s verification, which Seller agrees to support.

## 33. Quality; Problem Identification Reports

- (a) Seller shall provide and maintain a commercially reasonable quality control system (i.e., the current version of ISO 9001) that complies with the quality control requirements of the Contract. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and the Customer.
- (b) Seller shall notify Buyer of any facts or occurrences that may increase the cost of, or time required for, performance of the Contract or which may cause the Contract Work to fail to conform to the Contract. Seller shall provide such notification within 3 days of the manifestation of such facts or occurrence.
- (c) Buyer may at any time issue to Seller a corrective action request (“CAR”) that identifies any actual or potential failure of Seller to perform its obligations under the Contract and that requests information from Seller, including, but not limited to, a factual explanation of the cause of the failure, a discussion of correction of any defects, process changes that will be implemented to prevent recurrence, and a schedule of performance, and confirmation of compliance with various state and/or federal laws or regulations. Seller shall provide a responsive reply in writing to any corrective action request within 10 days of receipt of the events leading to the failure.

(d) Problem Identification Reports (“**PIR**”) shall be used by Seller to alert Buyer to actual or potential problems and to establish an early dialogue between Seller or Buyer with regard thereto. As used in this Clause, a problem is a fact or circumstance of which Seller is aware of that does, will or may (i) have an impact on the delivery schedule, completion or performance or cost (increase or decrease), or (ii) require a modification to the Purchase Order. Seller shall provide the Procurement Representative with a written report of each problem within 10 days after Seller identifies such problem. Each PIR shall be dated, reference the Purchase Order, and describe the nature of the problem, the date that the problem arose, and the anticipated effects of the problem including but not limited to, delivery, cost of performance, and Seller’s recommended resolution of the problem. The parties expressly agree that the PIR shall not constitute a modification or amendment of the Purchase Order or Contract and do not modify price or schedule.

(e) Buyer may unilaterally withhold 5% of the total Contract Price if Seller fails to submit to Buyer: (i) a conflict mineral compliance certification or (ii) human trafficking compliance certification. The financial withholding will be released after Seller submits the requisite certifications.

#### **34. Scope of Performance**

(a) When the words “or equal” are used in the Contract or specifications, proposed “equals” must be approved in writing by Buyer in its sole discretion before Seller is able to deliver the Contract Work. Seller shall perform the Contract Work described by the Contract. Seller shall provide at the location where the Contract Work is to be performed all labor, materials, equipment, tools and supervision, and Seller shall bear all items of expense for these items. Seller shall perform the Contract Work to the standards of care, skill and diligence, professional or otherwise, normally provided by a competent person when supplying goods or performing services identical or substantially similar to the Contract Work hereunder.

(b) Seller shall provide all necessary material, equipment and labor to supply the Contract Work in strict conformity with the specifications. Seller shall make no changes in the specifications without Buyer’s written consent and shall not substitute materials for those specified without Buyer’s written approval.

(c) Seller’s deliverables shall conform in all material aspects to the Contract.

(d) Seller shall cooperate with all other suppliers or subcontractors working in support of Buyer’s Prime Contract. Seller agrees to accept direction from Buyer with respect to performance, schedule or reschedule of Contract Work as necessary, attend meetings as requested by Buyer, and to be responsible for its personnel working harmoniously with other suppliers or subcontractors.

#### **35. Setoffs/Back-charges**

(a) Buyer may in addition to any other amounts to be retained hereunder, retain from any sums otherwise owing to Seller amounts sufficient to cover the full costs of any of the following:

(b) Seller’s failure to comply with any provision of the Contract or Seller’s acts or omissions in the performance of any part of the Contract, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements, the Affordable Care Act or submission of inaccurate or defective cost or pricing data;

(c) Correction of defective or nonconforming work by redesign, repair, rework or replacement or other appropriate means when Seller states, or indicates, that it is unable or unwilling to proceed with corrective action in a reasonable time to support production need; and/or

(d) Buyer may in addition to any other amounts to be retained hereunder, retain any sums otherwise owing to Seller amounts sufficient to cover the full costs of any of the following: (i) Incurred labor costs including all payroll additives; (ii) Incurred net delivered material costs; (iii) Incurred lower-tier Supplier and Seller costs directly related to performing the corrective action; (iv) Expediting costs beyond those normally provided in the normal course of the Contract when required to meet the Contract schedule; (v) Application of relevant manufacturing and material overhead and S, G&A expense to the work performed by Buyer; and (vi) Profit – appropriate profit (fee) as defined in FAR 15.404-4.

(e) Buyer shall have a right of set-off against payments due to Seller under the Contract or any other contract between the parties for all costs, expenses, damages, liabilities associated with Seller’s non-compliance with its obligation under the Contract. The parties expressly agree that such costs, expenses, damages and liabilities shall include, without limitation, any reduction in the award fee on Buyer’s Prime Contract and any costs determined to be unallowable attributable to Seller’s performance or submission, and any impacts to cost or schedule of other subcontractors under Buyer’s Prime Contract. For avoidance of doubt, Buyer may take a corresponding withholding should any withholding for deficiencies occur at the Prime Contract level as a result of Contract Work performed by Seller. Any amounts so withheld will be paid upon correction of the deficiency and approval at the Prime Contract level for payment provided that such Contract Work does not otherwise impact performance of Buyer’s Prime Contract, or result in a reduction to Buyer’s award fee. There shall be no interest due to Seller on any monies withheld by Buyer.

#### **36. Survival**

The following provisions survive expiration or termination of the Contract: Acceptance, Integration, Amendment and Interpretation; Compliance with Ethics; Compliance with Laws; Confidentiality and Third Party Intellectual Property Rights; Disputes; Export Control Compliance and Cooperation Applicable to Contract Work; Guaranty; Indemnity; Independent Contractor; Insurance; Limitation of Liability; No Advertising or use of Buyer’s Trademarks; Order of Precedence; Payment, Taxes and Duties; Setoff/Back-charges; Survival and Waiver.

#### **37. Time of Performance**

Seller shall perform the Contract Work and/or deliver the Contract Work in a diligent manner and in no event later than the time(s) specified on the face of the Purchase Order, unless the delay arises from causes beyond the control and without the fault or negligence of Seller, in which case, Seller and Buyer shall cooperate in good faith to agree in writing upon a revised completion date. *Time is of the essence.* If requested by Buyer, Seller shall submit to Buyer, in a format acceptable to Buyer, a detailed schedule for performance of the Contract. Buyer may require Seller, at Seller’s expense, to increase its forces or shifts or to use overtime, to use expedited shipping means, or to take such other measures as may be necessary to meet or recover schedule for schedule slippages not attributable to a Force Majeure. If at any time it reasonably appears to Buyer that Seller is failing to make progress, such that performance may not be completed in accordance with the Contract, and the delay is not attributable to causes beyond the control of Seller, then Seller shall, within a reasonable period of time, which in no event shall be less than 3 business days of a written request by Buyer, provide adequate assurances to Buyer that it will not breach the Contract and assure timely performance and represent to Buyer in writing its best completion date. If the represented completion date is not within the original time for completion of performance of the Contract, Buyer may immediately terminate the Contract for default in accordance with the Default Clause, provided

however that such default shall be without opportunity to cure. Buyer shall further have the right, but not the duty, and without waiver of any other rights and remedies which it may have, and regardless of Seller's best completion date, to extend the time for completion of performance.

**38. Title and Risk of Loss**

Title to the Contract Work shall pass to Buyer upon delivery of the Contract Work in accordance with the Contract unless stated otherwise in the Purchase Order or specifications. Title will revert back to the Seller when Buyer revokes acceptance, rejects or refused to receive Contract Work for any reason. Risk of Loss shall be as determined by the shipping terms set forth on the face of the Purchase Order unless otherwise agreed in writing by the parties; and Seller shall be responsible for Risk of Loss to the designated delivery point until acceptance occurs unless the loss, destruction or damage results from Buyer's gross negligence. Seller shall remain solely liable for Risk of Loss, after Buyer's rejection, unless such loss, destruction or damage results from Buyer's gross negligence.

**39. Waiver**

A party's failure to insist on performance of any part of the Contract shall not be construed as a waiver; and shall not affect that party's right to exercise any right or remedy. Buyer's acceptance of Contract Work shall not operate as a waiver of rights or otherwise relieve Seller from its responsibilities or obligations under the Contract.

**40. Anti-Human Trafficking Compliance**

(b) *The following requirements apply when Seller is providing Contract Work to Buyer in support of U.S. Government prime contract.*

Seller shall comply with FAR 52.222-50 even if Seller provides services, commercial items, or Commercial Off-The-Shelf (COTS) items. ***Seller shall flow-down FAR 52.222-50 to its subcontractors or suppliers at any tier or level.*** However, FAR 52.222-50 paragraph (h) and paragraph (i) shall **only** apply when aggregate value of the Purchase Orders issued to Seller under the Contract are estimated to exceed \$500,000 **and** Seller is providing supplies other than commercially available COTS items acquired outside of the U.S. or services are to be performed outside of the U.S. When FAR 52.222-50 paragraph (h) and paragraph (i) apply, Seller shall provide Buyer with: (i) Seller's compliance plan and signed certification as provided in FAR 52.222-50 paragraph (h)(5) before Buyer is able to issue any Purchase Order to Seller under the U.S. Government prime contract; and (ii) Seller's annually updated compliance plan and certification thereafter. Seller must also implement Seller's compliance plan to prevent trafficking in persons.

(2) Seller shall comply with: (i) DFARS 252.222-7007; (ii) FAR 52.244-6 when Seller is providing commercial items; (iii) the hotline poster requirement set forth in 252.203-7004 when Seller's Contract for non-commercial items exceeds \$5 Million; and (iv) DFARS 252.225-7040 paragraph (d)(8) when Seller is providing personnel deployed to support U.S. Armed Forces outside of the U.S.